

CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title: AN INQUEST INTO THE DEATH OF TATU WILHELM MICHAEL PARZEFALL

Citation: [2017] ACTCD 5

Date of Findings: 1 September 2017

Before: Coroner K. M. Fryar

Decision:

1. Tatu Wilhelm Michael Parzefall died on 20 February 2017 at Springvale Drive, Hawker, in the Australian Capital Territory;
2. The manner and cause of death of Mr Parzefall are sufficiently disclosed and a hearing is unnecessary;
3. The manner and cause of Mr Parzefall's death are multiple injuries due to a motor vehicle accident; and
4. Pursuant to s 52(4)(a)(i) of the *Coroners Act 1997*, no matter of public safety is found to arise in connection with this inquest.

Legislation Cited: *Coroners Act 1997* (ACT)
National Transport Commission, *Australian Road Rules* (at February 2012) reg 141

Cases Cited: *March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506
R v Coroner Maria Doogan; ex parte Lucas-Smith [2005] ACTSC 74; 158 ACTR 1

File Number: CD 44 of 2017

1. Tatu Parzefall, a 22 year old man at the time of his death, held an ACT provisional motorcycle licence and was, I understand, a keen motorcyclist. At about 12:40pm on Monday 20 February 2017, Tatu was riding a Harley Davidson motorcycle south along Springvale Drive when he made the decision to overtake the car on the road in front of him on the left hand side. That car, a Toyota Camry sedan, had slowed and indicated to turn left into a driveway of a house fronting Springvale Drive. Tatu and the motorcycle struck the front left side of the Camry, and continued down the kerbing for some distance before striking a bus stop sign post, whereupon Tatu was thrown from the motorcycle and into the metal railings of a road bridge over a pedestrian underpass. Tatu suffered massive pelvic injuries and despite the best efforts of the driver of the Camry and bystanders who provided assistance, and ACT Ambulance Service officers who attended shortly after the collision, he died on

the side of the road. The post mortem examination of Tatu undertaken at my direction indicated that Tatu died from multiple injuries as a result of the collision.

2. Tatu's mother, Angela Parzefall, has requested that I hold a hearing into the manner and cause of Tatu's death, and submitted that a number of matters of public safety arise. In summary form, she raises the following issues for my consideration:
 - (a) At the time of the collision, Tatu was on a motorcycle lent to him by Harley Davidson Motorcycles Fyshwick while his own motorcycle was in for repairs. The circumstances in which Tatu was provided with this motorcycle have not been established. It appears that the dealership may not have followed its own policy in lending that specific motorcycle to Tatu. Also, it may not have been legal in the ACT for Tatu to have ridden that motorcycle (see point below).
 - (b) The effect on the accident of Tatu riding a motorcycle outside the class of approved provisional motorcycles has not been established. (I infer this relates both to the fact of the collision and to the injuries that Tatu received in the collision). The specific motorcycle being ridden by Tatu is not on the list promulgated by ACT Government of 'Approved Motorcycles'.
 - (c) The circumstances which caused Tatu to move to the left of the road and attempt to overtake a vehicle in front are not established.
 - (d) A hearing is necessary to investigate the above matters and also the adequacy of ACT law in relation to learner and provisional drivers of motorcycles in terms of promoting health and safety, and how ACT Policing determines whether a motorcycle is a permitted motorcycle for learner and provisional drivers. (Tatu had apparently been pulled over the day before the collision by Police, and Tatu was permitted to continue riding the motorcycle).
3. I will deal with each issue in turn, but I have ultimately concluded that I have sufficient evidence to make the findings I am required by law to make and I am satisfied that there is no public interest in holding a hearing in relation to the inquest into Tatu's death.
4. I turn first to the issue of the circumstances which caused Tatu to move to the left of the road. Leading Senior Constable Boyce, a very experienced crash investigator of the Australian Federal Police, who investigated the circumstances of Tatu's death on my behalf and has advised me that Springvale Drive is a residential two lane road with a lane in each direction, divided by a broken white line, and the applicable speed limit is 60 km/hr. She advised me that when she attended the site of the collision shortly after it had occurred it was day time, the weather was clear, and the bitumen surface was dry and in good repair. Expert mechanical examinations of both the motorcycle and the Camry found both vehicles were in good condition and no faults or deficiencies were found.
5. The driver of the Camry was interviewed by Police after the collision and said that after he indicated to turn left into his driveway and just before he commenced the turn, he looked in the rear vision mirror and could see no other vehicles behind him. It was as he commenced to turn into the driveway that the motorcycle impacted the

front left side of the Camry. Leading Senior Constable Boyce indicated that Tatu may not have been visible to the Camry driver as there is an incline up Springvale Drive to the collision scene which may have blocked sight of Tatu. Alternatively, the motorcycle may have been on the extreme left of the Camry outside of the range of mirrors, or the driver may just have missed sight of the motorcycle. The Constable has also advised me that there is no evidence of the driver of the Camry having been negligent in any way or having committed any traffic offence. Indeed there is no evidence that the actions of the driver of the Camry contributed to the collision.

6. Leading Senior Constable Boyce advised me that in her opinion speed was not a factor in the collision, and although she was unable to estimate the speed of the motorcycle immediately before the collision with any precision, she advised that from her observations the motorcycle did not appear to have been travelling excessively over the speed limit. She noted that there was no sign (such as skid marks) evidencing that the motorcycle braked prior to the collision. She estimated that immediately prior to and at the time of the collision the Camry was travelling at no more than 20 km/hr.
7. Leading Senior Constable Boyce advised me that in her opinion, the collision was caused by Tatu's attempt to pass the Camry on the left hand side. She noted that the reason for his doing so will probably never be known, but she postulated two possible scenarios: either that Tatu did not see the Camry's brake or left indicator lights which were operating appropriately at the time; or that Tatu may have been accelerating up the incline of Springvale Drive and ended up too close to the Camry when he noticed the Camry was turning; and in either case he made a decision to pass the Camry to the left instead of the right. I note that Regulation 141 of the Australian Road Rules, which apply in the ACT, prohibits a driver overtaking a vehicle to the left of the vehicle except in certain specified circumstances, none of which were applicable in this case.
8. Noting all of the above matters, I consider the events immediately prior to the collision are well established and that there is no more evidence likely to be discoverable by way of a hearing that would further assist me in the task I am required by law to undertake.
9. I find that Tatu made a decision to turn and pass the Camry on the left hand side and this action was the direct cause of the collision which ultimately resulted in Tatu's death. I make no adverse finding or comment in relation to the driver of the Camry.
10. I turn now to the issue of whether the motorcycle in question was lawful for Tatu (as a provisional licence holder) to be riding. Although every jurisdiction in Australia has nationally consistent Learner Approved Motorcycles (**LAMS**) regulations relating to limits on the power-to-weight ratio (being a maximum of 150 kw/tonne), that is the only limit imposed by the ACT whereas other jurisdictions also impose a limit on engine capacity (being 660 cc). To be clear: there is no capacity limit on motorcycles able to ridden by learners (or provisional licence holders) in the ACT. I am unaware of why the ACT has a different position in this regard.

11. The motorcycle being ridden by Tatu was a Harley Davidson FLSTF Black with an engine capacity of 1690 cc, well above the LAMS capacity limit in every jurisdiction save for the ACT. However, this motorcycle is quite heavy, weighing in at 330 kg (not including the rider). Leading Senior Constable Boyce has calculated the motorcycle has a power-to-weight ratio of 141 kw/tonne. Accordingly the motorcycle in question was lawful for Tatu to ride in the ACT. The fact that this type and brand of motorcycle is not listed on the ACT Government's 'List of approved motorcycles' does not mean it was unlawful: apparently the list is not exhaustive. Of course the fact that this motorcycle would not have been able to be ridden legally by a learner or provisional rider elsewhere in Australia is a matter of some concern to me and I will return to this later.
12. With the factual and legal position of the motorcycle clear, I now turn to whether it is appropriate for me to enquire as to how Tatu came to be in possession of the specific motorcycle involved in the collision. I am conscious of the limitations of the ACT coronial jurisdiction under the *Coroners Act 1997* (ACT) as explained by the ACT Supreme Court in *R v Coroner Maria Doogan; ex parte Lucas-Smith* [2005] ACTSC 74; 158 ACTR 1 (*R v Coroner Doogan*) and their Honours' endorsement at [29] of the 'common sense' test of causation laid down by the High Court in *March v E & MH Stramare Pty Ltd* (1991) 171 CLR 506, where they said:

A line must be drawn at some point beyond which, even if relevant, factors which come to light will be considered too remote from the event to be regarded as causative ... in the context of a coronial inquiry, [the common sense test of causation] may be influenced by the limited scope of the inquiry which, as we have mentioned, does not extend to the resolution of collateral issues relating to compensation or the attribution of blame.
13. On the basis that the motorcycle in question was not unlawful for a provisional licence holder, and bearing in mind the above passage, I consider that it is outside the scope of my jurisdiction to enquire further as to the circumstances in which Tatu was loaned the motorcycle by Harley Davidson Motorcycles Fyshwick. In my view this issue is too remote from the actual cause of the collision itself. It is not the coroner's role to be the moral arbiter of the actions and decisions peripheral to the main issues.
14. As to whether the absence of an engine capacity limit for the LAMS scheme under ACT legislation constitutes a matter of public safety arising from the facts of Tatu's death warrants further consideration, as urged on me by Ms Parzefall, about the possible effect in a causation sense derived from this heavy and powerful motorcycle.
15. Leading Senior Constable Boyce advised me that the opinion of experienced police motorcycle riders considering the events of this collision is that the same or a similar result would have occurred even with a smaller motorcycle. The officer noted that while the power and weight of the motorcycle may have contributed to the collision by way of a quicker rate of acceleration and slower rate of deceleration, and more difficulty in manoeuvring than might be the case for a smaller and lighter motorcycle, fundamentally the cause of the collision was Tatu's decision to ride to the left hand side of the Camry.

16. Leading Senior Constable Boyce also advised me that in her view the severity of Tatu's injuries was due to the location of the collision and Tatu's heavy collision with the bridge railing. The officer also noted that had Tatu missed the railing to the left hand side, he would probably have fallen three metres into the pedestrian underpass and, I infer, a concrete surface. She noted also that Tatu was wearing no personal protection equipment other than a helmet, but also opined that it is unlikely that other personal protection equipment would have prevented Tatu's death.
17. Accordingly, I am unable to positively conclude whether a smaller or less powered motorcycle would have altered the outcome from the collision for Tatu, and I accept Leading Senior Constable Boyce's opinion that it probably would not have. I note as an aside, it may in fact have been the power and weight of the motorcycle that gave Tatu a chance immediately after making impact with the Camry to try to right the motorcycle. It is likely that on a lighter bike the collision would still have occurred, and although the mechanism of injury may have been different the outcome would likely have been the same. On that basis I cannot find to the requisite standard that the lacuna in the ACT LAMS scheme constitutes a matter of public safety on the facts of this case. That said, it is quite clear that in other circumstance, a matter of public safety might well arise and accordingly it is a matter worthy of comment.
18. I turn finally to consider Ms Parzefall's submissions to me about the necessity of holding a hearing to explore issues of practice and policy on the part of ACT Government and ACT Police, and the adequacy of laws in the area of learner and provisional motorcycle riding.
19. I remind myself again of the guidance from the ACT Supreme Court in *R v Coroner Doogan* and specifically the passage at [15] as follows:

The [Coroners] Act is generally concerned with the resolution of relatively straightforward questions such as "what was the cause of this death?" or "what caused this fire?". It does not provide a general mechanism for an open ended inquiry into the merits of government policy, the performance of government agencies or private institutions, or the conduct of individuals, even if apparently related in some way to the circumstances in which the death or fire occurred.
20. Their Honours go on at [28] to warn coroners against the conduct of 'a wide-ranging inquiry akin to that of a Royal Commission' and of particular relevance to this matter, provide an example at [31] of the limits of enquiry:

... a coroner might well hear evidence suggesting that a cyclist's death had been caused not merely by a collision with a motor vehicle, but also by the antecedent conduct of the driver of that vehicle in failing to stop at a stop sign adjacent to an intersection. However, the limited jurisdiction conferred ... would not authorise the coroner to inquire into any perceived failures in relation to general policy relating to the siting of stop signs or the enforcement of traffic regulations. The particular siting and design of the relevant intersection may be a different matter. The application of the common sense test of causation will normally exclude a quest to apportion blame or a wide-ranging investigation into antecedent policies and practices.
21. In my view, having determined there is possibly a legislative gap in the ACT LAMS scheme, it would be beyond my jurisdiction to go further to conduct the sort of wide-

ranging enquiry Ms Parzefall urges on me in relation to the reasons behind the lack of an engine capacity limit or enquire generally into matters of health and safety for learner and provisional motorcycle riders. While I also hold the view that it is beyond my jurisdiction to enquire generally into the process of assessment by ACT Police of the legality of motorcycles ridden by learner and provisional drivers, I should also say that this issue is irrelevant on the facts of this case given the motorcycle involved in the collision was not being unlawfully ridden by Tatu.

22. In all the circumstances as detailed above in my view there is no necessity to hold a public hearing in relation to Tatu's death. I believe I have all the evidence which exists or is likely to exist which could possibly bear on the decisions I must make. There is no issue about which I would be empowered to hold a public hearing and which in and of itself warrants that course being taken, and further my ability to make recommendations is not contingent on the holding of a hearing.
23. Notwithstanding that I have found no matter of public safety arises in relation to Tatu's death, the *Coroners Act 1997 (ACT)* clearly contemplates that I can make recommendations in relation to the prevention of deaths, the administration of justice and the need for a matter to be investigated or reviewed by another entity. Coroners also have a well-recognised power at common law to make recommendations in the public interest. Accordingly, I make the following recommendations on that basis.
24. I recommend that:
 - (a) The ACT Government should review its adoption of the national LAMS scheme and reconsider its lack of adoption of the engine capacity limit for such motorcycles which applies in every other Australian jurisdiction.
 - (b) Access Canberra (who I believe to be the responsible area within government) should review the 'List of approved motorcycles' it has promulgated to provide better guidance to learner and provisional riders of the status of the law in this area, and if it cares to, provide suggestions as to the appropriate type or classification of motorcycles it recommends for inexperienced riders.
25. I will forward a copy of my findings, recommendations and comments as a report to the Attorney-General and the Chief Minister (who I understand to have responsibility for road regulation) for their information and consideration of my recommendations. I propose also to publish my findings, recommendations and comments on the ACT Coroners Court website, together with any response I might receive from Ministers or Government.
26. I convey again my greatest sympathies to Tatu's mother Angela, his girlfriend Emma, and all of Tatu's family and friends. It is my sincere hope that my recommendations to Government in this matter might constitute a lasting legacy from Tatu's unfortunate and untimely death.

I certify that the preceding twenty-six [26] numbered paragraphs are a true copy of the Findings of Coroner K. M. Fryar

Associate: Melinda Smith

Date: 1 September 2017