



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquiry	Inquest into the death of Tremaine GATT
Hearing dates:	21 May 2015
Date of findings:	18 June 2015
Place of findings:	NSW State Coroner Court – Glebe
Findings of:	H.Barry Magistrate
File number:	2013/296495
Representation:	Sergeant Mulligan Assisting Mr A Slattery, representing Leearna Davis
Findings:	Identity of deceased: The deceased person was Tremaine Gatt Date of death: died on 1 October 2013 Place of death: died at Kempsey Hospital Manner of death: Misadventure Cause of death: Multiple Injuries due to motor vehicle collision

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The Coroners Act 2009 (NSW) in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the death of Tremaine Gatt

Introduction:

Tremaine Gatt died on 1 October 2013.

On that day Tremaine had been at 95 Middleton St South Kempsey, the home of his Aunt Deborah Donovan.

About 4pm that afternoon Tremaine's mother Leearna Davis was driven to 95 Middleton St by her sister Charlene.

Charlene parked in the driveway at the right of the premises. She was informed that Tremaine wanted to stay at the property.

She reversed from the driveway onto the opposite side of the road. She had just driven off when someone called out that Tremaine was coming.

She reversed a short distance to the opposite side of the road to 95 Middleton St. Charlene and Leearna remained in the vehicle.

At that time a blue Nissan Pathfinder was being driven in a westerly direction along Middleton St. The driver was David Dungay, Tremaine's uncle.

As David Dungay approached 95 Middleton St, Tremaine walked or ran onto the roadway from between two parked cars. David Dungay was unable to stop in time and the near side of the front bumper bar on the Nissan Pathfinder collided with Tremaine.

Mr Dungay's vehicle travelled about 77 metres down Middleton St before coming to a stop.

Tremaine was carried from the roadway by Conrad Lardner and was taken to Kempsey Hospital where he died as a result of his injuries.

He was only four years old.

A statement read by Mr Slattery representing Tremaine's mother described Tremaine in the following way:

He was a happy- go-lucky little boy with a beautiful smile. He had a rich association with his family and was very involved with them.

He was very much loved and is greatly missed.

The Inquest:

A Coroners function is to attempt to answer five questions namely: Who died? When did he or she die? Where did he or she die? What was the cause of death? and finally What was the manner of death?

The focus of this inquest is the manner of death: that is the circumstances of Tremaine's death and what led up to it.

The Issues:

In her opening statement Counsel assisting proposed two issues to be dealt with at this inquest:

1. Was there anything concerning the manner of Mr Dungay's driving which could have led to the collision being avoided?
2. Was there a lack of supervision of Tremaine which contributed to the manner of his Death?

The Evidence:

Mr Dungay's driving

An extensive crash investigation was carried out by Senior Constable Andrew Nelson. He has been with the crash investigation unit for 8 1/2 years.

He attended the scene at about 6.50 pm on the evening of 1 October 2013.

The roadway was dry. His evidence is that Middleton St is a well- travelled main arterial road in Kempsey with a relatively high volume of local vehicular and pedestrian traffic.

The roadway is divided for the most part and each lane is relatively wide. There are houses on both sides of the road.

Police patrol the street on a regular basis and he stated that police are aware of issues relating to both vehicular and pedestrian traffic.

The street has a sign posted 50 km speed limit.

He inspected the vehicle driven by Mr Dungay. He noticed the front nearside indicator/parking light assembly was dislodged from its mounting and hanging by wires.

There was a smudged area along a vertical section of the bull bar which appeared to contain a blood stain.

His conclusion was that the deceased's head had struck that section of the bull bar.

Senior Constable Nelson conducted an inspection of the vehicle and noted that the brakes and steering were operating correctly.

A number of skid marks were noted on the roadway but none of those were associated with Mr Dungay's vehicle.

He observed two parked cars in front of 95 Middleton St. One was a Subaru hatch with dark window tinting. A second vehicle, a Holden Commodore station wagon was parked in front of the Subaru facing the opposite direction.

Senior Constable Nelson later ascertained that at the time of the collision a Toyota Tarago was parked directly behind the Subaru.

Senior Constable Nelson spoke with a number of witnesses who state they heard a noise and screaming but did not in fact witness the collision.

He also spoke with some witnesses who were able to give some evidence of what they observed.

Mr Shane Holten who lived at 101 Middleton St at the time told Senior Constable Nelson that at the time of the collision he saw a 4WD travelling west on the roadway approaching the parked cars in front of 95 Middleton St.

His statement is that as the 4WD came alongside the Subaru he saw a head appear suddenly from between the Subaru and the Commodore. The person continued to step onto Middleton St in front of the 4WD.

Deborah Donovan was resident at 95 Middleton St. Tremaine was her nephew.

On the afternoon of the collision Tremaine had been playing in her backyard. She was sitting outside in the front yard of the house facing in a direction perpendicular to the street.

She saw Charlene Gatt and Leearna Davis pull into the driveway in Charlene's car.

She saw Tremaine on the footpath at the front of the house and she yelled at him to wait when she saw cars coming down Middleton Street.

She saw the cars pass and Tremaine was between the two cars parked on the roadway. She observed him about to step out. She yelled "No". Tremaine stepped out. Mrs Donovan did not see the 4WD until that moment.

Charlene Gatt drove to 95 Middleton St with her daughter, Leearna and Leearna's son, Marly. She drove into the driveway of number 95.

Leearna called out for Tremaine to get in the car.

They could not see Tremaine and she reversed out, Leearna calling out for Tremaine to be dropped home later.

She started driving East, just passed 93 Middleton St when she heard someone yell "wait, he is coming now".

She reversed back along the opposite side of the road and stopped opposite number 95.

She states she saw Tremaine on the footpath as she was reversing.

She saw him between two cars and claims she saw him look to the right and left.

She saw Tremaine step out and suddenly saw another vehicle travelling west, collide with Tremaine.

Her written evidence is that it looked as though this vehicle was travelling faster than 50kph.

In her oral evidence, Charlene stated that she saw Denise Moylan's car which she believed to be in front of Mr Dungay's car. She said that she saw Denise's car go past and then Tremaine was hit.

Her oral evidence was that she did not see the other car before it hit Tremaine but she did witness the collision.

Denise Moylan, Mr Dungay's partner was travelling behind David Dungay in her vehicle. She was about 6 – 8 metres behind. Both cars were travelling under 50kph.

As she approached 95 Middleton St, she saw a figure come from nowhere. She heard a bang and saw it was a child under the front of the car. She saw the collision and had to swerve to avoid Tremaine.

She pulled up on the other side of the road behind Charlene's vehicle.

David Dungay gave a statement to the police. He stated he was travelling about 45kph. When he got to the back of the Subaru he saw a little figure walk out and there was no way he could stop in time.

Conclusion

Senior Constable Nelson concluded in his investigation that there was no evidence of excessive speed by David Dungay's vehicle.

Three witnesses confirm that Mr Dungay's vehicle was 'right there' when Tremaine entered from between the two cars.

The only suggestion of speed comes from Charlene Gatt who stated she believed Mr Dungay's vehicle was travelling faster than 50kph.

Given that she was reversing at the time and that in her oral evidence she stated she did not see the vehicle until the collision and the fact that there is no other evidence that supports her assertion that Denise Moylan's vehicle was in front of David Dungay's, I place little weight on her observations.

Senior Constable Nelson also stated there was no evidence of skid marks from David Dungay's vehicle, which is consistent with his version of not having an opportunity to brake in sufficient time to cause his wheels to lock up and skid.

Mr Slattery submitted that it would be open to conclude that Tremaine was visible to a driver for about one car length in front of Mr Dungay's vehicle. He also submitted that Mr Dungay may have been driving close to the left hand side of the roadway because of lines on the roadway that appear on the photographs of the scene taken later.

Such submissions are based on suggested scenarios put by Mr Slattery to Senior Constable Nelson. These scenarios essentially relate to speculation based on assumptions of the placement of Mr Dungay's vehicle on the roadway and assumptions as to the speed of that vehicle. There is simply no evidence to support such speculation.

Senior Constable Nelson told the court that he had taken extensive measurements and calculations based on the markings on the road as to where Tremaine's body was located and other markers based on the evidence of the eye witnesses.

In addition he caused these measurements and evidence to be forwarded to Mr Simon Parker a collision reconstruction expert, Forensic Imaging Section in the Police Department.

Mr Parker returned the same conclusion as Senior Constable Nelson.

Senior Constable Nelson also had Senior Constable Bentley, a senior crash investigator, review the evidence and the measurements. He also arrived at the same conclusion as that reached by Senior Constable Nelson and the collision reconstruction expert.

Senior Constable Nelson concludes that Mr Dungay drove in a prudent and reasonable manner at the time of the collision with all reasonable attention under the circumstances.

On the basis of all the evidence before me I am in agreement with Senior Constable Nelson.

I find there was nothing in the manner of Mr Dungay's driving which could have led to the collision being avoided.

Lack of Supervision

Senior Constable Nelson told the court that Middleton Road is a reasonably busy and well used thoroughfare. There is a significant amount of vehicular traffic and pedestrian traffic.

From time to time Senior Constable Nelson has had to stop his vehicle in that street and try to locate the parents of small unsupervised children who are walking or playing by themselves in dangerous vicinity of the street.

There are no pedestrian crossings in the vicinity where Tremaine was hit. There is no signage warning motorists of the presence of children in the area.

Whilst such traffic signs may assist in alerting the public to the presence of children in the vicinity, nothing can take the place of adult supervision of small children who attempt to cross the road.

The tragedy of this case is that there were adults present but no adult assisted Tremaine to cross the road.

Small children such as Tremaine simply do not have the requisite level of judgement to be able to cross roads unaided.

As Deborah Donovan stated in her oral evidence:

"I knew Tremaine was going to cross the road to his mother. Now that I look at it, Tremaine did require assistance to get across the road"

Findings required by s81 (1)

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, 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 Tremaine Gatt

Date of death

1 October 2013

Place of death

Kempsey Hospital

Cause of death

The death was caused by multiple injuries as a result of a motor vehicle collision (motor vehicle/pedestrian)

Manner of death

Misadventure

I close this inquest.

HG Barry

Coroner

Glebe

Date

16 June 2015