



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Matthew Scott Lewis
Hearing dates:	31 August - 2 September 2015
Date of findings:	2 September 2015
Place of findings:	NSW Coroners Court - Wellington
Findings of:	Magistrate Sharon Freund, Deputy State Coroner
Catchwords:	CORONIAL LAW – Cause and manner of death, vehicle modified for hunting, use of firearms without a licence.
File number:	2013/301793
Representation:	Mr J Harris instructed by Ms J Geddes, Crown Solicitor's Office as Counsel Assisting the Coroner; Mr N Regener for the Commissioner of Police; Mr J Galluzzo for Mr Mark Carter, a person of interest.
Findings:	<i>I find that Matthew Scott Lewis died on 5 October 2013 at Westmead Hospital from blunt force trauma to the head as a result of a single motor vehicle accident.</i>

Recommendations:

To the Minister for Roads, Maritime and Freight

I recommend that the Minister consider an amendment to the Road Transport Act 2013, Schedule 3, to provide police with power to require a person to undergo a breath test, or supply a sample of blood or urine, where there is reasonable cause to believe that the person was driving a motor vehicle that has been involved in an accident on private land, and where that accident has caused serious injury or death.

REASONS FOR DECISION

Introduction

1. This is an inquest into the death of Matthew Scott Lewis who was only 21 years old when he passed away on 5 October 2013, from head injuries he sustained when the modified motor vehicle in which he was a passenger rolled ("**the Accident**") whilst he was on a hunting trip with friends on a property known as "Westlynne" which is located approximately 5km northwest of Nyngan.
2. Matthew was the second child of Ms Cathy Vella. It is clear from the statement she gave at the outset of the inquest that his death has left a huge hole in the lives of his family, including his stepfather Mark, siblings Christie, Josh, Jaidyn, Luke and Ryan and Aunts Shellie and Sarah. Matthew was described as a young man full of potential, caring and even-tempered and obviously very much loved and very much missed. His family is clearly coming to grips with his sudden and unexpected death which occurred just before his 22nd birthday.
3. As outlined by Counsel Assisting, Mr Harris, this inquest considered the following issues in relation to Matthew's death:
 - A. Did the modifications to the Motor Vehicle contribute to the Accident?
 - B. What was the speed of the Motor Vehicle at the time of the Accident?
 - C. Was the driver of the motor vehicle under the influence of drugs or alcohol at the time of the Accident?
 - D. Did the police respond to and investigate the Accident appropriately in all the circumstances?
 - E. Are there any recommendations arising out of this inquest?

The function of the Coroner and the nature of the inquest

6. As outlined at the start of this inquest the role of a Coroner as set out in s. 81 of the *Coroners Act 2009* ("**the Act**") is to make findings as to:
 - a) the identity of the deceased;
 - b) the date and place of a person's death;

- c) the physical or medical cause of death; and
 - d) the manner of death; in other words, the circumstances surrounding the death.
7. The Coroner is also able to make recommendations pursuant to section 82 of the Act in relation to any matters to improve public health and safety.

Background and Events leading up to the Accident

8. At the time of his death Matthew was living at Geurie, near Dubbo, with his friend Mitchell Schneider. He was particularly close to the Schneider family having been in an on and off again relationship with Mitchell's sister, Kristy.
9. Over the Labour day October long weekend, the Schneider family and some friends planned to stay in a campsite at Nyngan. Matthew joined them. One of the activities the group planned to partake in over the weekend was to go hunting on a farm property nearby called "Westlynnne"
10. The property "Westlynnne" and its adjoining properties were occupied by Jack (also known as John) and Dione Carter.
11. Mark Carter (Jack's brother) was also visiting Nyngan at the time. He was a neighbour and friend of the Schneider family. He had arrived in the Nyngan area a few days earlier with Warrick Schneider (Mitchell's brother) and was familiar with "Westlynnne" as he had lived and worked on the farm in the past. He had often gone hunting on "Westlynnne"¹.
12. The Schneider family and their friends arrived at the Nyngan campsite over the course of the afternoon on Friday, 4 October 2013, eating a late meal together that included some alcohol.
13. At about 9pm, a group of five set off to go hunting, namely: Mark Carter, Warrick Schneider ("Blocka"), Wayde Stinson, Raymond Medley ("Mango") and Matthew. They traveled in Warrick Schneider's car and went straight to the sheds at

¹ Exhibit 1, Volume 2, tab 11, at Q103;

"Westlyne", where a modified landcruiser ("the Motor Vehicle") owned by Jack Carter was stored/housed.

14. The Motor Vehicle was extensively modified by Jack Carter who is by trade a welder to make it more suitable for hunting. It was known in the family as the "hunting buggy". In summary, the transmission had been changed from an all-wheel drive to a rear-drive automatic, a roll cage had been added, a bull bar and rails had been fitted, there was a spotlight and other lights on top and the station wagon rear was cut out and converted into a tray. Most significantly, 2 large holes were cut in the roof, called "pop-up" holes or manholes. Passengers could stand on the rear seats, with the top half of their bodies outside the roof, in order to shoot animals.
15. It was the evidence of Jack Carter that he maintained the Motor Vehicle and his mechanic Paul Beetson had checked it a few days prior to the accident. Police examined the Motor Vehicle after the accident and found it was in good working order with no mechanical faults that had contributed to the accident.²
16. When the hunting party arrived at the shed they found that the Motor Vehicle had a flat tyre, which they changed, they also filled up the tank with petrol. While they were doing this, they had another drink and discussed what they were going to do that evening. They loaded an esky with some beer and food into the Motor Vehicle and prepared to leave.
17. It is uncontroversial that Mark Carter was driving the Motor Vehicle. It was his evidence that he was very familiar with the vehicle, having driven many times it over the years.³ Wayne Stinson was sitting next to him in charge of the spotlight and Raymond Medley was in the front passenger seat. Warrick Schneider was in the rear right hand passenger seat and Matthew was sitting next to him on the rear left. No one was wearing seat belts.
18. The group also had 5 guns in their possession. Mark Carter had 2 rifles next to him.⁴ Raymond Medley had his own rifle.⁵ They both had appropriate firearms licences. However, Warrick Schneider and Matthew also each took a shotgun.⁶ Neither of

² Exhibit 1, Volume 2, tab 40;

³ 50 to 80 times: see M. Carter Exhibit 1, Volume 1 tab 11 Q250;

⁴ A .22 calibre Marlon XT rifle and a .243 calibre Winchester rifle;

⁵ A .223 Weatherby rifle;

⁶ 12 bore and .410 bore single-shot shotguns: see M. Schneider, Exhibit 1, Volume 1 tab 17;

them had a firearm licence. Both of those firearms belonged to Warrick's brother, Mitchell Schneider.

The Accident

19. At about 11pm, Mark Carter drove the vehicle south from the tree line from a "well formed dirt road"⁷ into a paddock. The paddock was cultivated, with trees and stumps removed, and had animal feed or grass growing in it, some of it up to 50cm high. It was in fallow⁸.
20. It was the evidence of Mr Carter that he was initially travelling at a speed of up to 70kmph as he entered the paddock along the dirt road but as he entered the paddock he noticed the ground was a bit "slippery", possibly being damp, and realised he should be careful. He therefore slowed down.
21. At this point the group noticed a number of kangaroos. The evidence indicates that Mr Carter began to follow the kangaroos North through the paddock and as he was following one of the kangaroos, it moved to the left. He turned the Motor Vehicle to follow it and as he did so, the rear of the Motor Vehicle began to slide, and then abruptly it rolled over, first onto the driver's side, onto its roof and ultimately coming to rest on the passenger's side.
22. Warrick Schneider was thrown out of the vehicle during the crash. His evidence was *inter alia* that: "as the Motor Vehicle rolled his right hand hit the ground, his legs fell out of the vehicle as it rolled onto its roof and he was thrown from the vehicle as it came to rest on the passenger side"⁹. After the Accident, Warrick Schneider saw that Matthew was trapped underneath the vehicle, with his head under the rear passenger side door. He called the others to help and together they managed to lift the Motor Vehicle and pull Matt out. They saw that Matt had sustained a very serious head injury and an ambulance was called.

⁷ oral evidence of Mark Carter - 1 September 2015;

⁸ Ibid;

⁹ oral evidence of Warrick Schneider - 1 September 2015;

The arrival of ambulance and police

23. As the Accident occurred on a private rural property, the ambulance was directed to the location of the Accident by Paul Carter, the father of both Mark and Jack. The evidence indicates that the ambulance (with Paul Carter directing in the back seat) arrived just before midnight. Soon after that, Jack and Dione Carter also arrived at the scene.
24. Paramedic Daniel McIntosh gave evidence on the first day of the inquest. His evidence can be summarised as follows:
- a) When the ambulance arrived at the scene of the Accident he observed the Motor Vehicle “was on its passenger side”¹⁰;
 - b) He observed the patient, Matthew, to be unconscious, lying on his back with his “head closest to the vehicle’s roof on a 90 degree angle. He had arms by his side and legs out straight”¹¹;
 - c) The patient was in a very serious condition and he had requested the assistance of police to drive the ambulance to Nyngan hospital as Matthew required intensive treatment by both himself and paramedic Elliot Lemmon¹²;
 - d) As the police had yet to reach the accident site he requested Mr Paul Carter to drive the ambulance so that Matthew could get optimum care¹³.
25. At about 12.15am, Matthew arrived at Nyngan Hospital by ambulance. He was attended to in the ambulance by both paramedic McIntosh and Lemmon¹⁴. The ambulance was driven by Paul Carter.
26. Matthew was later transferred to Westmead hospital from Nyngan hospital for treatment.
27. The ambulance control room informed the local police about the accident. Instead of attending the scene of the accident, they drove to meet the ambulance and arrived at Nyngan Hospital at approximately the same time. As a consequence, police did not

¹⁰ Exhibit 1, Volume 2, Tab 37, paragraph 7;

¹¹ Ibid;

¹² Oral evidence of Paramedic McIntosh - 31 August 2015;

¹³ Ibid;

¹⁴ Exhibit 1, Volume 2, Tab 36;

attend at the scene of the crash until about 4.50am. The reasons why police made this decision will be considered below.

28. It was conceded by those that remained at the scene of the accident that once Matthew had been taken by the accident and prior to the arrival of police that those present had cleared up the scene, in that they:
- a) put the Motor Vehicle back on its wheels, although it could not be driven away as it had a flat battery;
 - b) removed the esky and firearms from the scene.

Did the modifications to the Motor Vehicle contribute to the Accident?

31. The Motor Vehicle was extensively modified. An expert report was obtained from Mr Simon Parker¹⁵, a crime scene officer specialising in collision reconstruction, for the purpose of determining what if any impact the modifications to the Motor Vehicle had on its propensity to roll over. Mr Parker also gave oral evidence on the first day of the inquest. His evidence was inter alia that:
- a) the centre of mass and roll centre of the Motor Vehicle had been altered by the modifications, as weight had been removed and added above its original centre of mass¹⁶;
 - b) passengers standing in the back of the Motor Vehicle (which the modifications allowed for) would further increase the weight positioned above the centre of mass and roll centre of the Motor Vehicle¹⁷;
 - c) as a result of the modifications, the Motor Vehicle was more unstable and therefore more likely to rollover¹⁸.
32. The Motor Vehicle was owned by Jack Carter. It was his evidence that he carried out the modifications on the Motor Vehicle to make it more suitable for hunting and other farm activities. It was his evidence on the first day of the evidence that it was his belief that the modifications made the vehicle safer than the passengers "simply standing on the tray of a ute unsecured, trying to shoot and possibly falling off the ute whilst it was in motion".

¹⁵ Exhibit 1, Volume 2, Tab 42;

¹⁶ Ibid at paragraph 6;

¹⁷ Ibid at paragraph 8;

¹⁸ Oral evidence of Mr Parker - 31 August 2015;

33. Although Jack Carter made the modifications to the Motor Vehicle with good intentions and with the view that it was safer for the passengers to be hunting and shooting from a moving vehicle in the “more secured environment” of the “pop up holes” I accept the expert evidence that the modifications to the Motor Vehicle, coupled with the passengers standing up, made the Motor Vehicle inherently unstable and liable to rollover, which unfortunately occurred on the night of 4 October 2013 with tragic consequences.

What was the speed of the Motor Vehicle at the time of the Accident?

34. It was the evidence of Mark Carter who was driving the Motor Vehicle at the time of the Accident *inter alia* that:
- a) that he initially entered the paddock in which the accident occurred through a gate and on a “well formed hard dirt road”¹⁹;
 - b) he estimates he was doing approximately 70km per hour along the dirt road along the tree line at this time²⁰;
 - c) he then drove into the paddock when he realised that it was “slippery” and then immediately slowed down²¹;
 - d) he “estimates his speed to be around 50 km per hour though if someone would put to him he was doing 60 km per hour he wouldn’t deny that”²²;
35. It was the evidence of all other occupants of the Motor Vehicle that it was not travelling at an excessive speed at the time of the Accident.
36. It was the expert evidence of Mr Parker that:
- “After viewing the associated photographs and crime scene sketches of the vehicle at final rest along with its relationship to the tyre markings in the grassed surface it becomes apparent that this rollover has occurred at a relatively low vehicle speed. Had vehicle speed been a significant factor it would be expected that the vehicle would have continued rolling for a greater distance, the reason for this vehicle rolling over is solely contributable to the vehicle travelling at a speed too high for the desired*

¹⁹ oral evidence Mark Carter 1 September 2015;

²⁰ Ibid;

²¹ Ibid;

²² Ibid;

*turn radius in combination with the uneven terrain being negotiated. It is my opinion that based on the distances involved between where the vehicle has started to rollover and where the vehicle has come to rest the speed of the vehicle would not be in excess of about 50 km per hour*²³

37. Accordingly, I am satisfied on the balance of probabilities that the speed of the Motor Vehicle at the time of the Accident was approximately 50 km per hour.

Was the driver of the Motor Vehicle under the influence of drugs or alcohol at the time of the Accident?

38. Mr Mark Carter was not subject to breath analysis or urinalysis for drugs or alcohol following the Accident.
39. As the Accident occurred on private property the provisions of the *Road Transport Act 2013* that empower police to require a breath test did not apply, and accordingly the police investigating the Accident could not subject Mr Mark Carter to such testing. They simply did not have the power.
40. This inquest has looked into the question of whether Mr Mark Carter had been drinking prior to the Accident. He had. However the evidence at its highest indicates that he drank approximately 2-3 bottles of XXXX Gold at dinner and part of a beer when the group arrived at "Westlynn" and were changing the tyre on the Motor Vehicle.
41. For the abundance of caution expert reports were obtained from Dr Judith Perl forensic pharmacologist²⁴ who found based on the evidence of Mr Mark Carter's drinking at its highest his blood alcohol at the time of the Accident would be calculated to be between 0 to 0.015g per 100mL. Accordingly this level of alcohol would have caused no impairment to his driving ability²⁵.
42. There is no evidence at all that Mr Mark Carter was affected by drugs.
43. Accordingly I am satisfied on the balance of probabilities that Mr Mark Carter was not affected by either drugs or alcohol at the time of the Accident.

²³ Exhibit 1, Volume 2, Tab 42, paragraph 9;

²⁴ Exhibit 1, Volume 2, Tabs 41 and 41A;

²⁵ Ibid Tab 42A at paragraph 1;

Did the police respond and investigate the Accident appropriately in all the circumstances?

44. The evidence indicates that the police on duty on the night of 4 October 2013 received the call from police radio at approximately 11.32pm (23:32)²⁶.
45. The police who responded were Senior Constable Sweet and Senior Constable Cobcroft. They were in Nyngan at the time they received the call and had been advised that the ambulance was already en route.
46. It was the evidence of Senior Constable Sweet *inter alia* that:
- a) she knew the paramedic on duty that night and telephoned Daniel McIntosh directly to find out what was happening;
 - b) Mr McIntosh immediately passed the phone to a male person who she did not know who proceeded to give her directions to the accident site;
 - c) she and her partner who was driving got lost attempting to find the accident site;
 - d) they realised that they were in the wrong paddock when they could see lights in the distance so they turned around and headed back out the way they came to meet the ambulance;
 - e) Mr McIntosh had requested that she meet them and drive the ambulance as the patient was seriously injured and needed the attention of both paramedics;
 - f) They did not catch up to the ambulance until it was just outside of Nyngan and as it did not pull over they then proceeded to provide it with an escort to the hospital;
 - g) She did not realise that someone other than the paramedics was driving the ambulance until it pulled up at the hospital;
 - h) She and Senior Constable Cobcroft remained at the hospital until Matthew had been taken by the Royal Flying Doctor Service and while they were there they assisted medical staff in relation to his care and treatment;
 - i) She did not contemplate securing the scene of the Accident for further investigation, as her first priority was the care of the injured patient;
 - j) In hindsight she should have called the Bourke Supervisor, to send someone to the Accident scene to secure it.
47. The evidence of Senior Constable Sweet was corroborated by her colleague Senior Constable Cobcroft and by paramedic McIntosh.

²⁶ Exhibit 1, Volume 2, Tab 28A, incident log;

48. It is unfortunate that the Accident scene was not secured at an earlier time. However, I accept the evidence of both Senior Constables Sweet and Cobcroft that they were acting in what they thought was the best interest of Matthew at the time.
49. They should have perhaps have taken steps to call in other officers to do what they could not as they were otherwise occupied. However, I do note given the remoteness of the Accident site and the difficulties these officers themselves had in finding it would have been difficult for any other officer to find it in the circumstances.

Recommendations

50. As this Accident occurred on private property, police investigating whether the driver of the Motor Vehicle was affected by alcohol or illicit substances were hampered by the fact that they have no power to require the driver of the motor vehicle to take a breath test.
51. In my findings into the deaths of Eliza Wannan and William Dalton-Brown, delivered on 9 October 2013, I considered police powers to require a breath test under the *Road Transport Act 2013* (and the previous legislation then in force). I concluded:
- "... the police only have the power to conduct a breath test if the officer has reasonable cause to believe that the person was driving a motor vehicle or occupying the seat of a motor vehicle on a road or road related area. So without the power to test somebody driving a motor vehicle or occupying a seat of a motor vehicle on a private property for the presence of alcohol, it follows that charges are unlikely to arise."*
52. I declined to make a recommendation on that occasion, although I noted that there was an anomaly which can result in a negligent driver who has caused harm or death to another, not facing possible penalty as the driving occurred on private land/property.
53. I understand that, following my findings in that case, the relevant agencies have considered this issue further. However, to date there has been no change in the law.
54. Matthew's family also made a submission to me asking that I recommend that the law should be changed to empower police to require breath tests where an accident has occurred on private land.

55. Accordingly, I am satisfied that this case is another example where the law as it currently stands is inadequate. Consideration should be given to amendments that give the investigating officers to power to breath test those driving a motor vehicle on private land that is involved in an accident that causes injury and or death.

Conclusion

58. The death of Matthew Lewis was a tragic accident. A group of friends out for fun and adventure have found that their lives have been changed in an instant. For Matthew's family the grief no doubt will be everlasting.
59. What did unfortunately compound the distress was the decision taken by those present to collude and lie about the circumstances of Matthew's death and why they were out in the "hunting buggy" on 4 October 2015. They told police shortly after the accident that they had been shooting foxes, not kangaroos, because they were concerned that they may not have had the appropriate licence to do so. Self-interest and protection was at the heart of the lies, despite the fact their friend lay critically injured and dying in hospital. Mark Carter, Warrick Schneider, Ray Medley and Wayde Stinson did not contemplate the ramifications of their actions. They should have known better. We now know the truth but it should never have taken this long.

Findings

Accordingly, I now turn to the findings I am required to make pursuant to section 81 of the Coroners Act 2009:

I find that Matthew Scott Lewis died on 5 October 2013 at Westmead Hospital from blunt force trauma to the head as a result of a single motor vehicle accident.

Recommendations

For the reasons set out in these findings I make the following recommendation pursuant to section 82 of the *Coroners Act 2009*:

To the Minister for Roads, Maritime and Freight

I recommend that the Minister consider an amendment to the Road Transport Act 2013, Schedule 3, to provide police with power to require a person to undergo a breath test, or supply a sample of blood or urine, where there is reasonable cause to believe that the person was driving a motor vehicle that has been involved in an accident on private land, and where that accident has caused serious injury or death.

I close this inquest.

Magistrate Sharon Freund

Deputy State Coroner

Wellington

2 September 2015