

DISTRICT COURT OF QUEENSLAND

CITATION: *Morant v Terry Ryan (The State Coroner)* [2022] QDC 134

PARTIES: **ANGUS MORANT**
(applicant)
v
TERRY RYAN (THE STATE CORONER)
(respondent)

FILE NO: BD 3189/21

DIVISION: Civil

PROCEEDING: Application – s 30(6) *Coroners Act 2003* (Qld)

ORIGINATING COURT: District Court of Queensland, Brisbane

DELIVERED ON: 10 June 2022

DELIVERED AT: Brisbane

HEARING DATE: 16 May 2022

JUDGE: Loury QC DCJ

ORDER: **The application is refused**

CATCHWORDS: CORONER – INQUESTS AND INQUIRIES – where an application to hold an inquest in circumstances where the State Coroner has refused to do so – whether inquest would be in the public interest

LEGISLATION: *Coroners Act 2003* (Qld) s 28, s 30(6)

CASES: *R v Morant* [2018] QSC 251
R v Morant (2020) 286 A Crim R 148

COUNSEL: D Wells and M Thomas for the applicant
E Cooper for the Attorney-General of Queensland as *amicus curiae*

SOLICITORS: Tamborine Mountain Law & Canungra Law for the applicant
Crown Solicitor for the Attorney-General of Queensland as *amicus curiae*

Introduction

- [1] Jennifer Morant died of carbon monoxide poisoning on 30 November 2014, suffered in her car. Her husband, Graham Morant was convicted by a jury of counselling and aiding her suicide. Mr Graham Morant’s conviction and sentence were the subject of an appeal to the Court of Appeal. On 19 June 2020 the appeals were dismissed. On 30 July 2020 the Deputy State Coroner issued her formal

findings pursuant to s 45 of the *Coroners Act 2003* (Qld) ('the Act') following a coronial investigation. She did not order that an inquest be held.

- [2] On 13 August 2020 the applicant (the son of Graham Morant and step-son of Jennifer Morant) applied to the State Coroner pursuant to s 30(4)(a) of the Act for an order that an inquest be held. On 24 November 2021 the State Coroner informed the applicant's solicitor that he was not persuaded that it was in the public interest for an inquest to be held and declined to hold an inquest.
- [3] The applicant, Angus Morant now applies to this Court pursuant to s 30(6) of the Act for an order that an inquest be held.

The statutory framework

- [4] Section 30(6) of the Act provides for an application to be made to the District Court when the State Coroner has refused an application for an inquest. Such an order can only be made if the Court is satisfied that it is in the public interest to hold the inquest.¹
- [5] Section 28 of the Act provides that for a coroner determining whether to hold an inquest, he/she similarly must be satisfied that it is in the public interest to hold the inquest. Section 28(2) provides for what the coroner must have regard to in deciding whether it is in the public interest to hold an inquest. It provides –
- (2) In deciding whether it is in the public interest to hold an inquest, the coroner may consider –
- (a) the extent to which drawing attention to the circumstances of the death may prevent deaths in similar circumstances happening in the future; and
- (b) any guidelines issued by the State Coroner about the issues that may be relevant for deciding whether to hold an inquest for particular types of deaths.
- [6] In *Davis v Ryan, State Coroner*, Holmes CJ (with whom Gotterson and Flanagan JJ agreed) said whilst s 28(2) was not directly applicable to the exercise of the discretion under s 30, it gives some assistance as to the considerations relevant to the question of public interest. Holmes CJ said:

“The considerations relevant to the formation of the discretionary judgment in s 30(8) are not narrowly confined...The issue of ‘public interest’ which the section raises is properly considered...by reference to the objects of the Act and with regard to s 28(2), since it uses the same term; but s 28(2) is clearly non-exhaustive and nothing in it or s 30(8) limits the considerations which may be taken into account. To the contrary, 28(2)(b) recognises that there may be many factors to be taken into account, and by permitting the establishment of guidelines, leaves it to the specialist expertise of the State Coroner to determine what those factors are.”²

...

¹ *Coroners Act 2003* (Qld) s 30(8) ('*Coroners Act*').

² [2019] QCA 282, [27].

The exercise of the s 30(8) discretion is not a review of the State Coroner's decision, but since it arises only where the State Coroner has declined to exercise his or her discretion under the same provision favourably, it follows that a different conclusion will not lightly be reached, having regard to the proper consideration that the State Coroner's exercise of discretion was informed by that expertise."³

[7] The State Coroner has issued guidelines. The applicant, in particular, points to guideline 8.3 "How the person died" which relates to one of the findings that the Coroner who is investigating a death must, if possible, find.⁴ "How the person died" should be understood, according to the guidelines, to refer to "by what means and **in what circumstances** the death occurred" (emphasis added). It is broader than the medical cause of death referred to in s 45(2)(e) of the Act.

[8] The Attorney-General of Queensland has been granted leave to appear as *amicus curiae*.⁵ The Attorney-General refers to guideline 7.2 which relevantly provides:

Coroners should bring a proactive case management approach to their investigations to secure the evidence needed to support their findings or comments and to ensure relevant issues are identified and investigated appropriately and in a timely way. Coroners should carefully assess the extent of investigation warranted by the circumstances of each death so finite coronial resources are applied strategically. Any temptation to assume the death is from a pre-determined cause must be resisted until the cause of death and the circumstances of it have been established.⁶

[9] The Attorney-General also refers to guideline 9.2 which relevantly states:

Factors for consideration when assessing whether an inquest should be held include, but are by no means limited to, the following:

- Can all of the findings required by s45(2) be made without an inquest? Are chambers findings sufficient? If not, why not? Is an inquest likely to assist?
- Is there such uncertainty or conflict of evidence so as to justify the use of the judicial forensic process?
- Are there suspicious circumstances that have not been resolved or resulted in criminal charges?⁷

[10] The applicant also draws attention in this same guideline to the following statements:

In cases where family members believe someone is criminally responsible for the death and no charges have been laid, inquests are commonly requested. Unless a coroner can demonstrate the suspicions are baseless the request will usually be granted.⁸

[11] The submissions made by the applicant demonstrate that he believes that somebody other than or in addition to Graham Morant aided Jennifer Morant's suicide at the scene of her death, or that somebody caused her death. That is the basis for his argument that it is in the public interest for there to be an inquest.

³ Ibid [28].

⁴ *Coroners Act* (n 1) s 45(2)(b).

⁵ Order of Muir DCJ dated 4 February 2022.

⁶ Coroners Court of Queensland, *State Coroners Guidelines 2013* (at 2013) 1-2.

⁷ Ibid 4.

⁸ Ibid 5.

The State Coroner's Decision

- [12] The State Coroner had regard to the decision of the Court of Appeal in *R v Morant*⁹ which extensively summarised the evidence at trial and the issues which arose. That decision relevantly revealed the following facts.
- [13] On 30 November 2014 Mrs Morant was found dead in her car by police at 9.50 pm. It was parked in a street more than 10 kilometres from her home. The doors and windows of the car were all closed. The engine was not running. Mrs Morant was seated in the drivers seat. She was wearing sunglasses. A “stick it” note with the words “do not resuscitate me” written on it was found stuck next to the automatic gear lever.
- [14] Her husband, Graham Morant had contacted police at 8.02 pm to advise that he had returned home from church to find a note from his wife which indicated that she intended to do herself some harm.
- [15] When a police officer, Senior Constable Edwards attended the scene he opened the car door and smelt a strong odour of carbon monoxide. The back seat of the car was folded down. There was a Ryobi brand petrol generator in the boot of the car. It was not running. It was cold to the touch. There was a “little bit of petrol”¹⁰ still in the bottom of the generator.
- [16] The forensic examination of the scene revealed that the generator switch was in the “on” position.¹¹ A tape lift sample of DNA was taken from the handle of the generator. The analysis of that DNA sample revealed a mixed DNA profile, with more than one contributor present. The DNA profile was greater than 100 billion times more likely to have occurred if Mrs Morant contributed DNA rather than if she had not and approximately four times more likely to have occurred if Graham Morant had not contributed rather than if he did. The scientist, Ms Josie Entwistle, accepted that there was a possibility the tape had picked up two separate pieces of DNA on the handle of the generator. It was possible that Mrs Morant had placed her hand on the handle of the generator but that her hand already contained mixed DNA through coming into contact with some other object or a person.¹²
- [17] An autopsy confirmed that Mrs Morant had died of acute carbon monoxide poisoning. The autopsy report also refers to there being seven blue coloured bruises on the medial aspect of the mid-right upper arm measuring up to 10 millimetres in diameter. That finding is recorded under the heading “Signs of recent injury”.¹³
- [18] The medical records accessed by the pathologist indicated that Mrs Morant had chronic thoracic spine pain which was not assisted by surgery. She had a T8 compression fracture for which she had a fusion and vertebroplasty in 2011. She

⁹ (2020) 286 A Crim R 148 (*R v Morant*).

¹⁰ *Ibid* [100].

¹¹ *Ibid* [103].

¹² *Ibid* [104].

¹³ Affidavit of Biljana Stojanovic affirmed 21 January 2022, exhibit BS-7 page 27.

had been prescribed large doses of opioids since May 2013. She had a history of depression and anxiety.

- [19] A police officer, Detective Sergeant Adam Windeatt, conducted a test of the generator at the scene to determine how many pulls it would take before starting the generator. He did not add any petrol to the generator to conduct the test. It remained in the boot of the car. His test established that it did not take a lot of resistance in pulling the cord. The generator started with one pull. In his view, the generator stopped because the engine was starved of oxygen.
- [20] The generator had been purchased by Mrs Morant on 29 November 2014, the day prior to her death. Her husband, Graham Morant was with her when it was purchased although he remained in the carpark of the store whilst she went inside and purchased the generator. Graham Morant told police in an interview that he understood that Mrs Morant went into the store to buy a generator that she could start.¹⁴ He also said that together they lifted the generator into the boot of the car at the store. It was sufficiently heavy that neither of them could lift it on their own. The following day Graham Morant removed the generator from the car so that it could be removed from its box. He then assisted Mrs Morant to put the generator back into the car.
- [21] Graham Morant denied putting fuel into the generator. Mrs Morant had access to fuel at their home.
- [22] Ms Lynette Lucas, who is Mrs Morant's sister, and her friends Ms Judy Dent and Ms Nelly Winters gave extensive evidence of statements Mrs Morant had made to them in which she indicated in effect that Graham Morant was pressuring her to commit suicide.
- [23] The State Coroner in determining not to hold an inquest took into account the submissions made by the applicant's counsel. Those submissions attempted to persuade the Coroner that there was compelling circumstantial evidence that one or more of the witnesses who testified against Graham Morant were present when Mrs Morant died.
- [24] The same circumstantial evidence as well as some additional circumstantial evidence is relied upon to persuade this Court that it is in the public interest for an inquest to be held. This evidence and the applicant's submissions are discussed below.

The Generator

DNA evidence

- [25] The applicant argued that the DNA found on the generator supported a conclusion that someone else was present at the scene and involved in Mrs Morant's death.
- [26] The State Coroner referred to the findings of the Deputy State Coroner with respect to the DNA evidence. She said that the unidentified DNA found on the generator could be that of any number of unknown persons who could have come into contact

¹⁴ *R v Morant* (n 9) [124].

with the generator at any time. She also said that the evidence at the trial established that it was possible that Mrs Morant's hand, when placed on the generator could have contained mixed DNA through coming into contact with some other object or person.

- [27] The State Coroner also referred to the judgments of Sofronoff P and Boddice J respectively in the Court of Appeal judgment and the acceptance by the scientific officer of the possibility that the tape had picked up two separate pieces of DNA on the handle of the generator, as well as Mrs Morant's hand having contacted some other object or person. The State Coroner considered that the evidence established that the generator was unboxed after Mrs Morant and her husband returned from the store where it was purchased. He considered that it was highly probable that Mrs Morant came into contact with the DNA of another person while purchasing the generator. Further, the DNA might have been present from the time the generator was manufactured and sealed in the carton for shipping.
- [28] The State Coroner indicated that he had been advised by the Police Forensic Services Group that the DNA from the second contributor in the mixed DNA profile was present at an "extremely low level". There was sufficient DNA evidence to exclude Graham Morant from having contributed but not enough to load onto the National DNA database for matching purposes. There was also insufficient profile information available for the second contributor after Mrs Morant's profile was removed from the mixture. It is now no longer possible to compare any DNA profiles against the DNA profile of the second contributor.
- [29] The applicant accepts the statement of the State Coroner that it is no longer possible to compare any DNA profiles of other persons with the second contributor to the mixed DNA profile on the handle of the pull-cord of the generator. The applicant argues that the fact that there is a second person's DNA suggests that there was a second person who had their hands on the pull-cord or was physically close enough to Mrs Morant to leave their DNA on her hand.
- [30] The evidence given at trial was not that Graham Morant was excluded as having contributed DNA to the mixture, but rather that the mixture was four times more likely to have occurred if he had not contributed to the mixture. Whilst the report of the forensic scientist has not been adduced in evidence before me, it seems from the summary of the evidence in the Court of Appeal judgment that it is incorrect to say that Graham Morant has been excluded as a contributor.
- [31] There are a number of possible explanations for a mixed DNA profile being found on the handle of the pull-cord of the generator. One possibility is that when Mrs Morant purchased the generator, the box in which it was contained was not sealed shut and could be opened with ease by other potential purchasers. An employee of Bunnings could have opened the box to allow Mrs Morant to inspect the generator given, as Graham Morant said to police, that she was went into the store to "buy one she could start".¹⁵ The employee could have handled the pull-cord of the generator. Any number of employees of the manufacturer involved in the assembly or quality assurance processes in the factory could have handled the generator prior to it being placed in the box.

¹⁵ Ibid.

- [32] A further possibility, particularly given the very small quantity of DNA of the second contributor to the mixture, is that Mrs Morant transferred that profile to the handle after having come into contact with a person or an object. Transference could have occurred from an object on which a person's DNA has been left by the handling of that object by Mrs Morant. There are any number of objects that Mrs Morant might have touched from which a small amount of DNA could have been transferred onto her hand and then onto the pull-cord of the generator. For example, the car door handle, the pen she used to write the notes, the objects that were in the boot of her car; the container in which the petrol was stored. The list is really endless.
- [33] The applicant deposed that Mrs Morant was a zealous hand-washer. As such it might be supposed that any DNA transferred via her hand got there close in time to when she died. But that does not indicate there is a likelihood somebody else was present at the time of her death.
- [34] The DNA evidence can go no further than to raise the possibility another person touched the handle of the generator some time before it was swabbed by police. The evidence could not sustain a conclusion about who it was, or when their DNA was deposited on the generator. The evidence does not shed any light on the circumstances of Mrs Morant's death. I agree with the opinion of the State Coroner that the DNA evidence does not point to a conclusion that any of the witnesses who testified against Graham Morant were present when Mrs Morant died. Further I agree that an inquest would not take that issue any further.

Fuel

- [35] The applicant argued that the state of the generator when found indicated someone had turned it off after Mr Morant died. The State Coroner considered that it was likely that the generator simply ran out of fuel or was starved of the air needed for combustion as the vehicle filled with carbon monoxide.
- [36] The applicant argues that there is no basis for the State Coroner to have made such a finding. It is unlikely, he argues, that the generator ran out of fuel given that there was fuel in the tank of the generator when found by police. Further, it is difficult to believe, it is argued, that a fire was not caused by the generator running until it was starved of oxygen.
- [37] Mr Matthew Davey is a motor mechanic who conducted some experiments. His affidavit was filed in the proceedings before me and he gave some short evidence. The effect of his evidence is that he conducted an experiment in which he placed a Ryobi brand generator (of the same make and model as Mrs Morant purchased) into the boot of a Ford Falcon sedan of "similar size, structure and cabin seals"¹⁶ to that in which Mrs Morant died. The purpose of his experiment was to determine whether the generator would stop when it still had fuel in it and to determine how long the generator would run in a closed vehicle before it stopped as a result of running out of oxygen.
- [38] Mr Davey found that with 200 millilitres of fuel in the tank of the generator it would run for 2 minutes and 35 seconds until all available fuel in the tank was used. Mr

¹⁶ Affidavit of Matthew Davey affirmed 25 March 2020, exhibit A page 1.

Davey opined that the tank needed to be virtually dry, with a probe measuring less than five millilitres of fuel present, for the generator to stop for want of fuel.

- [39] Mr Davey found that, when placed in the boot of the car with “plenty of petrol” in it, the generator ran for 30 minutes and 55 seconds before it stopped for want of oxygen. Mr Davey opined, the generator used in Mrs Morant’s death must have run for at least 30 minutes if it was to stop because it was starved of oxygen. Running a generator for such a period in the enclosed space in which it was found would have increased the likelihood of a fire igniting given that generators create heat as well as electricity. As there was no fire, in his opinion that makes it unlikely that the generator stopped because it was starved of oxygen.
- [40] The evidence at trial established that there was a “little bit of petrol” still in the tank of the generator when located by police. The police officer, Senior Constable Edwards thought that it had stalled as it could not pick up the fuel left in the tank. Detective Sergeant Windeatt was able to start the generator without adding any more petrol to the tank. He considered that the generator was starved of oxygen, causing it to stop.
- [41] The experiment of Mr Davey does indeed demonstrate that eventually a generator in a closed space will become starved of oxygen and will stop. But his experiment did not replicate the conditions at the time of Mrs Morant’s death. For a time while the generator was running, Mrs Morant was alive in the vehicle and consuming some of the available oxygen. The oxygen available for the generator was less than in Mr Davey’s experiment. As well, the generator was found by police with the start button in the “on” position, something consistent with the generator stopping for want of oxygen. It might also be supposed that as the amount of available oxygen decreases so does the possibility of fire. That there was no fire does not demonstrate that it was not possible for the generator to stop because it was starved of oxygen.
- [42] The evidence adduced does not support the conclusion that someone present at Mrs Morant’s death turned off the generator. The preponderance of the evidence available demonstrates that Mrs Morant wanted to commit suicide and had spoken openly about that desire to many people. She adopted a method which had been successfully used by another member of her local community (without causing a fire). The probabilities clearly favour that the generator stopped because it was starved of oxygen.

The position of the on/off switch

- [43] The applicant also argues that the evidence disclosed by the police is consistent with the generator switch having been in the “off” position when found, and so if that were the case, that someone other than Mrs Morant must have been present to turn the generator off. The basis of this submission comes from the evidence of Detective Sergeant Windeatt who started the generator at the scene and again some months later in a holding yard. His notes (taken on 3 February 2015) demonstrate that the switch was in the “off” position when he started the generator in the holding yard.
- [44] On 30 November 2014 Detective Sergeant Windeatt also started the generator at the scene. Prior to him doing that, the forensic examination took place. A scenes of

crime officer, Robert Parker, conducted that forensic examination which included the taking of the tape lift sample from the handle of the generator. That necessarily had to happen prior to anyone attempting to start the generator in order to capture any DNA present on the handle. Mr Parker's examination revealed that the generator had an on/off switch and that switch was in the "on" position.¹⁷

- [45] I do not consider that the state of the switch suggests that someone was with Mrs Morant when she died. The state of the switch is consistent with Mrs Morant having committed suicide in the car whilst alone. It is consistent with the generator stopping because it was starved of oxygen.

Mrs Morant's physical state

- [46] The applicant argues that the nature of Mrs Morant's injury and pain means that she was not capable of starting the generator herself and therefore someone must have been present to assist her. He argues that there was no evidence before the Supreme Court and none available to the State Coroner to suggest that Mrs Morant had the strength to start the generator.
- [47] In addition to the evidence contained in the autopsy report as to the physical condition of Mrs Morant's back, the applicant relies upon the contents of an email that Mrs Morant sent to Doctor Nitschke on 25 May 2014 as evidence of the state of Mrs Morant's pain at a time proximate to her death.¹⁸ Mrs Morant wrote:

"Dear Dr Nitschke

I desperately need your help, to assist me to end my life in a peaceful manner. I am in chronic pain for the past 3 years now, with Spinal Surgery not giving me any relief, in August 2011, I fractured my spine from Osteo Perosis, and I had 3 rods, 2 plates and cement injected into my spine, but the operation was not a success and now I am having to take large amounts on a daily basis of Oxycontin, Endone, Tramadal, Stemetil, Maxolon, Panadol Osteo, but most days I do not get out of bed because the pain and the nausea is so bad, if I can manage to get up, I am back in bed by 4PM, propped up with Pillows, so i can eat a little amount of food, but the past 4 months I have had such severe nausea i could not eat at all, & also with the large amounts of Oxycontin I have to take the side effects are terrible.

I am 56 years old and I have no quality of life any longer, the Doctors have tried giving me injections into my spine to block the nerves, but nothing has worked, and I am so tired of being in pain every day, I now need your help and experience to end my pain and suffering.

Could you kindly give me my options of how to end my life in a peaceful manner, and also the cost of them.

I sincerely would appreciate your help, I have admired you for many years, and now I really need your guidance and experience.

Many Thanks & Kind Regards

¹⁷ *R v Morant* (n 9) [103].

¹⁸ Affidavit of Angus Morant affirmed 27 April 2022, exhibit A.

Jenny Morant”¹⁹

- [48] The applicant also provided a statement²⁰ in which he says that Mrs Morant was very much weakened by the spinal condition she suffered. In her last years she was unable to lift things an average person of her age and size could lift. He never saw her lift anything as heavy as a Ryobi generator. He had never seen her use the amount of strength it takes to start a Ryobi generator. She did not go grocery shopping unless there was someone available to carry the bags.
- [49] The applicant relies on what is described as a plausibility study. Ms Jeanette Henderson has sworn an affidavit exhibiting the results of an experiment she undertook.²¹ She has worked in the aged care industry for 40 years. The purpose of her experiment was to “ascertain the ability of women, of a similar age and capability of Mrs Morant to start a Ryobi generator within a confined space” (the generator was of the same make and model as that which Mrs Morant used and was placed in the boot of a Ford Falcon sedan). Three women participated in the experiment. They were aged between 55 and 66 years. They were of similar height and build to each other. None of them appeared to show any evidence of a severe physical disability. A 62-year-old woman of “average height and weight” was unable to start the generator despite five attempts. A 55-year-old woman of “average height and weight” was successful at starting the generator after 6-8 pulls on the cord. A 66-year-old woman of “average height and weight” was unable to start the generator despite 10 – 15 attempts. Ms Henderson, despite not knowing Mrs Morant, formed an opinion that Mrs Morant would not have been able to start the generator.
- [50] The applicant argues that there is no evidence available that Mrs Morant could have started the generator and that the combination of other evidence available including the results of Ms Henderson’s study demonstrates that Mrs Morant could not have started the generator herself.
- [51] Detective Sergeant Windeatt started the generator on 30 November 2014 (the night of Ms Morant’s death). He did that in order to see how difficult it was to pull the cord of the generator and how many pulls it would take before starting. His test established that it did not take a lot of resistance in pulling the cord and that the generator started with one pull.²²
- [52] A real estate agent, Ms Samantha Spedding has exhibited a document said to be the handwritten notes of Detective Sergeant Windeatt which were disclosed to Graham Morant on 30 June 2017.²³ Those notes are dated 3 February 2015. They indicate that the officer attended a vehicle holding yard to document the starting of the generator used in the suicide of Mrs Morant. The officer writes:

“Some effort required to initially start generator, however easily restarted after it was warmed up. Generator incorrectly started initially on/off switch in off position which

¹⁹ The response received was that “Assisted suicide is against the law in Australia and so Philipp cannot help you die.” She was referred to a book which she could purchase and an “Exit workshop” she could attend.

²⁰ Affidavit of Angus Morant affirmed 2 April 2022, exhibit A.

²¹ Affidavit of Jeanette Henderson sworn 6 April 2022.

²² *R v Morant* (n 9) [105].

²³ Affidavit of Samantha Spedding affirmed 26 April 2022, exhibit A.

may have caused generator to flood with fuel when attempts made to start it. Further test to be conducted tomorrow to start generator when cold.”

No further notes have been exhibited. It is unknown to me whether there were further tests conducted and if so, what the results of those tests were. This test was undertaken two months after Mrs Morant’s death at a time when the generator had been sitting in storage in a police holding yard. It is unknown what impact that might have had on the ease with which the generator could be started.

- [53] The officer’s earlier test on the night of Mrs Morant’s death is in my view a more useful determinant of how difficult or otherwise it was to start the generator on 30 November 2014. On that evidence it did not take much resistance to start the generator.
- [54] The evidence at trial included testimony from Mrs Morant’s general practitioner who saw her every four to five weeks for her chronic back pain. His last appointment with her was 28 November 2014, two days prior to her taking her life. In cross-examination he said that back pain is limiting in movement and that limitation can be severe. He also said that Mrs Morant had previously travelled to Thailand and he admired her for the fact that, in spite of her pain, she managed to function and travel.²⁴ I would infer, given this evidence was called at trial, it was relevant to Mrs Morant’s ability to start the generator.
- [55] The physical ability of Mrs Morant to start the generator was a matter which concerned the Coroner during the coronial investigation prior to Graham Morant being charged. An email was sent from the Office of the State Coroner to Detective Sergeant Windeatt on 22 January 2016 requesting clarification as to whether consideration had been given to “the difficulty associated with starting the generator used by the deceased and whether it may be the case that she would have required some level of assistance”.²⁵ A response was provided in a supplementary Form 1 (Police Report of Death to a Coroner provided pursuant to s 7(3) of the *Coroners Act 2003*) which was received on 18 April 2016.²⁶ That document has not been exhibited to the affidavit of Ms Stojanovic however there is certainly a suggestion in the material filed with the Coroners office that this issue was investigated.
- [56] Other than Mrs Morant’s general practitioner, the other person perhaps best placed to shed some light on Mrs Morant’s ability to start the generator was Graham Morant, her husband of some 14 years. He had lived with her since she commenced suffering constant, chronic pain. In his interviews with police Graham Morant said that Mrs Morant had told him that she wanted to end her life using a generator. It was, he said, her idea to buy a generator because he thought that she could not start the generator he had at their home. He said to police that Mrs Morant went into Bunnings to purchase a generator that she could start. Despite her pain and whatever limitations that caused her she was able, according to Graham Morant, to assist him to lift the 30 kilogram generator into the boot of the car. The following day after its purchase, he said that he got the generator out of the car so that Mrs Morant could remove the box in which it was packaged. He then assisted her to put it back into the vehicle. He accepted in his interview with police that after he put the generator

²⁴ *R v Morant* (n 9) [196]-[197].

²⁵ Affidavit of Biljana Stojanovic affirmed 21 January 2022, exhibit BS-18.

²⁶ *Ibid* exhibit BS-20.

back into the car Mrs Morant was then able to kill herself if she wanted to.²⁷ He said that when he went to church on the evening of Sunday 30 November 2014 there was a good chance that Mrs Morant was going to kill herself.²⁸

- [57] There is nothing in the summary of Graham Morant's interviews that suggests in any way, that in his view, Mrs Morant would have been unable to start the Ryobi generator. On Graham Morant's account she purchased this particular generator so that she could start it. His statement, that there was a "good chance that she was going to kill herself"²⁹ when he went to church, demonstrates his acceptance that she was able to start the generator.
- [58] There was evidence available to the Coroner and to this Court that demonstrates that Mrs Morant was able to start the generator. Ms Henderson's experiment does not shift my view in that regard. Mrs Morant, on the whole of the evidence, was intent on taking her own life. What strength a person intent on taking their life might be able to muster, is not something that Ms Henderson's experiment took into account. None of her subjects had that frame of mind.
- [59] There is nothing in the evidence that the applicant points to that makes it more probable than not that Mrs Morant did not have the strength to start the generator, and thus another person must have been present when she died.

New evidence of Peter Batten

- [60] The applicant contends that the new evidence of Mr Peter Batten, a real estate agent at Tamborine Mountain, demonstrates that Ms Lynette Lucas lied in her evidence in the trial of Graham Morant and that she did so out of a consciousness of guilt. This is said to be a matter that requires an inquest. This was material which was before the State Coroner.
- [61] Mr Batten had previously had some engagement with Graham and Jennifer Morant, having showed them, in his capacity as a real estate agent, the property, Flame Tree on 20 February 2012.
- [62] Ms Lucas was the sister of Mrs Morant. She gave extensive evidence in the trial as to things that Mrs Morant had said to her about Graham Morant,³⁰ which was evidence of his encouragement of her to commit suicide. Mrs Morant told Ms Lucas that she had become a born-again Christian in Graham Morant's religion. He had strong views about the forthcoming end of the world which he referred to as "the raptures and Armageddon". The raptures were a:

"...prelude to the end of the world and they could come in different forms and they could be rats and fireballs and things coming out of the heavens and they are attacking people and you're running away."³¹

- [63] Relevant to the applicant's argument, is evidence that Ms Lucas gave that Mrs Morant had said to her that Graham Morant was going to buy a property called

²⁷ *R v Morant* (n 9) [129].

²⁸ *Ibid* [123]-[132].

²⁹ *Ibid* [132].

³⁰ See *ibid* [28]-[37] and *R v Morant* (n 9) [143]-[161].

³¹ *R v Morant* (n 9) [144].

Flame Tree with the insurance moneys (that he would receive upon her death), which was going to be a communal environment he could use as a place of safety on the coming of the raptures and Armageddon. Ms Lucas' statement to police dated 5 May 2015 contains detail that, in addition to being told about Graham Morant's intended purchase of Flame Tree, that Mrs Morant drove her past the property during one of their meetings. Ms Lucas described it as a "two story bungalow type house set on a few acres".

- [64] Mr Batten has sworn an affidavit dated 18 November 2020 in which he says that, on an unknown date "not that many months since Mrs Morant died" Mrs Morant's sister, (who introduced herself as Lyn) and a man got out of a car in front of Mr Batten's house. Lyn introduced herself and said that Mrs Morant had mentioned a place called Flame Tree. Lyn started asking him questions about Flame Tree which he considered was her "fishing for information". Mr Batten thought from this conversation that Lyn did not know where Flame Tree was, contrary to her statement to police of 5 May 2015.
- [65] Mr Batten's account does not evidence in my view, that Ms Lucas was lying in her evidence at the trial. His bare opinion that Ms Lucas did not know where Flame Tree was could not establish deliberate dishonesty on her part. Mr Batten thought Ms Lucas was fishing for information which is likely what she was doing. She sought out a real estate agent who had some engagement with Mrs Morant and Graham Morant about the property, Flame Tree and who was a reputed agent in Tamborine Mountain. Ms Lucas was likely searching for answers or attempting to elicit information in the period of time after her own sister's death, particularly given the comments that Mrs Morant had made about Graham Morant's pressuring of her to suicide. It appears from the evidence before me that the Lucas' were suspicious of Graham Morant's involvement in Mrs Morant's death as it was Mr Paul Lucas (Ms Lucas' husband) who initially contacted police three days after Mrs Morant's death informing them that he believed that Graham Morant was involved in or had encouraged Mrs Morant's suicide.³²
- [66] Mr Batten has exhibited a photograph of the house at the property, Flame Tree. It is not a two-storey house as Ms Lucas indicated in her evidence. Ms Lucas' evidence was only that she had driven past the property and not that she had been to the property. It is reasonably possible that she is simply mistaken as to which house it was that was the property, Flame Tree.
- [67] The evidence of Mr Batten does not come close to establishing that Ms Lucas lied in her evidence and that she did so out of some consciousness of guilt as to her involvement in her sister's death.³³

New evidence of Katrina Barbara French-McClean

- [68] The applicant argues that the evidence of Ms French-McClean demonstrates that Ms Judy Dent, a friend of Mrs Morant, lied in her evidence at trial and did so out of a consciousness of guilt.

³² Affidavit of Biljana Stojanovic affirmed 21 January 2022, exhibit BS-5 Supplementary Form 1 at page 21. See also exhibit BS-3 page 16.

³³ *Edwards v The Queen* (1993) 178 CLR 193, 211 (Deane, Dawson and Gaudron JJ).

[69] The relevant evidence that Ms Dent gave at the trial was that on 7 November 2014 she spoke by phone with Mrs Morant. Mrs Morant told her that she cancelled her flight to Peru (where she was going to commit suicide), and that Graham Morant had told her to fly directly to Peru. Mrs Morant said to Graham Morant “I can’t do that and if you want me to take my life I will have to do it here and you will have to help me”. Graham Morant said:

“Yes, and I know a way that won’t cause you any pain. I have worked for a widow whose husband had taken his own life and the way he done it, he didn’t feel any pain and he also left his wife some insurance money and it was a blessing.”³⁴

[70] Mrs Morant came to stay with Ms Dent for around a week, leaving on 22 November 2014. Ms Dent said that on that day (22 November 2014) Mrs Morant explained to her that spending time with her was the deal she had reached with Graham Morant but that when she returned home she had to commit suicide. Mrs Morant said to Ms Dent that she should not worry as she would not feel any pain. She said that Graham Morant knew a way she could do it. He had worked with a person whose husband had taken his own life in the same way. He did not suffer any pain. He left insurance money as a blessing to his wife. Mrs Morant said that she would do it at home, that she would have everything set up, that Graham Morant would go to church and when he came home at 7 or 7.30 pm he would find her with a note. He would help her beforehand and then go to church.³⁵

[71] It was put to Ms Dent (as well as to Ms Lucas at the trial) that each had a motivation to be making false assertions in relation to the statements attributed to Mrs Morant.³⁶

[72] In this application, Ms French-McClearn swore an affidavit dated 18 August 2020. She lives on Mt Tamborine. She lived with her husband until he committed suicide on 21 October 2013 by gassing himself using a generator inside a “tiny sealed home office”. Graham Morant had worked on Ms French-McClearn’s property. She never spoke to him about the manner of her husband’s death until after Mrs Morant had died. She states that she met Mrs Morant around the first week of December 2013. She spoke directly to Mrs Morant about the manner in which her husband died. Mrs Morant asked her did she think it took very long for him to die and did she think it was a peaceful way to die. Ms French-McClearn told her that her husband had taken a generator into his office and switched it on and that from what she knew it didn’t take too long and it happened quickly and peacefully. She did not gain the impression that Mrs Morant was asking questions for the purpose of finding a way to end her own life. In Ms French-McClearn’s opinion, the evidence of Ms Dent could not possibly be true.

[73] The State Coroner considered this evidence and had regard to what the Court of Appeal had said about its use. He was not satisfied that the evidence of Ms French-McClearn would help in establishing a “consciousness of guilt” on the part of Ms Dent or clarify if other persons were present when Mrs Morant took her own life.

³⁴ *R v Morant* (n 9) [170].

³⁵ *Ibid* [174].

³⁶ *Ibid* [240].

- [74] I do not consider that the evidence of Ms French-McClearn provides any basis for a concern that Ms Dent lied in her evidence at trial. She gave evidence only as to what Mrs Morant told her. She could not give any evidence as to the source of the information that Mrs Morant provided. It is apparent from the totality of the evidence including the emails sent to Doctor Nitschke, that Mrs Morant vacillated about ending her own life. She had considered different methods including seeking out information from Doctor Nitschke in May and September 2014 and going to Peru in November 2014 where she would source medication used to put animals to sleep. Graham Morant said in his interviews with police that Mrs Morant took it upon herself to seek other means to terminate her life.³⁷ That is consistent with the emails and the comments made to Ms Lucas and Ms Dent. Graham Morant also said that Mrs Morant found out about someone suiciding through a generator months and months prior to her death. He said he did work for that lady (a reference to Ms French-McClearn). He told Mrs Morant. It was common knowledge all over Tamborine Mountain.³⁸
- [75] That Mrs Morant had spoken directly to Ms French-McClearn does not demonstrate to my mind that it was impossible in the months leading up to her death, when she was looking into methods to take her own life, that Graham Morant might have suggested the use of a generator as a painless method of committing suicide. There are, in any event, other interpretations open. Mrs Morant may have been referring to not the use of the generator, but the placing of it into the boot of the car with the back seat open.
- [76] A compelling feature of Ms Dent's evidence was that Mrs Morant committed suicide only a week after leaving Ms Dent's home where she had said that she had agreed with Graham Morant to kill herself on her return home.
- [77] There is also evidence from a Ms Winters who visited Mrs Morant on 3 November 2014 and was told of a man on the mountain who had committed suicide with no pain, leaving his wife with insurance monies. Ms Winters' evidence supported that of Ms Lucas and Ms Dent in that she said Mrs Morant also said to her that she had promised Graham Morant to go through with her suicide.³⁹
- [78] The evidence of each of Ms Lucas, Ms Dent and Ms Winters was very important in the context of the offence of counselling Mrs Morant's suicide which Graham Morant was tried for. Unless the jury accepted this evidence, the prosecution could not have succeeded on the offence of counselling.⁴⁰ The jury had the benefit of hearing and seeing each of these women give evidence. Given the verdict of guilty of the offence of counselling suicide, the jury must have considered these women to be credible and reliable. Davis J who also saw and heard them give evidence considered them to be truthful witnesses. As His Honour said:

“No doubt, also, though, the three ladies have not recalled the conversations verbatim. There may have been some honest errors made in their recall.”⁴¹

³⁷ Ibid [138].

³⁸ Ibid [140].

³⁹ Ibid [190].

⁴⁰ *R v Morant* [2018] QSC 251, [25].

⁴¹ Ibid [65].

- [79] The possibility of an honest error is another possible explanation for what is said to be the inconsistency between the evidence of Ms Dent and Ms French-McClean.
- [80] In my view the evidence adduced before me does not at all support or suggest that either Ms Dent and/or Ms Lucas lied out of a consciousness of guilt of their involvement in the death of Mrs Morant. Such a suggestion was made to police when the applicant's solicitor requested a further investigation into the death of Mrs Morant. Detective Senior Sergeant Mark Proctor wrote in a letter of 20 January 2020, of the suggestion that Ms Dent had a financial motive to assist Mrs Morant:

“Ms Dent appears no more physically able than Mrs Morant was at the time of her death, therefore it is highly unlikely that Mrs Morant would ask Dent for assistance in starting the generator.”⁴²

Bruises to Mrs Morant's arm

- [81] As referred to in the autopsy report,⁴³ Mrs Morant was found to have seven blue coloured bruises on the medial aspect of the mid-right upper arm measuring up to 10 millimetres in diameter.
- [82] The applicant argues that the presence of these bruises warrants an inquest because there is evidence available from Graham Morant⁴⁴ that he saw no bruises on Mrs Morant on the day of her death.
- [83] The applicant relies upon an expert opinion from Professor Noel Woodford,⁴⁵ a specialist pathologist who reviewed the autopsy report and received some unknown information in an email and in a telephone call from the applicant's counsel. Professor Woodford was not provided photographs of the autopsy. He says that he cannot exclude the possibility that the bruising was sustained on the day Mrs Morant died. From the description in the autopsy report the bruises could have been caused by someone grasping her upper arm. He can't exclude the possibility that the bruises were caused by someone grasping Mrs Morant's arm as she was removed from the car.
- [84] The issue of the bruising to Mrs Morant's arm was raised by the applicant's solicitor in her request of the police for a further investigation into the death of Mrs Morant. In Detective Senior Sergeant Proctor's letter⁴⁶ in reply he indicates that additional inquiries were made of Doctor Olumbe (a forensic pathologist). Doctor Olumbe provided an advice on 11 October 2020. He accessed the report and photographs. He stated that there were seven blue bruises on the inner/medial aspect of the right upper arm. The location, clustering and number suggested having been caused by grip marks/fingertips. From the autopsy report, images and the lack of other injuries he favoured the view that the bruises were perimortem injuries caused during the removal of the body by either the undertakers or police officers or other person. Detective Senior Sergeant Proctor also referenced the forensic report of Scott Parker in which he made observations of the body and noted no injuries were observed.

⁴² Affidavit of Biljana Stojanovic affirmed 21 January 2022, exhibit BS-40 page 155.

⁴³ Ibid exhibit BS-7.

⁴⁴ Affidavit of Graham Morant sworn 1 April 2022, exhibit A.

⁴⁵ Affidavit of Angus Morant affirmed 27 April 2022, exhibit A.

⁴⁶ Affidavit of Biljana Stojanovic affirmed 21 January 2022, exhibit BS-40 page 154.

[85] The bruises are easily explained and do not warrant an inquest.

Mrs Morant's email account

[86] The applicant argues that Mrs Morant's email account has been tampered with by some unknown person, and that thorough investigations are required by way of an inquest.

[87] The applicant relies on the evidence of Ms Spedding (his partner) and Mr Whitting, an IT specialist. Ms Spedding states that after Mrs Morant's death (and well prior to Graham Morant's trial) the applicant and herself tried on two occasions to access Mrs Morant's email account. They did so because they were looking for evidence which might prove Graham Morant's innocence. They were unsuccessful in accessing the account. She states that she did this in early 2014, however Mrs Morant did not die until November 2014. I would infer this to be an honest error and that she attempted to access the account after Mrs Morant's death.

[88] On 23 February 2022 Ms Spedding tried again to access Mrs Morant's email account. She was successful. She noticed that the "in file was empty. So was the sent file, so was the drafts file and even the spam file was empty".⁴⁷ She also discovered that someone had changed the password to the account on multiple occasions after Mrs Morant died. Ms Spedding sought the assistance of an IT specialist as she believed that whoever changed the password to the email account must have been motivated to do so to prevent Graham Morant obtaining information that may have been of use to him in his defence or his appeal. She made a complaint to the Crime and Corruption Commission because only the police, Judy Dent and Paul and Lyn Lucas knew the login credentials in 2014 for Mrs Morant's email account.

[89] What Ms Spedding has failed to take into account is that Graham Morant had access to the email and password as Ms Spedding states:

"Jenny had been the bookkeeper for the family business and had left Graham a list of details relating to the affairs she was managing, and that list included this password."⁴⁸

[90] Mr Jason Whitting, who holds a Diploma of IT, and professional certifications in Network and Microsoft computing, accessed the email account on 23 February 2022. He confirmed that the account had been emptied. He states that the account should have closed down after one year of disuse. He presumes that the account would not have been accessed after Mrs Morant died so that it should have closed down in November 2015. In his experience the only possible explanation for the account still being in existence, is that someone has been keeping it alive by logging into it at least once a year. He also noticed that a number of password changes had been made in the weeks following Mrs Morant's death.

[91] Mr Whitting explains that the account must have been deactivated less than 90 days prior to Ms Spedding's accessing the account on 23 February 2022, and more than 30 days prior to that access to explain that the account had been cleared of all

⁴⁷ Affidavit of Samantha Spedding affirmed 2 April 2022, exhibit A.

⁴⁸ Affidavit of Samantha Spedding affirmed 2 April 2022, exhibit A.

correspondence but not been closed by Yahoo.⁴⁹ In his letter dated 28 March 2022 in which he sets out his findings he concludes that the account was deactivated on or about 9 December 2021. He provides no basis for selecting that date other than, that is the date that Ms Spedding advised him a letter had been sent to the police.

- [92] Mr Whitting prepared a further statement on 16 May 2022. In that statement he said that he accessed Mrs Morant's email address again on 15 May 2022. He found that the account had received some spam emails. He sent an email from Mrs Morant's account to her own account (commonly known as "bouncing" an email) and received an "unusual activity notice". He further states that there was no "unusual activity notice" left by whoever had been deleting emails from Mrs Morant's account, which he considered odd. He concluded that someone was in possession of Mrs Morant's computer and had left the account on automatic sign in and was deleting emails from that account.
- [93] The applicant argues that from this body of evidence, it is apparent that somebody changed Mrs Morant's password shortly before and several times shortly after she died and at some point, someone changed the password back again, and so had access to the contents of the email account during a criminal trial in respect of which, the email account was relevant evidence. The argument continues that if someone was tampering with evidence, that is further evidence of a consciousness of guilt, and so the identity of that person and their involvement in Mrs Morant's death should be determined at an inquest.
- [94] Firstly, it is speculative that the email account contained relevant evidence. Secondly, the person with possession of Mrs Morant's computer and email account credentials immediately following her death was Graham Morant. He may have changed the password not for any nefarious reasons but rather in order to prevent others accessing the email account. It seems others had access to the account. He was not imprisoned until 2 October 2018 after his convictions.
- [95] There is no evidence before me as to what happened to the computer and no results of any investigation conducted by the Crime and Corruption Commission or the Queensland Police Service. I do not understand how an inquest into who had access to the email account in late 2021 and deactivated it, has any bearing at all on the determination of how Mrs Morant died 7 years earlier. The deactivation of the account is not in any way proximate to the time of Mrs Morant's death. It could not at all be said to be evidence of a consciousness of guilt of involvement in her death. The argument rather sounds like a conspiracy theory.

Is the ordering of an inquest in the public interest?

- [96] The State Coroner, in determining whether to hold an inquest, specifically had regard to and was guided by s 28 of the Act and guidelines issued for deciding whether to hold an inquest. He considered the findings of the Deputy State Coroner which were informed by a review of the materials before the Supreme Court and Court of Appeal. He had regard to the comments of Muir J in *Doomadgee v Deputy State Coroner Clements*; *Hurley v Deputy State Coroner Clements*:

⁴⁹ Affidavit of Jason Whitting affirmed 26 April 2022, exhibit A.

“A coroner’s discretion as to what evidence ought to be obtained and by what means requires the exercise of commonsense and judgment. Even though some potential evidence might be regarded by a coroner as relevant, he or she is not bound to attempt to procure it regardless of its probative value or of the cost of or time spent in obtaining it. The resources of all tribunals are finite and the public interest often will be better served by the expeditious and economical dispatch of business than by the indiscriminating pursuit of evidence which the tribunal regards as having no reasonable likelihood of influencing the outcome of the hearing.”⁵⁰

- [97] The State Coroner considered that the Deputy State Coroner had made findings into all matters required by the Act and that an inquest would not achieve any more. For those reasons he considered that it was not in the public interest for an inquest to be held.
- [98] As the State Coroner is a person with expertise in the findings to be made pursuant to the Act, his consideration that it was not in the public interest to order an inquest be held, is one which carries weight in the exercise of my discretion.
- [99] The applicant argues however, that the State Coroner’s decision was affected by jurisdictional error. That argument has been pressed with a view to having the findings of the State Coroner set aside, however this application is not an appeal from the decision of the State Coroner. The application requires me to exercise my own discretion to determine whether an inquest ought to be held. The existence of jurisdictional error might, however, impact the weight to be given to the determination of the State Coroner to not hold an inquest. The applicant argues that both the Deputy State Coroner and the State Coroner limited their investigation to establishing the cause of death without examining or making findings as to the broader circumstances surrounding the death, that is, they each failed to determine, as required by s 45(2)(b) of the Act, how Mrs Morant died.
- [100] It is contended that the only finding made by the Deputy State Coroner and the State Coroner was that Mrs Morant died of acute carbon monoxide poisoning. Specifically, it is argued they have assumed that “the death was a self-administered dose of carbon monoxide by the medium of a generator in the rear of the vehicle and that she was alone at the time.”⁵¹ It is contended that the cumulative effect of the evidence before me raises doubt as to whether Mrs Morant was alone at the time; that doubt gives rise to suspicious circumstances that have not been resolved; and the public interest favours the ordering of an inquest.
- [101] Having reviewed all of the material before the State Coroner I do not consider that the Deputy State Coroner or State Coroner have failed to determine how Mrs Morant died. The Deputy State Coroner said in her findings:

I find that this is how the person died. At the time of her death Ms Morant lived with her husband, Graham Morant. Ms Morant had suffered from depression and ongoing back pain for many years. About 18 months before her death she had surgery on her spine which was not very successful. She took significant amounts of medication for her pain. She had previously attempted suicide.

⁵⁰ [2006] 2 Qd R 352, 364 [52].

⁵¹ T 1-23 L 1.

At about 8.15pm on 30 November 2014 Mr Morant reported to police that Ms Morant was missing. He told police that he suspected that she might have ended her life. He told police he had been out that morning and then went home at about 3.30pm before going out again. He said he returned home at 7.30pm, and found a note written by Ms Morant in contemplation of her death by suicide. He found that the car was missing. He tried to phone her but she didn't answer.

Police immediately began searching for Ms Morant and police units were tasked to search high probability areas.

At 9.50pm on 30 November 2014 police officers found Ms Morant's car at the end of Welches Road, Wongawallan. All of the doors and windows were closed. Ms Morant was inside. She was unresponsive and cold to touch. It was clear that she was deceased and had been for some hours. When police officers opened the door they were overcome by the smell of carbon monoxide inside the car.

Police observed a note on the console which stated, "Please do not resuscitate me."

In the boot of the vehicle police found a new Ryobi brand 11000 watt portable generator. It had a small amount of petrol left in the tank. It was not running. The rear passenger seat was folded forward to allow fumes to pass from boot to car cavity.

Police concluded that Ms Morant drove her car to the location where she was found, closed the car doors and windows and started the generator which emitted the poisonous gas carbon monoxide which she inhaled.

An autopsy confirmed that Ms Morant died from acute carbon monoxide poisoning. Toxicology was also positive for oxycodone, nortriptyline, diazepam, paracetamol, atenolol and quetiapine, all at a therapeutic level. Those drugs did not contribute to her death.

Police investigated the death of Ms Morant and found that she had purchased the generator at Bunnings on 29 November 2014. Mr Morant drove her to Bunnings and helped her push the trolley with the generator to the car and load the generator into the car.

Police also found that at the time of her death, Ms Morant had three insurance policies totalling \$1.4 million. Her husband was the beneficiary of all three policies.

Police interviewed Mr Morant who initially denied knowledge of the generator. He later admitted that he drove Ms Morant to Bunnings, helped her put the generator into the car, removed it from the car once at home, removed the packaging around it and placed it in Ms Morant's boot. He said that when he left the house on the day of Ms Morant's death he left the car with the generator in the boot so that she could use it to take her life.

About a week prior to her death Ms Morant told her friend Judy Dent that she was under pressure from Mr Morant to end her life so that he could receive the insurance money. Ms Morant also told her sister, Lynette Lucas, that Mr Morant was counselling her to kill herself so that he could obtain her insurance payout.

On 9 February 2017 Mr Morant was charged with counselling the suicide of Ms Morant and with aiding her suicide, pursuant to section 311 of the *Criminal Code*. He entered pleas of not guilty to those charges. He was convicted of both counts by a jury after a trial in the Supreme Court at Brisbane. On 2 November 2018 he was sentenced

to ten years and six years imprisonment respectively. Those sentences were ordered to be served concurrently and a parole eligibility date of 2 October 2023 was imposed.

Mr Morant was sentenced on the basis that he knew that Ms Morant was going to commit suicide, that he assisted her in doing so by assisting her with the generator and leaving it at home for her to use and that he counselled her to commit suicide.

Mr Morant appealed his convictions and sentence. The appeals were dismissed by the Court of Appeal on 19 June 2020.

I find that Ms Morant died from carbon monoxide poisoning. Her death was due to suicide.⁵²

[102] The Deputy State Coroner referred in particular, to the finding by a jury that, Graham Morant had aided Mrs Morant's suicide and counselled her suicide. Her findings were as required by the legislation. There is no jurisdictional error in her findings.

[103] The material before me includes the new evidence relied upon by the applicant. The determination by the State Coroner given his expertise, that no inquest is required, is but one matter that I should have regard to.

[104] The Coroners Guidelines sets out the standard of proof required. It states:

..in keeping with the inquisitorial character of the jurisdiction, a coroner has to reach a comfortable or reasonable satisfaction having regard to all of the available information relevant to the questions in issue. A coroner applies the civil standard of proof but the approach referred to as the *Briginshaw* sliding scale should be adopted.⁵³

The guidelines go on to state:

However, the gravity of a finding that the death was caused by the actions of a nominated person would mean that a standard approaching the criminal standard should be applied because even though no criminal charge or sanction necessarily flows from such a finding, the seriousness of it and the potential harm to the reputation of that person requires a greater degree of satisfaction before it can be safely made.⁵⁴

[105] The accumulation of evidence placed before me does not suggest to me that there was some other person present when Mrs Morant died. The thinly-veiled suggestion in the applicant's material is that Ms Lucas or Ms Dent were present and somehow aided in Mrs Morant's suicide or caused her death.

[106] In *Briginshaw v Briginshaw* Dixon J said:

"..[R]easonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a

⁵² Affidavit of Biljana Stojanovic affirmed 21 January 2022, exhibit BS-35.

⁵³ Coroners Court of Queensland, *State Coroners Guidelines 2013* (at 2013) guideline 8.9, 8. The guidelines reference *Anderson v Blashki* [1993] 2 VR 89, 96 and *Secretary to the Department of Health and Community Services v Gurvich* [1995] 2 VR 69, 73.

⁵⁴ Coroners Court of Queensland, *State Coroners Guidelines 2013* (at 2013) guideline 8.9, 8-9.

given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.”⁵⁵

[107] Rich J stated that:

“The nature of the allegation requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that the tribunal has reached both a correct and just conclusion.”⁵⁶

[108] In *Rejfeck v McElroy* it was said:

“But the standard of proof to be applied in a case and the relationship between the degree of persuasion of the mind according to the balance of probabilities and the gravity or otherwise of the fact of whose existence the mind is to be persuaded are not to be confused. The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words; it is a matter of critical substance. No matter how grave the fact which is to be found in any civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge ...”⁵⁷

[109] The applicant contends that in considering the cumulative effect of the evidence he has placed before me I would be satisfied on balance that there was someone else present with Mrs Morant when she died. Indeed, whilst not expressly stated, the suggestion is made that Ms Lucas or Ms Dent were present and either aided her suicide or perhaps caused her death. It has not been contended at all, that the evidence might suggest Graham Morant was present at the scene. That is despite his having counselled her suicide and aided in her suicide and despite his having a motive to see her dead.

[110] The gravity of a finding that Ms Lucas or Ms Dent were present at Mrs Morant’s death is self-evident. Whilst the standard of proof is the balance of probabilities, the strength or cogency of the evidence necessary to establish that suggestion needs to be significant.

[111] I do not consider that the evidence adduced before me provides any support at all for a suggestion that Ms Lucas or Ms Dent were present at Mrs Morant’s death or caused it. There is a significant volume of evidence that demonstrates that Mrs Morant wanted to take her own life. She lived with chronic pain and in the months leading up to her death made inquiries into how she might go about taking her own life. Those inquiries included asking the assistance of Doctor Nitchske, who is said to be a proponent of voluntary euthanasia. Mrs Morant had given consideration to ways in which she might take her own life and had discussed that with her friends and Graham Morant. She had stated one week prior to her taking her life that she had agreed with Graham Morant to do so. She herself went into Bunnings (whilst Graham Morant waited in the carpark) and purchased the generator which she used

⁵⁵ [1938] 60 CLR 336, 362.

⁵⁶ Ibid 350.

⁵⁷ (1965) 112 CLR 517, 521-2 (Barwick CJ, Kitto, Taylor, Menzies and Windeyer JJ). See also *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd and Ors* (1992) 110 ALR 449, 449-50 (Mason CJ, Brennan, Deane and Gaudron JJ).

the following day to take her life. All of the evidence proved that Mrs Morant intended to and did take her own life. She did so by using a generator inside a car to gas herself.

[112] There is such scant evidence that any other person was present, in my view the public interest is not served by the ordering of an inquest.

[113] The applicant relies upon a statement in guideline 9.2:

In cases where family members believe someone is criminally responsible for the death and no charges have been laid, inquest are commonly requested. Unless a coroner can demonstrate the suspicions are baseless the request will usually be granted.⁵⁸

[114] Whilst the applicant has not filed an affidavit explaining why he wants an inquest it is apparent that he believes that someone is responsible for Mrs Morant's death. He does not believe that his father, Graham Morant is guilty of any offence.⁵⁹ The applicant swore an affidavit and gave some short evidence before Davis J, the relevance being an attempt to undermine the truth of what Mrs Morant told her sister and Ms Dent. The nature of the evidence presented before me tends to suggest that the point to it all is to suggest that Ms Lucas and/or Ms Dent were in some way involved in causing Mrs Morant's death. For the reasons I have set out above I do not accept that the evidence relied upon by the applicant demonstrates this or even casts any suspicion over them. The applicant's suspicions are in my view unreasonable. In any event, charges were laid in this matter and Graham Morant was convicted of counselling and aiding Mrs Morant's suicide. This guideline does not give rise to a suggestion that an inquest should be held in order to allay the applicant's unreasonable suspicions.

[115] The application is refused.

⁵⁸ Coroners Court of Queensland, *State Coroners Guidelines 2013* (at 2013) 5.

⁵⁹ *R v Morant* [2018] QSC 251, [85]-[86].