

1936.
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VICTORIA.

REPORT

OF THE

ROYAL COMMISSION

ON THE

ALLEGED SHOOTING AT AND WOUNDING

OF

JOHN O'CONNELL BROPHY,

A SUPERINTENDENT OF POLICE.

PRESENTED TO BOTH HOUSES OF PARLIAMENT BY HIS EXCELLENCY'S COMMAND.

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REPORT.

To His Excellency THE RIGHT HONORABLE WILLIAM CHARLES ARCEDECKNE, BARON HUNTINGFIELD, K.C.M.G., Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY,

I, Your Commissioner, appointed on the fifth day of June, One thousand nine hundred and thirty-six to inquire into and report upon—

1. The circumstances connected with or relating to the alleged shooting at and wounding of John O'Connell Brophy, a Superintendent of Police, at Royal Park on the twenty-second day of May, One thousand nine hundred and thirty-six.
2. The truth or falsity of—
 - (a) the statements or reports written or prepared by the Chief Commissioner of Police and/or members of the Police Force relating to the said alleged shooting at and wounding of the said John O'Connell Brophy ; and
 - (b) the statements or reports prepared and issued by the Chief Commissioner of Police and/or members of the Police Force to representatives of newspaper proprietors relating to the said alleged shooting at and wounding of the said John O'Connell Brophy.
3. The circumstances connected with or relating to the preparation and/or issue of the statements or reports referred to in paragraph 2.
4. What steps have been taken by the Chief Commissioner of Police and/or members of the Police Force—
 - (a) to investigate the said alleged shooting at and wounding of the said John O'Connell Brophy ; and
 - (b) to apprehend the person or persons responsible for the said alleged shooting at and wounding of the said John O'Connell Brophy :

have the honour to submit the following Report :—

The inquiry was opened on 10th June, 1936.

Mr. Stretton (instructed by the State Crown Solicitor) appeared to assist the Commission.

Mr. O'Bryan (instructed by Mr. R. H. Dunn) appeared for members of the Police Force concerned.

Mr. Ham, K.C. and Mr. Lewis (instructed by Mr. N. A. Miller) appeared for the *Herald* and *Sun* newspapers, and their employees ; and

Mr. Brennan appeared for press men concerned.

The inquiry occupied eleven days during which 44 witnesses were called, numerous exhibits were put in evidence, and I called for certain confidential files which were examined by me but by no one else.

I find that on the night of the 22nd May, 1936, Superintendent Brophy, the Chief of the Criminal Investigation Branch, went to Royal Park for the purpose of meeting an informer who had said he had information which would be of use in assisting the police to investigate the activities of certain criminals. Superintendent Brophy engaged the car of a Mrs. Orr to take him to the appointed place, and by a series of fortuitous circumstances he was accompanied by Mrs. Orr, a Mrs. Phillips, and Mrs. Orr's chauffeur. While awaiting the arrival of the informer, two men came to the car in which Superintendent Brophy and his companions were seated. Both these men were armed and masked, and attempted to "hold-up" the occupants of the car. Superintendent Brophy drew his own pistol and fired two shots. The masked men returned his fire, and, in the course of the shooting, Superintendent Brophy was shot in three places ; his right arm was fractured, and he received a bullet wound in the cheek and an abrasion above the heart.

The two bandits fired at and punctured one of the tyres of the motor car, and then drove off. Superintendent Brophy's chauffeur proceeded to follow, but, finding the tyre was punctured, was forced to stop. Superintendent Brophy was taken to St. Vincent's Hospital by a Mr. Millard, and there he received the necessary treatment. There is some slight corroboration of the "hold-up" in the evidence of Mr. Knopp, and some similar corroboration of the purpose which took Superintendent Brophy to the locality in the evidence of Detective Sergeant O'Keeffe that he had seen the informer, who stated he had the appointment.

A suggestion was made that Superintendent Brophy had been guilty of scandalous conduct and that it was possible that an enraged husband might have been responsible for the shooting. It was further suggested that he was guilty of improper conduct in taking female companions with him to such an appointment. The evidence shows that Mrs. Orr is a widow, and a friend of Superintendent Brophy and his wife and daughter for very many years. Mrs. Orr is the licensee and occupier of a hotel in Russell-street, and the owner of the car which was used during the night of the 22nd May. Mrs. Phillips is a very close friend of Mrs. Orr, a married woman living on good terms with her husband, and also a friend of Superintendent Brophy and his family. The other occupant of the car, one Maher, is Mrs. Orr's chauffeur and barman. Mr. Phillips was called as a witness, deposed to his relations with his wife, and no suggestion was made to him by any one that he was in any way enraged. No suggestion was made against the moral character of Mrs. Orr, Mrs. Phillips, Maher, or Superintendent Brophy; and I find it impossible to believe that Superintendent Brophy would take any woman with two other people to Royal Park to engage in any immoral or improper conduct, while there appeared to be no obstacle to his making use of Mrs. Orr's hotel if he so desired. I do not believe there was anything improper in Superintendent Brophy taking the women with him to meet an informer. The women would not be exposed to any danger from the informer, who was obviously friendly. In all the circumstances I find there was nothing immoral or improper in Superintendent Brophy's conduct.

Before leaving Mrs. Orr's car, Superintendent Brophy had assured Mrs. Orr and Mrs. Phillips that their names would not be brought into the matter. During his journey to the hospital, Superintendent Brophy gave the impression to Mr. Millard, the man who took him there, that he had been shot by bandits, and that he wanted to be taken to the Detective Office. Mr. Millard, having noticed that Superintendent Brophy was bleeding freely, took him to the hospital, where Superintendent Brophy sent a message to the Detective Office. Having regard to the evidence of the doctors who saw Superintendent Brophy at the hospital, and having regard to the fact that he had in fact been held up and hit in three places with three .45 bullets, I am satisfied that at this time Superintendent Brophy must have been excited and shocked, and believe his condition was responsible for the varying statements he then made. At the hospital he told a nurse that he wished his family to be told he had met with an accident. He told two of the doctors that he had been shot by criminals. He asked Maher to go to his son-in-law to tell him the full facts, but to ask the son-in-law to advise Mrs. Brophy and his daughter that he had met with an accident. In response to a message, Detective Bolton went to the hospital, and I believe that Superintendent Brophy told him he had met with an accident, that nothing could be done that night, but that he would be able to explain everything in the morning; further, that he asked Detective Bolton to tell Inspector McKerral, and to ask Inspector McKerral to advise the Chief Commissioner of Police (Sir Thomas Blamey). I believe that Superintendent Brophy desired his wife and daughter to be told he had met with an accident, as they were both invalids and he thought, rightly or wrongly, that they would not be as shocked if they were told it was an accident, as if they were told he had been shot by criminals. I further believe that his telling Detective Bolton it was an accident was prompted by the belief that if he said he had been "held-up," he would have to disclose the fact that women were with him in the car, and that such a disclosure (no matter how innocent it was in fact) would lay those women open to scandalous comment.

Much criticism was levelled against Detective Bolton for not making inquiries as to how the accident happened. At that stage all Detective Bolton knew was that Superintendent Brophy had dried blood on his face and hands. He did not know how many wounds there were. I find no difficulty in believing that, when his superior officer told him it was an accident, he believed it.

Detective Bolton did what he was told. He telephoned Inspector McKerral and told him exactly what he had been ordered to do. Inspector McKerral went to the hospital where he was informed of the number and nature of Superintendent Brophy's wounds, but he was unable to see the patient. He made no inquiry as to how he received the wounds, but immediately telephoned Sir Thomas Blamey that he had an important communication, and went out to Sir Thomas Blamey's house. Had Inspector McKerral believed that Superintendent Brophy had met with an accident simply, I cannot understand why he did not telephone as Detective Bolton

did, and advise Sir Thomas Blamey of the fact. Inspector McKerral went to Sir Thomas Blamey's house and discussed the matter for about half-an-hour, and, amongst other things, told Sir Thomas Blamey how many wounds Superintendent Brophy had received. I believe at this stage, Sir Thomas Blamey and Inspector McKerral had very grave doubts that it was an accident.

At 8.50 a.m. the next morning, Sir Thomas Blamey went to the hospital and saw Superintendent Brophy. Superintendent Brophy remembered seeing Sir Thomas Blamey, but says he does not remember what transpired at that interview. Sir Thomas Blamey says that Superintendent Brophy told him he had met with an accident, and that there were two ladies with him at the time, whose names he gave; and Sir Thomas Blamey says he believed it was an accident. Having regard to the fact that Sir Thomas Blamey knew the number and nature of the wounds, I cannot accept his evidence that he believed it was an accident. I am satisfied that Superintendent Brophy's governing motive for saying it was an accident was to hide the fact that he had two innocent women with him. He divulges their names to Sir Thomas Blamey, so that the only reason for saying it was an accident had disappeared. If Sir Thomas Blamey believed it was an accident it is difficult to understand why he should think it necessary to detail two detective sergeants to ascertain the facts. According to the medical evidence, and also to Sir Thomas Blamey's evidence, Superintendent Brophy appeared to be quite capable of giving a clear account of what had happened, and he did in fact give a detailed account to Detective Sergeants O'Keeffe and Carey within two hours of his interview with Sir Thomas Blamey. I am forced to the conclusion that Sir Thomas Blamey was told the truth, i.e., that Superintendent Brophy had been held up while on duty, and while in the company of Mrs. Orr and Mrs. Phillips; and I believe that, being jealous of the reputation of the Force, which he commands, he thought that that reputation might be endangered if the whole truth was disclosed. That being so, I believe Sir Thomas Blamey told Inspector McKerral the truth, but to announce to the press that Superintendent Brophy had met with an accident.

Inspector McKerral wrote out what announcement was to be made, and according to his evidence it was as follows (Exhibit "A") :—

"Superintendent Brophy was accidentally shot in the right forearm whilst handling his revolver. The bone in his arm was fractured."

Sir Thomas Blamey agrees that the document he saw substantially agrees with Exhibit "A." That announcement was admittedly false. Four reporters attended police headquarters and were shown a document; but the reporters deny that Exhibit "A" was the document they were shown. None of those reporters made an exact copy of the document, or any note of it, at the time. And each of the four reporters differed as to what the exact words of the announcement were. Substantially the announcement contained in the newspapers agreed with the contents of Exhibit "A," but there is one exception, that the newspapers all omit any statement that "the bone in the arm was fractured." Counsel for the *Herald* and *Sun* newspapers accused Inspector McKerral of having falsified Exhibit "A," either by having prepared a different document altogether to the one shown the reporters or by having added the last sentence "the bone in his arm was fractured." On the evidence of the reporters I am not prepared to find that an altogether different piece of paper was shown to them, but it is very noticeable that not one paper had anything to say about the bone being fractured. I believe that when Exhibit "A" was being prepared, it was desired to make as little of the shooting as possible, for the reason that the more serious the wounds, the more persistent would the inquiries be, and the more persistent those inquiries, the more likely it would be that the names of Mrs. Orr and Mrs. Phillips would be disclosed. Exhibit "A" itself has some intrinsic evidence that is, in my opinion, very important, and that is that immediately prior to the words "the bone in his arm was fractured," there is a full stop. From those circumstances I infer that that last sentence was written in subsequently to the reporters having seen the document.

On Saturday, 23rd May, in some of the evening editions of the *Herald* there was published, under sensational headlines, the fact that Superintendent Brophy had been shot by criminals. Some of the facts there published were inaccurate, but it became obvious that it was known that Superintendent Brophy had not met his wounds by accident. Consequently Sir Thomas Blamey and Inspector McKerral discussed the matter, and Inspector McKerral prepared another announcement for the press. On the afternoon of Sunday, the 24th May, he gave it out to two reporters, namely, Mr Bergin of the *Sun*, and Mr Lawson of the *Age*, Inspector McKerral produced the document he says he read (Exhibit "B"), which is as follows :—

"24th May, 1936.—On Friday night Superintendent Brophy received a 'phone message that a man wanted to see him at Royal Park to give him some information

regarding the recent hold-ups that had taken place in that locality recently. Mr. Brophy went there and shortly after his arrival two men appeared at the car and attempted to hold him up. Brophy immediately drew his automatic and fired, but it jammed. The bandits appeared to recognize Mr. Brophy and fired three shots at him. One bullet struck him on the right forearm fracturing the bone, one hit him in the face, and the other in the chest. They then got into a dark-coloured motor car and drove away."

Mr. Bergin and Mr. Lawson both say that that is not the document which was read to them, and each purported to give his version of what the document read contained. Mr. Bergin says he took a longhand note, and Mr. Lawson that he took a shorthand note. Both those reporters then met another reporter, Mr. Luxton of the *Argus*, and the three proceeded to compose the reports for their respective papers. Those reports, as printed, are almost identical with one another, but are not identical with Exhibit "B," although, in fact, with the exception of the last paragraph printed in the newspapers the reports are substantially in accord with Exhibit "B." There are perhaps two matters which should be mentioned. In Exhibit "B" the words "and fired" appear to have been originally written "to fire"; in the newspapers the words are printed as "to fire." Again, in Exhibit "B" "three shots" are stated, whereas in the newspapers "four shots" are mentioned. Mainly because of those verbal differences and because of the omission from Exhibit "B" of all mention of a "drag-net having been placed around the bandits," Inspector McKerral is charged with having deliberately brought Exhibit "B" into existence in place of the document the reporters say he produced. The mere fact that three newspapers are almost identical does not appear, to me, to be of great importance, because it was proved that those three reporters met together and composed their reports, they say, from the shorthand notes of Mr. Lawson, and the longhand notes of Mr. Bergin. It is to be expected, if the report was written under those circumstances that each reporter would have exactly the same story. Mr. Lawson produced what he said were the shorthand notes actually written by him at the dictation of Mr. McKerral. The first thing to be noted is that it is not a verbatim shorthand note; it is merely a note in shorthand. If it is the actual shorthand note taken, it is strong evidence that Exhibit "B" is a concocted document. Mr. Lawson said that, as a general rule, he does not keep shorthand notes made by him. He gave various and contradictory reasons for having retained these notes, among others being that, two or three days after he took the note he saw, there was a conflict between what Sir Thomas Blamey had said and what Inspector McKerral had said. Mr. Lawson admitted that he had made a statement that Sir Thomas Blamey had on some previous occasion gone to Mr. Lawson's employers and endeavoured to have Mr. Lawson dismissed. It would appear that Mr. Lawson had a strong motive for wishing to prove that Sir Thomas Blamey is a liar, and one way of doing so might be to prove that Inspector McKerral contradicted Sir Thomas Blamey. From those facts, and from his demeanour in the witness box, I do not accept Mr. Lawson's evidence that he kept his shorthand notes, and accordingly, I do not believe that the notes produced by him were those made by him at the interview with Inspector McKerral. Mr. Bergin did not purport to take a shorthand note, but took a note in longhand which he destroyed as soon as he had written his report. He has read the published report on many occasions since, and I have no doubt he believes the published report is what Inspector McKerral actually read. It may very well be that, hearing that the pistol had jammed, he thought it meant that it had not been fired, and so he wrote "to fire" instead of "fired." The *Herald* newspaper, on the Saturday evening, had published that there were four bullet wounds and, having that idea in his mind, I think it possible that that was the reason why Mr. Bergin inserted four shots rather than three. Mr. Bergin swore that he telephoned Inspector McKerral on Sunday afternoon and was told, *inter alia*, that Detective Sergeant Carey and Inspector McKerral had prepared the statement given to the reporters that morning, and that Superintendent Brophy had approved of it. In fact, Detective Sergeant Carey had nothing to do with the preparation of the statement, and Superintendent Brophy was never asked for his approval of it. I do not believe that evidence by Mr. Bergin, and think it ridiculous to suggest that Inspector McKerral would, for no reason whatever, invent that he and Detective Sergeant Carey had prepared the statement, or that Superintendent Brophy had approved of it. I do not believe that Inspector McKerral had altered the words "to fire" to "and fired" after these reporters saw the document, because at that time the information Inspector McKerral had was that Superintendent Brophy had actually fired, and I think that the alteration in Exhibit "B" was made because Inspector McKerral, at first, in writing the note hurriedly, knowing that the pistol had "jammed," may have thought that it prevented any firing and then, having re-read the document or reconsidered the matter in the state of his knowledge, he made the alteration from "to fire" to "and fired." If he was going to falsify a document, it seems absurd, to me, to suggest that he would make an alteration to correspond with what he must have realized his critics would suggest. I do not

believe that Inspector McKerral had at any time written down that *four* shots were fired, because at that time Inspector McKerral knew, as the fact was, that only three wounds had been received by Superintendent Brophy, and there was no object to be gained by saying something different. The last paragraph in the newspaper reports was:—

“Owing to the drag-net which was being placed round the bandits who had been operating there for some time, it was considered advisable not to release the true facts of the case, but, owing to false rumours which got about and have been published, it is now considered advisable to release the true facts.”

No words to that effect appeared in Exhibit “B,” but Mr. Bergin undoubtedly asked Inspector McKerral certain questions after Inspector McKerral had finished reading his announcement, and the questions were as to whether other hold-ups had occurred in the same vicinity. I cannot shut my eyes to the position that at this time the press were clamouring for information which the Chief Commissioner of Police did not consider it advisable to give, and I can readily believe that questions such as Mr. Bergin asked invited evasive replies. I do not believe that Inspector McKerral would go out of his way to make any apology for the first announcement; I believe that he was simply prepared to correct what had been originally announced and would not make any excuse concerning it; and I think the last paragraph in the newspapers, with regard to this drag-net, arose from a misapprehension by those who were present as to what Inspector McKerral actually said. My belief, in other words, is that he told them there had been other hold-ups, and that it was not desirable to release the true facts of those hold-ups, and, having got that statement from Inspector McKerral, the reporters composed the paragraph which appears at the end of the purported announcement. On the evidence I am not prepared to find that Inspector McKerral deliberately brought Exhibit “B” into existence in place of the document the reporters say he produced.

There appeared in the *Sun* of Monday, 25th May, a statement:—

“When interviewed at the hospital on Saturday afternoon Superintendent Brophy denied that he had been decoyed or shot at While transferring his automatic pistol from his left hand to his right, it had gone off twice.”

In other words, it was reported that on Saturday afternoon Superintendent Brophy was reiterating the “accident story.” That statement in the *Sun* emanated from the reports of a Mr. Wright (of the *Herald*), and a Mr. Warren (of the *Sun*). Both swore they received the statement from Superintendent Brophy, presumably at separate interviews. Superintendent Brophy admitted he saw Wright in the presence of a Mr. Redmond, who corroborated Superintendent Brophy that no information whatever was given to Mr. Wright. Superintendent Brophy denies that he saw Mr. Warren at all, and I believe him. Both Mr. Wright and Mr. Warren created a very bad impression on my mind; their evidence was contradictory of one another, and the details of the “accident” attributed by them to Superintendent Brophy are so absurd that I can only think this story arose from the joint imaginations of those two reporters.

The next statement or report into which I inquired was that of an interview with Sir Thomas Blamey, which took place on Monday, the 25th May. In many respects what the reports say the statement contained was substantially in accord with what Sir Thomas Blamey says he said. There are verbal alterations, some of them undoubtedly open to the criticism that they are merely due to a misconstruction placed upon certain words; for instance, it is said in the *Argus* newspaper that Sir Thomas Blamey stated that Superintendent Brophy had received information concerning a reported hold-up, and, because of that, he went to Royal Park. Sir Thomas Blamey’s recollection is that he told the reporters that Superintendent Brophy went there to obtain information from an informer concerning the activities of gunmen; and I can well imagine that a reporter, on being told that Superintendent Brophy was to receive certain information concerning hold-ups or the activities of gun-men, might interpret that to mean, either that it referred to a “reported” hold-up (according to the *Argus*) or a “projected” hold-up (*Sun*), or that car bandits “would be operating” in Royal Park (*Age*); but to me it is incredible that Sir Thomas Blamey would say anything to lead the reporters to the conclusion that a man in Superintendent Brophy’s position would be going to Royal Park by himself with the object of arresting car bandits, particularly having regard to the fact that I am satisfied, and I believe Sir Thomas Blamey knew, that the reason for Superintendent Brophy’s going to the Royal Park was merely to obtain information which might lead to the apprehension of car bandits who had been operating in that locality. I am satisfied that, having made his statement, Sir Thomas Blamey was asked as to how it was that the announcement concerning “the accident” came to be issued, and that he gave replies which were not in accordance with the truth, with the sole purpose of secreting from the press the fact that women were in the

company of Superintendent Brophy. Sir Thomas Blamey was asked "Do you think that you were justified in making a statement to the press which you knew was untrue?", and his answer to that question was, "I am not prepared to say yes or no to that."

I do not believe that Sir Thomas Blamey ever said that no steps were being taken to investigate the crime. On the contrary, I am satisfied that as soon as Superintendent Brophy described what had actually occurred to him, Sir Thomas Blamey and the officers acting under him took the necessary steps to fully investigate the crime that had been committed, and to apprehend the person or persons responsible for the shooting. They were in possession of very few facts that would lead to the identification of the criminals, and, although criticism was made that they had not taken certain steps, I think the answer to that is that two experienced detective sergeants acted in the way which they thought proper, although their methods might not appear to be as effective as those suggested by laymen. I think it undesirable to set out all the steps that have been taken.

I desire to place on record my appreciation of the services rendered by Mr. P. A. Carbines as Secretary to the Commission.

All of which your Commissioner has the honour to submit for Your Excellency's consideration.

Witness my hand this 2nd day of July, 1936.

(L.S.) H. C. G. MACINDOE.