

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2009 002063

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: DAMIEN PERCEVAL

Delivered On:	28 September 2012
Delivered At:	Coroners Court of Victoria Level 11, 222 Exhibition Street Melbourne
Hearing Dates:	28, 29 and 30 May 2012
Findings of:	CORONER K. M. W. PARKINSON
Representation:	Mr B Ihle for Ms Cheryl Weir Russell
Police Coronial Support Unit appearing to assist the Coroner	Leading Senior Constable King Taylor

I, K. M. W. PARKINSON, Coroner having investigated the death of DAMIEN PERCEVAL
AND having held an inquest in relation to this death on 28, 29 and 30 May 2012
at MELBOURNE

find that the identity of the deceased was DAMIEN PERCEVAL

born on 25 November 1975

and the death occurred on 19 April 2009

at Dandenong & District Hospital, David Street, Dandenong, Victoria 3175

from:

1 (a) ASPIRATION PNEUMONIA AND HYPOXIC BRAIN INJURY IN A MAN
CONSUMING ALCOHOL AND METHADONE

in the following circumstances:

1. An inquest was held in relation to the death of Mr Damien Perceval on 28, 29 and 30 May 2012. A brief of evidence containing witness statements was prepared by Victoria Police for the Coroner. The following witnesses were called to give evidence in the proceeding: Mrs Robbie Perceval; Mr Tim Perceval; Ms Donna Gorman; Mr A (identified in this manner as witness name suppressed); Mr Paul Gorman; Mr John Hanson, Ms Kristine Crofts; Mr Darren Weir; Ms Cheryl Weir Russell; Detective Senior Constable Colin Beard. I have had regard to all of this material.
2. Damien was 33 years of age at the time of his death. He was employed as a storeman and resided at Pakenham in a house he was purchasing. Damien is survived by his mother, father, brother and sister. Damien was described by his family as a trusting person who always saw the best in people. His mother described how he was a good natured man, vulnerable to people taking advantage of him.
3. Damien had a history of alcohol dependency. Whilst he was known to intermittently use illicit substances, he did not suffer from illicit substance addiction and he was not a registered methadone program participant.

4. In around March 2008, Damien met Ms Kristine Crofts and became involved in a relationship with her. Ms Crofts and her son moved into his residential premises after the relationship commenced.
5. Ms Crofts arranged for her mother Ms Cheryl Weir Russell and her mother's partner Mr Darren Weir, to stay at Damien's house for the weekend of Saturday 18 April 2009 to celebrate Ms Weir Russell's birthday. Each of these people were present in the house during the course of the day and at the time of relevant events.
6. Mr Darren Weir has a history of heroin addiction and is a registered methadone recipient. He was apparently eligible as at April 2009 for what is known as 'takeaway' methadone doses. This meant that he was able to regularly collect a number of doses of the prescribed Schedule 8 drug methadone and take them home with him for later use.
7. The evidence is that he had advised his medical practitioner that he would be away from his usual premises and pharmacy collection location on the weekend in question and he collected a supply of takeaway doses. Ms Weir Russell stated:

"Darren and Damien would often sit out the back of the house. Darren would drink coffee and Damien would drink alcohol. They were both drug users and had a lot in common to talk about. I don't remember when but on one of the visits Darren told me he'd given Damien some of his methadone.

Darren's dose is 300mls a day and at the time he got take-away from the Chemist for weekends. He told the Doctor that he travelled to Seaspray on weekends to see his son which is not true. The truth is that he didn't want to go to the chemist each day.

At the time I was the carer for Darren and one of the things I did for him was give him his methadone. Sometimes he would get himself and when we stayed at Krissy's house it was always kept in a locked box. The key was kept on the key ring, with the house and car keys."¹

8. During the morning, Damien consumed alcohol. The evidence is that he did not leave the house at all during the day. At approximately 11.30am, Ms Crofts went to the shopping centre

¹ Exhibit 13 - Statement of Ms Cheryl Weir Russell dated 27 March 2011 p3-5

to buy meat for a barbeque to be held that evening. She returned at approximately 12-12.30pm at which time Damien was alive and quite obviously substance affected. There were various interactions between Ms Crofts and Damien in the period to 1.30pm. At that time Ms Crofts says she left him sleeping in the bedroom.

9. Some time later Damien was located by Ms Crofts, unresponsive in the bedroom of the premises. Ambulance attended and he was resuscitated and transported to the Dandenong Hospital. His family were notified and attended at the hospital. Damien was admitted to the Intensive Care Unit. His prospects for recovery were poor, as he had sustained significant hypoxic brain injury. Damien Perceval died at 1.20am on 19 April 2009.
10. A post mortem examination was undertaken by Forensic Pathologist Dr Melissa Baker. Dr Baker reported that the cause of death was aspiration pneumonia and hypoxic brain injury in a man consuming alcohol and methadone. Toxicological analysis of ante-mortem blood samples revealed the presence of alcohol at 0.09g/100mL and methadone at a concentration of 0.1mg/L and trace evidence of methadone metabolite. There was no evidence of natural disease or of any injuries which may have caused or contributed to death. Dr Baker commented:

“concurrent use of more than one drug with central nervous system depressant actions can contribute to the toxic effect of each drug present” and that:

“it is likely there was a period of unconsciousness prior to the deceased being found unresponsive, during which time there was ongoing metabolism of alcohol and methadone and the level of alcohol and methadone was likely to have been higher at the time the aspiration occurred.”

THE EVENTS OF 18 APRIL 2009

11. Ms Crofts' account of the day was that Damien had been consuming alcohol out of a can since approximately 8.30am. She states that she was aware that he had consumed a number of cans of pre-mixed UDL vodka. Her evidence was that she was aware that Mr Weir had his methadone at the premises.

12. Ms Crofts stated that she went to the shopping centre at Berwick to purchase meat for a barbeque that was to be held that evening or on the next day. Her evidence is that she arrived at the butchers to find that Damien's account, which she had intended to use for the purchase, did not have enough money deposited to support her purchases and the transaction was declined.
13. She then sent a text to his mother asking that she deposit some money into the account. This was a somewhat unusual request to make of someone with whom she was not close and did not frequently communicate. This action of going to the shopping centre and engaging Mrs Perceval in the activities of the day was suggested as having been deliberate and directed to establishing an alibi for her whereabouts at or around the time of Damien being administered an overdose or succumbing to the affects of an overdose of methadone.
14. Ms Crofts denies that this is the case. She states that it was Damien who told her to contact his mother and that she did not assist in the administration of the methadone. Ms Crofts stated:

"Before I'd left that morning we'd had another talk about his drinking cause he'd recently been to the doctor, with an ulcer problem. When I left that morning at about 11.20am, Cheryl and Darren were still there but gone when I returned home at about 12.00pm. Damien was alone sitting on the couch with a UDL can in his hand. He didn't look good. He was slurring his words more than usual and was moving very slowly. I asked him if he was OK and he said he taken some methadone. I asked where's he get it from and he said 'doesn't matter'.

A couple of minutes later he said he was going to lay down for a while in our room. He asked me to come in as well and ended making love for about one (1) hour. Towards the end he was nodding off while we were doing it.

I left the room at about 1.30pm to do some housework and left Damien asleep on the bed. The kids were out at the local park and Mum and Darren got back just before I came out of our bedroom. At about 2.00pm I went in and checked on Damien and he was snoring so I left him alone and went back to doing housework.

At about 2.20pm I went into our room to get some clothes and saw blood coming out of Damien's mouth but he was still snoring. I called an ambulance straight away. They

arrived within 5 minutes. I had still been on the phone to them and was doing CPR. The man on the phone told me to pull Damien off the bed and do CPR on him on the floor. When ambulance people arrived they worked on him for more than an hour (one) until they took him to hospital.

Apart from Darren Weir I don't know anyone who is on methadone including Damien's friends. No one came to visit while I was home that morning except for my family and as far as I know no one came around while I was out."²

15. Mr Darren Weir stated to police that he observed Damien drinking alcohol on the morning of 18 April 2009 and that he appeared to be affected by alcohol and substances, however he was unaware of where or how or what substances may have been affecting him. Mr Weir said that his methadone was locked away in a box in the boot of his car and that it remained there over the weekend. He stated:

"In my original statement, I remembered talking to Damien in the morning on the day he died before Cheryl, Riki Lee and me went to Narre Warren to see our other daughter. I remember Damien looking wasted and I asked him then what had he had. I could tell he wasn't drunk but appeared to be stoned on something. I remember his eyes were pinned but he was talking fine. Damien told me that he had taken 40ml of methadone. I asked him where he got it and he said off a mate. He didn't tell me which mate and I don't know any of his mates anyway. I am pretty sure I told the police this when I made my original statement. I am on 300ml of methadone a day and I thought that 40ml wasn't a very big amount and I didn't think it would hurt him.

I have been on methadone for about five and half years. I was on methadone at the time Damien died and I took my supply to the house in Pakenham. I kept my supply in a locked blue cash tin to keep it away from the kids. I also kept my supply of methadone in the boot of the car as an added precaution. Cheryl and I are the only one's with keys to the cash box. My methadone bottles are filled up to the same amount every time I receive them so I know there was no methadone missing from when we went to Pakenham.

² Exhibit 9 – Statement of Ms Crofts paragraphs 15 to 20

*I didn't give any of my methadone to Damien and I don't know where he obtained it from. I am too reliant on the methadone and if I missed out on 40ml from my daily dose I would be really crook."*³

16. Ms Crofts stated:

*"Darren always kept his methadone in a locked metal box so that the kids can never get into it. I saw the box that weekend and it was always locked. It was blue and he had it on the bed side table in their room."*⁴

17. Ms Cheryl Weir Russell stated to police that she observed Damien drinking at approximately 9.00am, that she was aware that he may have taken valium and that there was some discussion about methadone which took place between Damien and Mr Weir. She stated that Mr Weir told her he had given his methadone to Damien. She understood that Damien had taken the methadone and that he voluntarily consumed the drug. She stated:

"At the time I was the carer for Darren and one of the things I did for him was give him his methadone. Sometimes he would get himself and when we stayed at Krissy's house it was always kept in a locked box. The key was kept on the key ring with the house and car keys.

That morning Darren got up before me and I'm pretty sure he got his methadone himself that day. The day that Damien died at about 8.30am me and Darren drove to Narre Warren to pick up my daughter Sherallee. At the time she was in foster care.

When we got back to the house in Pakenham I asked Krissy where Damien was and she said she he was inside asleep. A little while later we were out the back when Krissy came out and said, 'Mum can you come in here quick'. I went into the bedroom with Krissy and Darren following and saw that Damien had vomited.

He was on the bed and I think on his back with the vomit on his left hand side. He had a doona over him. Darren was standing beside me and said to us, 'Just let him sleep it off he was pissed last night.'

³ Exhibit 11 – Second statement of Mr Darren Weir dated 1 April 2010

⁴ Exhibit 9 – Statement of Ms Kristine Crofts dated 8 January 2010

I can't remember exactly when but Darren noticed there was blood in the vomit and told Krissy to call for an ambulance. That was either at the time or a few minutes later.

The next time I went into the room Damien was naked and lying on the floor with Darren and Krissy in the room with him. Two ambulances came to the house and took him to hospital.

Later Krissy told me that while they were in the bedroom with Damien and she was calling an ambulance Darren took the phone off her and told the '000 operator' that Damien had taken methadone. I don't remember when she told me that.

Afterwards I was talking to Darren and he told me he'd given Damien the methadone because he'd asked for it. I can't remember if he told me when we were waiting for the ambulance or after. When they did arrive they worked on him for a long time at the house.

The police arrived while the ambulance were still at the house and spoke to me and Darren and Krissy. They took a written statement from me which I signed at about 5.35pm. I don't remember if I knew about the methadone before or after I made that statement.

It was either the 18th or 19th of April 2009 when I found out that Darren had given him the methadone. I never told the police about it because I was fear of what Darren would do to me.

Prior to making this statement Senior Detective Beard warned me that I did not have to say or do anything and anything I said could be taken and given in evidence."⁵

ALLEGATIONS OF ILLICIT ADMINISTRATION OF METHADONE AND FACTUAL FINDINGS

18. Shortly after Damien's death his family became aware of information causing them to be concerned that the death was not accidental and may have been orchestrated or assisted by those present at the house.

⁵ Exhibit 13 – Second statement Ms Cheryl Weir Russell dated 27 March 2010 paragraphs 5 to 16

19. A number of allegations were made as to the circumstances in which Damien came to be in possession of the methadone, which in combination with alcohol, caused his death. It is alleged that the methadone Damien consumed was supplied by Mr Darren Weir from his prescribed methadone. Allegations were also made that the methadone had been illicitly administered to Damien by Mr Darren Weir with the assistance or in the knowledge of Ms Cheryl Weir Russell and Ms Kristine Crofts.
20. In 2009, a call was made to the Victoria Police Crime Stoppers number in which allegations were made that Mr Weir was involved in the death of Damien and that he administered methadone without Damien's knowledge. Allegations of this nature were also made in statements to police and in evidence in the inquest. The allegations were largely based on hearsay, which was once or twice removed.
21. The allegations were also made to Damien's family. Mr and Mrs Perceval reported to police the following information being provided to them by Mr John Hanson when he attended at their home on 30 June 2009 and also by Mr Paul Gorman by telephone on 30 June 2009. Mr A also made statements to Mr Tim Perceval that Mr Weir had provided the methadone to Damien.
22. In a letter to police dated 4 July 2010⁶, Mr and Mrs Perceval reported the contents of conversations they had with Mr Gorman, Mr A and Mr Hanson in relation to their son's death. They stated that they were told:

"John Hansen told us the following: Kristine got two valium tablets from her mother Cheryl 2 days before the incident occurred. She gave these to Damien on the Saturday morning while he was drunk. She then left the house and while she was away Darren and Cheryl gave Damien the methadone before she returned. They then waited before they called the ambulance.

Kristine has since made a statement to Pakenham police saying that her mother Cheryl and Darren Weir gave Damien methadone on the day of his death. John said they were after Damien's house, he asked us to contact the police. He said Paul Gorman had

⁶ Exhibit 4 – Correspondence from Mr and Mrs Perceval to Detective Senior Constable Beard of Victoria Police.

more details and wanted to speak to us and gave us his phone number so I then rang Paul the same night 30 June 2010.

Paul Gorman told us the following: Paul said he had known Darren from jail and had called him on Monday 27th April. It was the night of the funeral and Darren told him Kristine's partner had died and put her on the phone to speak to Paul. He then met Kristine on the Wednesday night and went to Damien's house the following weekend they had sex and she spoke about getting Damien's house. During their relationship she told him the details of what happened to Damien. Kristine Crofts said she planned Damien's death with her mother Cheryl and Darren Weir, Cheryl's boyfriend, they all wanted Damien's house. On Thursday 16th April, Kristine got two valium tablets from her mother. Damien had been drinking the Friday night and was still drunk on the Saturday morning Kristine gave him the two valium tablets. She then went to the shops in Pakenham and made sure she could be seen on security cameras, Cheryl and Darren remained at the house.

They watched Damien and when they saw the valium was taking effect they then poured 30mls of methadone down his throat. After 20 minutes Kristine returned to the house. She went into the bedroom and had sex with Damien to make his heart rate go up so the methadone would work faster. After that she went into the lounge room and waited with Cheryl and Darren. After a while she went to check Damien and there was blood coming from his mouth that's when the ambulance was called. Paul was told that Darren spoke to the ambulance drivers and said that Damien was dying from taking 30mls of methadone.

Later she also told Paul the autopsy report had stated they found 30mls of methadone and two undigested tablets, she hadn't seen the report it was sent to us.

Paul said while they were living together at Mentone the police interviewed her, Darren was interviewed 3-4 weeks prior by Cobram police.

Paul said he and Kristine have since parted, she gave birth on the 30th January 2010 to a boy Delion and he's not sure if the baby is his or Damien's. They had lots of arguments and he was told, the same thing that happened to Damien would happen to him.

Paul said he would talk to the police. He had already rung Crime Stoppers twice, so had his ex wife Donna and Mr A.

Mr A spoke to Tim and Kerrie, Damien's brother and sister, the day after his death and said that Kristine had told him that Darren got the methadone."

23. Mr Tim Perceval's made a statement and gave evidence of the information he had received from Mr A when he attended at the hospital on 18 April 2009. His account was as follows:

"On Saturday night the 18th of April 2009, I received a phone call from my Mum telling me that Damien was at the Dandenong Hospital and it was serious. I went to the hospital and met with my parents and Krissy.

I was told that he 'wasn't good' but not a lot more. While we were waiting I spoke to Krissy and asked her what was going on. She initially said it was something to do with drugs or alcohol and during the evening I pressed her for more information.

Eventually she mentioned something about methadone and I asked her where he had gotten methadone from. She was really vague about it but said that he'd had methadone before. Over the time we were at the hospital she changed her story a few times.

She said that her step father Darren had been there at the time. I don't recall her mentioning her mother being there. She said that her and Damien had been fighting on Friday night and he got drunk. Then on Saturday morning he got out of bed and started drinking again. She said that at about 9.00am she went to the shops to buy some meat for a BBQ and when she returned she found Damien on the floor or their bedroom and was blue. Her story changed a few times, another story was that she came home from the shops and they had sex in the bed and after that she left him as he slept afterwards.

I don't remember the sequence of events or the conversation but it eventually came out that she had taken 45 minutes from finding Damien unconscious to calling the ambulance. When I asked her about that she said it was because she didn't know what to do.

While I was at the hospital her step father Darren and her mother arrived. At one point they were down stairs outside the hospital having a smoke and I could see them laughing

and joking which confused me but thought that people deal with grief in different ways and at the time I tried very hard not to think badly of them.

The following day on the 19th of April, mum tried to contact Krissy to get Damien's financial documents. She eventually got hold of her that afternoon but said she was busy and couldn't meet up with us until later. She arranged to meet us at the house at 10.00pm on Sunday night. I went to Damien's house with my mum and sister Kerrie. Krissy was there with her brother Ian and someone else that I didn't know. Krissy immediately went into a conversation about what she was going to do with the house now that Damien was dead. I remember her saying, 'Were gunna renovate'. She went on about doing this and that to the house. She was very particular in mentioning that they had been a couple for 13 months and that after 12 months she was entitled to the house.

She said, 'I know Damien wanted me to have the house. John was there when he said it'. John was a family friend of Krissy's, I don't know his last name. She also said, 'He wanted me to have his super too' and she was of the belief that he had nominated her on a recent super fund. My sister Kerrie, advised me that Krissy was making comments about the house the night before when we were in the hospital whilst Damien was on his death bed.

At one stage I was in the kitchen with Mum and Kerry. Krissy started dishing out Damien's belongings to us and telling us what other family members could and couldn't have. Mum asked to see the room that Damien died in.

While she was doing that with Krissy, Mr A walked in from the backyard. Mr A approached us and said, 'That prick Darren gave it to him, he gave Damien 30mls of methadone. Krissy knew about it. That prick should be in goal, six months ago he put a shotgun to my head. Don't involve me in this because I won't be able to see X (suppressed) again'. It was clear from the conversation that he didn't want Krissy to hear what he was saying.

Mum got the financial documents belonging to Damien and we left. From the financial paperwork that we obtained it was discovered that Krissy got hold of Damien's key card after his death and cleaned the account out of about \$700.00. I did note the condition of the house had deteriorated a lot from when I had last been there including lots of junk

under the carport and in the backyard and the BBQ my parents had bought Damien for Xmas or his birthday was in an ordinary state.”⁷

EVIDENCE OF MR PAUL GORMAN

24. Mr Paul Gorman had been involved in close personal relationship with Ms Kristine Crofts shortly after Damien’s death. He gave evidence that he had been told by Ms Crofts, that the methadone had been administered to Damien without his (Damien’s) knowledge by Ms Crofts and Mr Darren Weir with the intention of causing his death.

25. Mr Gorman’s evidence was that during a conversation Ms Crofts had stated that if he (Mr Gorman) ever left her she would kill him like she had done with Damien. Mr Gorman stated that :

“In May 2009 Krissy got pregnant with our son. When it happened we made a pact that we would never leave each other. That’s when she told me what she had done to Damien. She said that if I ever leave her she’d do to me what she did to Damien. She said she’d put it in my food or my drink. I asked her what she was talking about and she said she had gotten 2 valium pills off Cheryl 2 days before he died. On the day he died she gave him the 2 pills for a headache and then had sex with him in their room. Whilst they were having sex Cheryl measured out 30mls of Methadone and handed it to Darren who put it into a can of alcohol Damien had on the bench. After Krissy had sex with Damien she drove down to the local shops for 30 minutes so she could be on the security camera. She did this in case the police asked where she was when he died. Krissy told me they had planned all of this because Damien was told by his doctor that if he kept drinking alcohol and took drugs it would kill him and Krissy realised this would be a good way to get the house.”⁸

26. Mr Gorman repeated this conversation to Mr John Hansen. As a result, Mr Hansen and Mr Gorman contacted Damien’s parents and advised them of the allegations. Mr and Mrs Perceval contacted police.

⁷ Exhibit 5 –Statement of Mr Tim Perceval paragraphs 10 to 21

⁸ Exhibit 8 – Statement of Mr Paul Gorman dated 25 March 2011 and T.104.

27. Ms Crofts denies these conversations took place.

EVIDENCE OF MS DONNA GORMAN

28. Ms Donna Gorman, the former partner of Mr Paul Gorman, stated that sometime after the death of Damien, at the end March 2010 she was threatened by Ms Crofts (then Mr Paul Gorman's current partner) who stated:

"You had better watch your back. We have gotten away with it before and a little bit of extra methadone would take care of you".

29. Ms Gorman's evidence was that she did not understand the comment at the time, that she was at that time unaware of Damien and his death, and that it was some time afterwards that she came to understand or interpret the threat as referring to events involving Damien Perceval.

KNOWLEDGE OF METHADONE AND HOW IT WAS OBTAINED

30. Each of those present at the scene stated that Damien had told them he had consumed methadone and that they were aware of this as a result of information provided by Damien himself, that he had consumed methadone.

31. Ms Weir Russell stated that the methadone had been provided by Mr Weir.

32. Ms Crofts stated that she believed Mr Weir had provided the methadone to Damien and she went so far as to state that she believed he did so without Damien's knowledge.

33. During the course of her evidence she stated that whilst she had not observed Mr Weir to provide the methadone to Damien on 18 April 2009, it was consistent with his past behaviour and she had seen him do so on one other occasion. It was the firm evidence of the witness Ms Crofts that she had on at least one previous occasion observed Mr Weir give his methadone to Damien. She believed also that her mother, Ms Weir Russell had also seen this occur.

34. The information as to the events on the evening as recounted by Ms Cheryl Weir Russell and Mr Weir was provided to the court in statements made by them to police at the time of the death. They were excused from giving evidence at the inquest, having made application to be

excused on the ground that the evidence they may give may tend to incriminate them in relation to an indictable offence. Their statements to police remain a part of the evidence before the court.

THE CREDIBILITY OF THE WITNESSES AND RELIABILITY OF THE EVIDENCE GIVEN

35. There have been a number of serious allegations made in this case and the allegations must be considered in the context of the actual evidence available and having regard to the relevant standard of proof, which is a more exacting standard in circumstances of allegations of criminal conduct. The accounts which are given as to criminal conduct are largely hearsay accounts. There are no admissions by any person as to actual involvement in the death and nor is there any physical evidence of such involvement.
36. The evidence which exists, is that of various hearsay accounts and that of those persons in the house on the evening and depends upon inferences being drawn from the circumstances. There is also a large amount of variation in the accounts, examples of which being the quantity of methadone reported to have been administered and the timing of Ms Crofts leaving the house to shop. It is necessary therefore to consider the weight to be attributed to the information provided as it relates to the involvement of various parties in the death.
37. The difficulty with the evidence of each witness who reports accounts suggesting deliberate acts to cause Damien's death, is that their credit is tainted by bitter rivalries and hostilities.
38. There have been a series of disputes between all of these witnesses rising from intertwined personal relationships. Mr Paul Gorman was the former partner of Ms Crofts and of Ms Donna Gorman. He says that he entered into the relationship with Ms Crofts on the evening of Damien's funeral and a child of the relationship was born in 2010. These parties have now separated and are involved in an acrimonious dispute in relation to child custody matters.
39. Ms Gorman disliked Ms Crofts because of the relationship she formed with her former husband, Mr Paul Gorman and as a result of conduct she alleged Ms Crofts had engaged in with her (Ms Gorman's) teenage son.

40. Mr Gorman stated that he disliked Mr Weir because of his violent behaviour towards Ms Cheryl Weir Russell.
41. Ms Crofts evidence was that she hated Mr Darren Weir because of his violence towards her mother, Ms Cheryl Weir Russell and also towards herself.
42. The fracture in the relationships between Ms Crofts, Mr Weir, Ms Weir Russell and Mr Gorman was also compounded by suspicions held by some of the parties that secret relationships of a sexual nature were being maintained between their respective partners.
43. Each of the witnesses referred to in this part had a reason or motivation to create difficulties for the other.
44. Mr Gorman has made statements implicating Ms Crofts and Mr Weir in the death of Damien, by active collusion in the administration of the methadone. Ms Crofts denies this involvement and says that Mr Gorman has motive to attempt to cause her difficulties arising from the dispute as to child custody.
45. She also alleges that Ms Donna Gorman, had motive to create difficulty for her also, when she made allegations that Ms Crofts had threatened her and that this arose from her entering a sexual relationship with Mr Gorman and becoming pregnant with his child whilst he was still married to Ms Gorman. This event occurred within weeks of Damien's death.
46. It is apparent from the evidence in this proceeding that the people involved in this event, Ms Weir Russell, Ms Crofts, Mr Gorman, Mr Weir and to a lesser extent Ms Gorman, were frequently in dispute with each other and that these disputes often involved verbal abuse and threats together with complaints to police and other authorities.
47. The evidence of those witnesses who reported upon conversations held and admissions allegedly made to them was often vague and uncertain and inherently inconsistent. The circumstances in which they made reports to police, driven as they were by personal disputes and vendetta between various parties, makes it difficult to assess the reliability of the information they provided or the accuracy of their accounts of conversations held.

48. The evidence of Mr A, is not quite in the same category. He appeared a truthful and considered witness and his statements made to Damien's family are likely to be a true account of the information he was given by Ms Crofts. Whether Ms Crofts gave a true account to him, is another matter entirely.

METHADONE DETECTED IN THE POST MORTEM SAMPLES

49. The evidence is that a regulated Schedule 8 drug Methadone was identified in Damien's post mortem blood in addition to alcohol. Damien was not a registered methadone user and was described as an occasional user of illicit substances including heroin and amphetamine. He struggled with a significant alcohol addiction.
50. It is clear that as Damien was not a regular user of methadone he would not have developed any level of tolerance or resilience to the affects of the drug and would have been made more vulnerable to the depressive affect upon his respiration when combined with the alcohol he had consumed.

WHERE DID THE METHADONE COME FROM?

51. The only person in the household who had access to methadone was Mr Darren Weir. Damien was not a regular drug user and had no history of methadone use. The only people who had access to the metal box in which the methadone was kept, were Mr Darren Weir and Ms Cheryl Weir Russell. Mr Weir maintained that in addition to the metal box he also kept the methadone box in the boot of his car as an added precaution⁹. This evidence is contradicted by Ms Crofts who saw it on the bedside table and by Ms Weir Russell's.
52. Ms Crofts' evidence was that she had observed Mr Weir to bring his methadone to the house when he visited. The evidence is that Mr Weir was on a high dose of methadone and that it was administered by suspension liquid. Ms Crofts evidence was that she had observed that the methadone was in the second bedroom on the bedside table.

⁹ Exhibit 11- Second Statement of Mr Darren Weir dated 1 April 2010.

53. Witnesses gave evidence in the proceedings of having observed Mr Weir supplying his prescribed methadone to others. Some witnesses stated that he was 'known' to sell the methadone. Ms Crofts evidence was that she had observed him to provide it to Damien on one previous occasion and that was Ms Weir Russell's evidence¹⁰.
54. Mr A gave evidence that he had heard Ms Weir Russell and Ms Crofts arguing and that Krissy (Ms Crofts) was angry that Darren (Mr Weir) had given Damien his "done". Mr A stated that he understood 'done' to refer to methadone. He stated that Ms Weir Russell was 'sticking up' for Darren but she was also agreeing that Damien should not have been given the methadone. He also recalled Ms Crofts commenting that: "If he asked for it that's one thing but I don't think he asked for it".
55. His evidence was that over the next few months he continued to hear discussion between Ms Crofts and Ms Weir Russell as to the methadone and that their conversation always revolved around the same thing: "*Ms Weir Russell was worried that Darren would do time for giving it to Damien and Krissy was pissed off that Darren had given it to him*"¹¹.
56. During the course of his oral evidence he moved somewhat from this account and his evidence was that he was now uncertain as to the exact conversation which he had overheard. He did not however resile from his understanding that Ms Crofts was describing that the methadone ingested by Damien had been that prescribed to Mr Weir.
57. Damien's brother, Mr Tim Perceval gave evidence¹² that on 19 April 2009, the day after Damien's death, he was with his parents at Damien's house gathering his belongings. He had a conversation with Mr A. He stated that Mr A had approached them and said:

"that prick Darren gave it to him, he gave Damien 30mls of methadone. Krissy knew about it, that prick should be in gaol".

¹⁰ Exhibit 13- Second Statement of Ms Cheryl Weir Russell dated 27 March 2011

¹¹ Exhibit 6 - Statement of Mr A dated 12 December, 2011.

¹² Exhibit 5 – Statement of Mr Tim Perceval and Transcript page 35-36.

58. I accept the evidence of Mr Tim Perceval. He was a clear and cogent witness with a firm recollection of the events at and around the time of his brother's death. His account of this conversation is consistent with that which was recounted by his mother, Mrs Roberta Perceval¹³ in her evidence.
59. I also accept Mrs Perceval's evidence as to the conversations. The evidence of Mrs Perceval and Mr Tim Perceval is preferred over that of every other witness in the proceeding.
60. The information supplied to Mr Tim Perceval by Mr A is open to a number of interpretations, including that Mr Weir gave the methadone to Damien and he voluntarily ingested it; or alternatively that Mr Weir administered it without Damien's knowledge or consent.
61. Ms Crofts evidence is not a coherent account of either her own or Mr Weir's conduct on the evening. Her evidence on some occasions is that she believes Mr Weir administered the drug without Damien's knowledge,¹⁴ however she later stated that she understood Damien voluntarily ingested the substance, it having been provided by Mr Weir.
62. The evidence is that the methadone available in the household on that day was that prescribed to Mr Weir and that the methadone was within the control of Mr Weir. It is unlikely having regard to the evidence as to Mr Weir's usual demeanour, that any person in the household would have taken his methadone without his permission.
63. The evidence establishes that on 18 April 2009, Ms Kristine Crofts, Mr Darren Weir and Ms Cheryl Weir Russell were aware of the consumption of the methadone by Damien and aware that he was drug affected by alcohol, methadone and possibly also by valium (diazepam). It was apparent to Ms Crofts, Ms Weir Russell and Mr Weir, from Damien's unsteady and slurring presentation at about 9.30am, 11.30am and certainly by 12.30pm that he was significantly affected by the combination of substances.

¹³ Transcript page 21

¹⁴ Transcript page 207 – 208

64. The evidence is that each of the persons present in the household was aware of the possible toxic effects of methadone. The evidence of Ms Crofts was that she had read the label on the bottle of methadone, which she said clearly indicated the danger of its use by people for whom it was not prescribed.
65. Mr Weir had been a methadone recipient for a number of years and could not have helped but notice the warnings on the label of the bottles in his possession. Ms Weir Russell was exposed also to the bottles and their warnings, by dint of her close association with Mr Weir and her access to the methadone, her evidence being that from time to time she would administer his medication.
66. Notwithstanding that they each knew of the warnings and that Damien had ingested the methadone in combination with a significant quantity of alcohol, Mr Weir, Ms Crofts and Ms Weir Russell allowed a significant period of time to pass, (at least 3 hours after 12.30pm) even on their own disparate versions of events, before taking action to call the ambulance service.
67. Mr Weir's statement was that he, at approximately 11.30am, became aware that Damien had taken 40mls of methadone. *"He was sitting on the couch looking stoned, 'gone'.* Mr Weir recounts that he asked Damien what he had been on and he said methadone 40ml. That he then 'cracked a can of UDL' and that his partner, Ms Weir Russell then said "you don't really need that do you" and he replied that it would take him three hours to finish it. Mr Weir states that they left the house shortly thereafter and did not return until approximately 3.00pm. Ms Crofts evidence is that they had already returned to the house by approximately 1.30pm, as they were present when she left Damien in the bedroom.
68. Ms Crofts initial statement was that she returned home from shopping at about 12.00pm. She stated that Damien was still sitting on the couch with a UDL can in his hand. She said he did not look good and he was slurring his words more than usual and he was moving very slowly. I asked him if he was OK and he said that he had taken some methadone. He would not say where he had obtained the methadone. Ms Crofts then went into the bedroom with Damien and her evidence was that they engaged in sexual activity, towards the end of which Damien was "nodding off". She left him in the bedroom asleep at approximately 1.30pm.

69. In the period from 1.30pm to 2.20pm, Ms Crofts described how she 'checked' Damien and concluded that he was sleeping. The evidence was that Mr Weir had advised that they should let him 'sleep it off' although the timing of this advice is unclear.
70. She reports that her mother and Mr Darren Weir returned just before she came out of the bedroom at 1.30pm. She stated that she then did some housework. Ms Crofts stated that she next 'checked' on Damien at approximately 2.00pm, noting that he was snoring so she left him alone and went back to do the housework. A later account is that she did not do housework but sat outside with her mother and Mr Weir. She reports that at approximately 2.20pm she went back into the bedroom to get some clothes and saw blood coming out of Damien's mouth and that he was still snoring. She stated that she called an ambulance straight away, within 5 minutes.
71. Ambulance Victoria records show that the first call to emergency services was made at 3.32pm. Their records show incoming call at 15:32 and that they dispatched a time critical ambulance at 15:33 arriving at 15:51.
72. During the course of the communication with ambulance, telephone information was relayed to the ambulance service as to the patient's status. The ambulance service 000 and the attending ambulance officers were all told by a person present at the house, believed to be Mr Weir, that Damien had consumed methadone. In the case of the attending officers, they were told the quantity as being 40mls.
73. There is some uncertainty about the accuracy of the times as related by Ms Crofts. Her evidence that she called an ambulance within 5 minutes of finding him unresponsive and vomiting blood. She initially stated that she observed the time as being 2.30pm on the clock on the wall in the bedroom and that she otherwise did not have a clock or a watch from which to be accurate about the timing of events. It may be that she mistook the time. In the event the ambulance call log reveals that an ambulance was not called until 15:33.
74. The evidence of Mr Gorman is that Ms Crofts told him that after engaging in sexual activity with Damien, she then went out and had coffee with the others and deliberately waited an hour until they called the ambulance. Ms Crofts denies that this is the case and denies that there was anything deliberate about her failure to call the ambulance earlier. She stated:

"..to bed that you deliberately waited before you rang the ambulance, knowing that he was not well. What do you say to that?—No, I didn't deliberately wait to call the ambulance at all. Look, I didn't think to even ring the ambulance when he'd had the methadone, okay. I don't know why I didn't think to do that. Maybe I should've done it straight away but I didn't think to do that. I regret not doing it, believe me. I didn't – I did not sit back and wait for Damien to pass away and then ring an ambulance. I didn't know he was going to pass away. Look, I knew there was a serious – a serious note on the methadone bottle that says "Do not give to other people. Could cause death or serious harm," but look, I didn't think to ring an ambulance straight away. That's all I can say to that."¹⁵

75. The evidence entitled a conclusion that every adult present at the house on that day knew Damien had taken methadone and was drinking alcohol in combination. They also knew that he was not a regular drug or methadone user and that the methadone bottle contained upon it warnings as to taking by persons for whom it was not prescribed and the dangers of the drug. The adults present all observed that Damien was physically and cognitively affected by the combination of substances.
76. The fact that Ms Crofts' evidence is that she 'checked' on Damien over a period of time, suggests that she had an understanding during the afternoon and well before an ambulance was called, that he was adversely affected by the methadone.

CONCLUSIONS

77. I am satisfied that the methadone which was ingested by Damien on 18 April 2009, was the methadone which had been prescribed to Mr Darren Weir.
78. I am satisfied that Mr Darren Weir knowingly supplied that methadone to Damien and that the dose of methadone was likely to have been 40mg.
79. I am unable to be satisfied at the requisite standard as to whether Mr Weir administered the methadone without Damien's consent or knowledge. It is possible having regard to Damien's intermittent illicit substance use that he willingly consumed the methadone.

¹⁵ Transcript page 190.1-15

80. I am unable to be satisfied at the requisite standard as to whether Ms Crofts assisted Mr Weir in the administration of the methadone without Damien's consent or knowledge.
81. There are aspects of the conduct of Ms Kristine Crofts on the day of Damien's death, such as raising with his grieving parents that she was entitled to his house, her intention to claim his superannuation death benefits and to renovate his house, which are less than edifying and reflect very badly on her character. However, those matters of themselves in the absence of other firm evidence do not entitle me to conclude as to criminal conduct.
82. I am satisfied that on 18 April 2009, Ms Kristine Crofts, Mr Darren Weir and Ms Cheryl Weir Russell were aware of the consumption of the methadone by Damien and aware that he was drug affected by alcohol, methadone and possibly also by Valium (diazepam).
83. I am satisfied that each of the people present in the household on that day was aware of the compromising effect that the combination of substances was having upon Damien.
84. I am satisfied that between 1.30pm and 3.33pm when the call was ultimately made to the ambulance service, each of Ms Kristine Crofts, Mr Darren Weir and Ms Tracey Weir were present in the house. Ms Crofts from 12.00 midday.
85. I am satisfied that none of the persons present at the house took steps to intervene when it first became apparent to them that Damien was struggling under the influence and effects of the combination of alcohol and methadone.
86. I am satisfied that each of the persons present in the household was aware of the possible toxic effects of methadone.

FINDING AS TO CAUSE AND CONTRIBUTION

87. I find that Mr Damien Perceval died on 19 April 2009 and that the cause of his death was aspiration pneumonia and hypoxic brain injury in a man consuming alcohol and methadone.
88. I find that Mr Damien Perceval did not intend to take his own life.
89. I find that death would not have occurred in the absence of consumption of methadone.

90. I find that Mr Darren Weir contributed to the death by the provision of the substance methadone to Damien for his consumption.
91. I find that had there been intervention to call an ambulance by any of the persons present in the house immediately they became aware that he had consumed the methadone, his death would have been prevented.
92. I find that had Ms Crofts called an ambulance at or around the time she left Damien substance affected in the bedroom at approximately 1.30pm his death may have been prevented.
93. I find that Mr Darren Weir contributed to the death by his failure to intervene to call an ambulance immediately he became aware that Damien was struggling with the effects of the substances, methadone and alcohol he had ingested.
94. I find that Ms Cheryl Weir Russell contributed to the death by her failure to intervene to call an ambulance immediately she became aware that Damien was struggling with the effect of the substances, methadone and alcohol he had ingested.
95. I find that Ms Kristine Crofts contributed to the death by her failure to intervene to call an ambulance immediately she became aware that Damien was struggling with the effect of the substances, methadone and alcohol he had ingested.
96. I find that the availability of the 'take-away' methadone at the domestic premises, rather than being consumed at a registered pharmacy outlet, was a contributing factor to the death.

COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death:

1. The program allowing for 'take-away' methadone a Schedule 8 drug, by a substance addicted person, for consumption in the home, is undertaken with little actual oversight or supervision.

2. This is a case where the availability of methadone in the hands of people who are inherently unreliable members of the community, in this case a person with a criminal record, has enabled the consumption of the methadone by a person for whom it was not prescribed.
3. The evidence in this case was that Mr Weir told his doctor that he was travelling each weekend to see his son and that was why he needed take-away dosage. The truth according to the witness was that he could not be bothered going to the chemist each day.
4. I have commented about the availability of 'take-away' methadone in previous findings. The availability of a Schedule 8 drug designed and prescribed for treating illicit drug addiction, to be 'taken-away' by a registered addict to be used by them in the community, in circumstances where there is little or no supervision by authorities, is a danger to public health and safety and should be ceased.
5. I believe that an indictable offence may have been committed in connection with the death arising from the circumstances of the supply to Damien of the Methadone and I intend to refer this finding and the transcript of the proceedings to Director of Public Prosecutions.

RECOMMENDATIONS

Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

1. That the Minister for Health take steps to prohibit the supply of 'take-away' doses of the Schedule 8 drug Methadone by drug addicted persons and require that methadone therapy be delivered and administered at a pharmacy premises under the supervision of a registered pharmacist.

Pursuant to section 73(1) of the **Coroners Act 2008**, I order that the following not be published on the internet:

Any material which is subject to the Suppression Order made by the Court on 28 May 2012

I direct that a copy of this finding be provided to the following:

Mr Keith Perceval and Mrs Roberta Perceval;

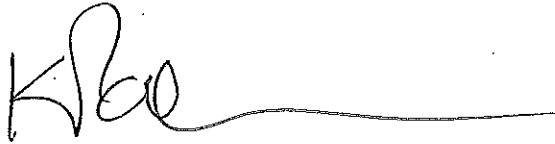
The interested parties;

The investigating member;

The Minister for Health, the Honourable David Davis MLC;

The Secretary, Department of Health Victoria.

Signature:



K. M. W. PARKINSON

CORONER

Date: 28 September 2012

