



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Joel Murphy
Hearing dates:	26, 27, 28 July, 24 August 2017
Date of findings:	24 August 2017
Place of findings:	NSW Coroner Court - Glebe
Findings of:	Magistrate Paula Russell, Coroner
Catchwords:	CORONIAL LAW – Suspension of inquest into the death Joel Murphy
File number:	2015/269100
Representation:	Sgt Durand Welsh, Coronial Advocate Assisting the Coroner
Findings:	Identity Joel Murphy Date of death: 12 September 2015 Place of death: Tizzana Rd, Ebenezer Manner of death: Cause of death: Multiple injuries sustained in a motor vehicle collision

Introduction

Joel Murphy, who was 18 at the time, was one of 2 front seat passengers in a single cab silver Toyota Hilux utility, registered number DV3114, driven by Dylan Vella on Tizzana Road, Ebenezer, between 11.30pm and midnight on Saturday, 12 September 2015. Joel Murphy was the passenger closest to the passenger's side door and Braydon Watson was in the centre. At about 11:50pm that vehicle collided with a tree outside 393 Tizzana Road, fatally injuring Joel Murphy, who died of multiple injuries.

S 81 Coroners Act 2009

S 81 of the *Coroners Act* requires that a coroner holding an inquest into the death of a person

must, at its conclusion or on its suspension, record in writing the coroner's findings as to:

- (a) the person's identity, and
- (b) the date and place of the person's death, and
- (c) in the case of an inquest that is being concluded - the manner and cause of the person's death.

Joel's identity, the date and place of his death and the cause of his death, as distinct from the cause of the collision, being sufficiently disclosed, the focus of this inquest has been to establish the manner, or the circumstances, in which that collision occurred.

Background

Joel Murphy, Dylan Vella, Braydon Watson, Ben Atkins and Corey Madden were part of a group of friends who regularly spent time together.

Braydon Watson and Dylan Vella had, earlier on 12 September, been watching their friend, Ben Atkins, waterski at Wiseman's Ferry. Sometime around 7pm they met Joel and another friend, Corey Madden, at a Chinese restaurant in Windsor. Both Ben Atkins and Braydon Watson told police that the group arrived at Windsor in 4 cars, Braydon and Ben together in Ben's car, Dylan, in his own car and Joel and Corey together in Joel's car. Ben Atkins, did not, in his evidence remember that detail but it is of little significance.

After dinner at Windsor, Corey Madden collected his car and the group went to the Woodland Industrial Park in Wilberforce. At that location Dylan and Braydon did burnouts in their vehicles. Following that the group went back to Ben Atkins' house on Tizzana Road and Joel Murphy changed a bald tyre on Dylan Vella's vehicle. The group stayed at Ben Atkins' house until about 10 o'clock and then they drove into

Windsor again. This time only Dylan and Corey drove. Joel and Braydon were passengers in Dylan's vehicle and Ben in Corey's vehicle.

They left Windsor, in the same vehicles, at about 11:30pm heading back to Ben Atkins' house. Dylan Vella's vehicle was in front having left the carpark first.

Tizzana Rd Ebenezer

Tizzana Rd towards the collision site is described by Leading Senior Constable Kristy Foster, accident investigator with the Metropolitan Crash Investigation Unit of the New South Wales Police Force as

[c]onsist[ing] of a single lane roadway in each direction. The roadway travels along various grades and consists of multiple twists and turns approaching the collision scene.

The road surface at the time, Leading Senior Constable Kristy Foster said, was

of an asphaltic bitumen in good condition with no rutting, pot-holing or subsidence eviden[t]. The eastern and western edges of the roadway were gravel leading to acreage and residential properties.

In close proximity to the collision scene, vehicles travelling [in the direction of Dylan Vella's vehicle] are faced with a right-hand bend with a downhill grade. Upon exiting the corner vehicles are faced with a straight relatively level section of roadway. Along this entire section of road opposing lanes of traffic are separated by double unbroken lines marked on the roadway.

The speed limit on Tizzana Rd, which has been described by a number of witnesses as a narrow road, is 80kph.

Testing of the frictional properties of the road surface in the relevant area led LSC Foster to form the opinion that road surface was sufficiently abrasive and, therefore, to discount the surface friction of the roadway as a contributor to the collision.

The collision

Approximately 12 metres north of the driveway of 393 Tizzana Rd, towards the end of the right hand bend but before the road straightens out, Leading Senior Constable Foster observed a tyre mark on the gravel shoulder of the north bound lane. It was her opinion that that tyre mark evidenced the beginning of a sequence of events which culminated in the fatal collision. It indicated that the nearside (or passenger side) wheels of Dylan Vella's vehicle entered onto the gravel shoulder of the road at that point. That tyre mark continued north along the shoulder entering a grassed area and continued for approximately 43 metres before ending at the road's edge.

She observed related tyre furrows approximately 23 metres north of that point, across the road, on the eastern grass verge. By the time it made those marks, in her opinion, the vehicle was out of control in that it was rotating around its mass. There

was nothing, at that point, she said, that a driver could do to affect, by which I understood her to mean, control, its movement.

As it travelled along the grass verge on the eastern shoulder in a sideways motion the vehicle came into contact with a banksia tree. It entered the roadway travelling towards the western shoulder. As it travelled across the road towards that shoulder there was a harsh application of the brakes evidenced by scuff marks on the road. The vehicle continued onto the gravel shoulder and into the surrounding foliage where the nearside door of the vehicle hit a tree in a sideswiping motion and then hit a large tree head on. The force of that impact rotated the vehicle in an anticlockwise direction.

Joel Murphy died in that vehicle.

The inquest

At the end of the 3rd day of evidence, late on 28 July, the proceedings were adjourned until today to enable any submissions to be made with respect to section 78 *Coroners Act 2009*.

S 78 Coroners Act 2009

S 78 *Coroners Act 2009* is relevantly in the following terms:

78 Procedure at inquest or inquiry involving indictable offence

(1) This section applies in relation to any of the following inquests or inquiries:

(b) an inquest or inquiry if, at any time during the course of the inquest or inquiry, the coroner forms the opinion (having regard to all of the evidence given up to that time) that:

(i) the evidence is capable of satisfying a jury beyond reasonable doubt that

a known person has committed an indictable offence, and

(ii) there is a reasonable prospect that a jury would convict the known person of the indictable offence, and

(iii) the indictable offence would raise the issue of whether the known person caused the death, suspected death, fire or explosion with which the inquest or inquiry is concerned.

(3) If this section applies to an inquest or inquiry as provided by subsection (1) (b), the coroner may:

(a) continue the inquest or inquiry and record under section 81 (1) or (2) the coroner's findings or, if there is a jury, the verdict of the jury, or

(b) suspend the inquest or inquiry and, if there is a jury, discharge the jury.

(4) The coroner is required to forward to the Director of Public Prosecutions:

- (a) the depositions taken at an inquest or inquiry to which this section applies, and
- (b) in the case of an inquest or inquiry referred to in subsection (1) (b)—a written statement signed by the coroner that specifies the name of the known person and the particulars of the indictable offence concerned.

Submissions have been made, with respect to section 78 of the *Coroners Act 2009*, as to whether, having regard to all of the evidence given up to that time, I should form the opinions set out in section 78 (1)(b).

I have had regard to those submissions but I have formed the opinion that there is evidence capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence and there is a reasonable prospect that a jury would convict that person of that offence. I have formed the opinion that the indictable offence would raise the issue of whether that person caused the death of Joel Murphy.

The question of whether a person is guilty of a criminal offence is a question which must be decided in the criminal courts and not in this jurisdiction. The consequence of my forming those opinions is that the inquest will be suspended without my making findings on the manner, or circumstances, in which the collision causing the fatal injuries to Joel Murphy occurred.

Findings required by s81(1)

I am able to confirm that the death occurred and make the following findings in relation to it:

The identity of the deceased

The deceased person was Joel Murphy

Date of death

Joel Murphy died on 12 September 2015

Place of death

He died at Tizzana Rd, Ebenezer, NSW

Cause of death

Joel Murphy's death was caused by multiple injuries sustained in a motor vehicle collision.

Inquest suspended

Pursuant to s 78(3)(b) I suspend this inquest.

Magistrate Paula Russell

Coroner

Glebe

Date 24 August 2017



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Background

Joel Murphy, Dylan Vella, Braydon Watson, Ben Atkins and Corey Madden were part of a group of friends who regularly spent time together.

Braydon Watson and Dylan Vella had, earlier on 12 September, been watching their friend, Ben Atkins, waterski at Wiseman's Ferry. Sometime around 7pm they met Joel and another friend, Corey Madden, at a Chinese restaurant in Windsor. Both Ben Atkins and Braydon Watson told police that the group arrived at Windsor in 4 cars, Braydon and Ben together in Ben's car, Dylan, in his own car and Joel and Corey together in Joel's car. Ben Atkins, did not, in his evidence remember that detail but it is of little significance.

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They left Windsor, in the same vehicles, at about 11:30pm heading back to Ben Atkins' house. Dylan Vella's vehicle was in front having left the carpark first.

Tizzana Rd Ebenezer

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[c]onsist[ing] of a single lane roadway in each direction. The roadway travels along various grades and consists of multiple twists and turns approaching the collision scene.

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The speed limit on Tizzana Rd, which has been described by a number of witnesses as a narrow road, is 80kph.

Testing of the frictional properties of the road surface in the relevant area led LSC Foster to form the opinion that road surface was sufficiently abrasive and, therefore, to discount the surface friction of the roadway as a contributor to the collision.

The collision

Approximately 12 metres north of the driveway of 393 Tizzana Rd, towards the end of the right hand bend but before the road straightens out, Leading Senior Constable Foster observed a tyre mark on the gravel shoulder of the north bound lane. It was her opinion that that tyre mark evidenced the beginning of a sequence of events which culminated in the fatal collision. It indicated that the nearside (or passenger side) wheels of Dylan Vella's vehicle entered onto the gravel shoulder of the road at that point. That tyre mark continued north along the shoulder entering a grassed area and continued for approximately 43 metres before ending at the road's edge.

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Joel Murphy died in that vehicle.

The inquest

At the end of the 3rd day of evidence, late on 28 July, the proceedings were adjourned until today to enable any submissions to be made with respect to section 78 *Coroners Act 2009*.

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a known person has committed an indictable offence, and

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(a) continue the inquest or inquiry and record under section 81 (1) or (2) the coroner's findings or, if there is a jury, the verdict of the jury, or

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- (a) the depositions taken at an inquest or inquiry to which this section applies, and
- (b) in the case of an inquest or inquiry referred to in subsection (1) (b)—a written statement signed by the coroner that specifies the name of the known person and the particulars of the indictable offence concerned.

Submissions have been made, with respect to section 78 of the *Coroners Act 2009*, as to whether, having regard to all of the evidence given up to that time, I should form the opinions set out in section 78 (1)(b).

I have had regard to those submissions but I have formed the opinion that there is evidence capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence and there is a reasonable prospect that a jury would convict that person of that offence. I have formed the opinion that the indictable offence would raise the issue of whether that person caused the death of Joel Murphy.

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Date of death

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Place of death

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Cause of death

Joel Murphy's death was caused by multiple injuries sustained in a motor vehicle collision.

Inquest suspended

Pursuant to s 78(3)(b) I suspend this inquest.

Magistrate Paula Russell

Coroner

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Background

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The road surface at the time, Leading Senior Constable Kristy Foster said, was

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In close proximity to the collision scene, vehicles travelling [in the direction of Dylan Vella's vehicle] are faced with a right-hand bend with a downhill grade. Upon exiting the corner vehicles are faced with a straight relatively level section of roadway. Along this entire section of road opposing lanes of traffic are separated by double unbroken lines marked on the roadway.

The speed limit on Tizzana Rd, which has been described by a number of witnesses as a narrow road, is 80kph.

Testing of the frictional properties of the road surface in the relevant area led LSC Foster to form the opinion that road surface was sufficiently abrasive and, therefore, to discount the surface friction of the roadway as a contributor to the collision.

The collision

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Approximately 12 metres north of the driveway of 393 Tizzana Rd, towards the end of the right hand bend but before the road straightens out, Leading Senior Constable Foster observed a tyre mark on the gravel shoulder of the north bound lane. It was her opinion that that tyre mark evidenced the beginning of a sequence of events which culminated in the fatal collision. It indicated that the nearside (or passenger side) wheels of Dylan Vella's vehicle entered onto the gravel shoulder of the road at that point. That tyre mark continued north along the shoulder entering a grassed area and continued for approximately 43 metres before ending at the road's edge.

She observed related tyre furrows approximately 23 metres north of that point, across the road, on the eastern grass verge. By the time it made those marks, in her opinion, the vehicle was out of control in that it was rotating around its mass. There

was nothing, at that point, she said, that a driver could do to affect, by which I understood her to mean, control, its movement.

As it travelled along the grass verge on the eastern shoulder in a sideways motion the vehicle came into contact with a banksia tree. It entered the roadway travelling towards the western shoulder. As it travelled across the road towards that shoulder there was a harsh application of the brakes evidenced by scuff marks on the road. The vehicle continued onto the gravel shoulder and into the surrounding foliage where the nearside door of the vehicle hit a tree in a sideswiping motion and then hit a large tree head on. The force of that impact rotated the vehicle in an anticlockwise direction.

Joel Murphy died in that vehicle.

The inquest

At the end of the 3rd day of evidence, late on 28 July, the proceedings were adjourned until today to enable any submissions to be made with respect to section 78 *Coroners Act 2009*.

S 78 Coroners Act 2009

S 78 *Coroners Act 2009* is relevantly in the following terms:

78 Procedure at inquest or inquiry involving indictable offence

(1) This section applies in relation to any of the following inquests or inquiries:

(b) an inquest or inquiry if, at any time during the course of the inquest or inquiry, the coroner forms the opinion (having regard to all of the evidence given up to that time) that:

(i) the evidence is capable of satisfying a jury beyond reasonable doubt that

a known person has committed an indictable offence, and

(ii) there is a reasonable prospect that a jury would convict the known person of the indictable offence, and

(iii) the indictable offence would raise the issue of whether the known person caused the death, suspected death, fire or explosion with which the inquest or inquiry is concerned.

(3) If this section applies to an inquest or inquiry as provided by subsection (1) (b), the coroner may:

(a) continue the inquest or inquiry and record under section 81 (1) or (2) the coroner's findings or, if there is a jury, the verdict of the jury, or

(b) suspend the inquest or inquiry and, if there is a jury, discharge the jury.

(4) The coroner is required to forward to the Director of Public Prosecutions:

- (a) the depositions taken at an inquest or inquiry to which this section applies, and
- (b) in the case of an inquest or inquiry referred to in subsection (1) (b)—a written statement signed by the coroner that specifies the name of the known person and the particulars of the indictable offence concerned.

Submissions have been made, with respect to section 78 of the *Coroners Act 2009*, as to whether, having regard to all of the evidence given up to that time, I should form the opinions set out in section 78 (1)(b).

I have had regard to those submissions but I have formed the opinion that there is evidence capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence and there is a reasonable prospect that a jury would convict that person of that offence. I have formed the opinion that the indictable offence would raise the issue of whether that person caused the death of Joel Murphy.

The question of whether a person is guilty of a criminal offence is a question which must be decided in the criminal courts and not in this jurisdiction. The consequence of my forming those opinions is that the inquest will be suspended without my making findings on the manner, or circumstances, in which the collision causing the fatal injuries to Joel Murphy occurred.

Findings required by s81(1)

I am able to confirm that the death occurred and make the following findings in relation to it:

The identity of the deceased

The deceased person was Joel Murphy

Date of death

Joel Murphy died on 12 September 2015

Place of death

He died at Tizzana Rd, Ebenezer, NSW

Cause of death

Joel Murphy's death was caused by multiple injuries sustained in a motor vehicle collision.

Inquest suspended

Pursuant to s 78(3)(b) I suspend this inquest.

Magistrate Paula Russell

Coroner

Glebe

Date 24 August 2017