IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2012 002049

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)
Section 67 of the ***Coroners Act 2008***

Inquest into the Death of: DAVID ALLAN RONALD SINCLAIR

Delivered On:	14 July 2015
Delivered At:	Coroners Court of Victoria 65 Kavanagh Street, Southbank
Hearing Dates:	3 June and 6 November 2014
Findings of:	JUDGE IAN L GRAY, STATE CORONER
Representation:	Ms M Mykytowycz of Counsel, instructed by Ms N Hope of Holding Redlich, appeared on behalf of the family Mr R Galbally of Galbally Rolfe, appeared on behalf of Mr K Alkemade
Police Coronial Support Unit:	Leading Senior Constable A Maybury, assisting the Coroner.

I, JUDGE IAN L GRAY, State Coroner, having investigated the death of DAVID ALLAN RONALD SINCLAIR

AND having held an inquest in relation to this death on 3 June and 6 November 2014

at Melbourne

find that the identity of the deceased was DAVID ALLAN RONALD SINCLAIR

born on 27 February 1989

and the death occurred on 2 June 2012

at vacant land at the rear of 18 Park Road, Warburton Victoria 3799

from:

I (a) MECHANICAL ASPHYXIA

in the following circumstances:

SUMMARY

Personal Background

1. David Allan Ronald Sinclair (David) was a 23-year-old man who was born in Box Hill on 27 February 1989 to Ms Annette and Mr Douglas Sinclair. He had an older brother, Graham, and younger brother, Paul. David lived with his family in Warburton from the age of six months until his death in June 2012.

2. David was diagnosed with an intellectual disability at a young age and attended a special school in Donvale due to this diagnosis. He left in 2003, returned in 2004 and remained there until 2005. In 2005, David received funding to enable him to attend recreational activities with one-on-one support.

3. In 2006-07, David attended a TAFE hospitality course at Swinburne in Lilydale, but was unsuccessful. After this, he experienced a few setbacks and began seeing a drama therapist in 2007. He responded well to these sessions and continued with them until 2010.

4. In 2011-12, David continued to attend various outreach programs and responded well to them. On days when he was attending such programs, David was known to go for walks around the local town.

5. David was described by his family as a gentle, non-threatening person who was childlike in his behaviour and keen to seek out friendships. He was a keen member of the Yarra Valley Theatre Group and the Misfits Theatre Group.

David's Intellectual Disability

6. When David was approximately 6 years old and attending primary school, it became apparent to his parents and teachers that he had an intellectual disability.

7. As a result of David's disability, he had difficulty understanding and comprehending some tasks. During his childhood years, David required constant supervision and assistance in relation to personal hygiene and other day-to-day activities. He also had difficulty with reading, writing and general schoolwork.

8. Family members also believe that due to his intellectual disability, David was often misunderstood and unfairly labelled by many in the local community. Family members believe that he sometimes followed children around the town in the hope of making friends with them and for non-sinister reasons. However, this sort of behaviour would often scare children and alarm parents, resulting in David being bullied and much maligned in the town.

Circumstances of Death

9. At about 7.00pm on Friday 1 June 2012, Mr Kieren Alkemade and his girlfriend, Ms Paige Lampier, checked into Room 13 at the Warburton Lodge located at 18 Park Road, Warburton.

10. The Warburton Lodge is a heritage hotel centrally located in Warburton. It consists of a main administration building, dining room, sitting room and separate wings, with a total of 19 hotel rooms.

11. Room 13 looks out to a central garden area. Access is gained to this room and adjoining rooms by walking up a set of stairs and along a shared verandah. Room 13 consists of a main bedroom with a queen size bed, side tables, small desk, bar fridge and television. The room has an ensuite with a toilet and shower. There is a sliding door to this ensuite.

12. After checking into this room, Mr Alkemade and Ms Lampier spent the evening in the room and slept late into Saturday 2 June 2012.

13. At about 10.00am on Saturday 2 June 2012, David left on foot from his home address. At the time of leaving the house, David told his father that he was going for a walk and to purchase a bottle of soft drink, which was part of his usual routine.

14. Sometime after 12.00pm, Mr Alkemade and Ms Lampier showered in the ensuite of their hotel room.

15. Between about 12.20 and 12.25pm, Ms Lampier finished showering, exited the ensuite and sat down on the bed in the main section of the hotel room. At this time, she was partially dressed in her bra and underpants.

16. After a short time, Mr Alkemade also exited the en-suite and as he entered the main section of the hotel room observed David to be looking into the room through a small gap between the edge of a blind and the window architrave at the bottom of the front window.

17. Upon seeing David, Mr Alkemade yelled out 'Oi', causing David to run from the area. Because Mr Alkemade was naked and the chain to the hotel room door was on, he was unable to chase David.

18. Both Mr Alkemade and Ms Lampier quickly got dressed and had a brief look outside their room for David but did not find him. At 12.27pm, Ms Lampier telephone her mother, Ms Susan Stringer, and informed her of what had just occurred. Ms Stringer advised her daughter to notify the owner of the Warburton Lodge about the incident, and to contact the police.

19. Mr Alkemade and Ms Lampier walked up to the reception area however it was unattended. As a result, Mr Alkemade telephoned a number at reception and spoke to the owner of Warburton Lodge, Mr Baden Berry, and informed Mr Berry about what had occurred. This call was made at 12.33pm. At the time of this telephone call, Mr Berry was off site and offered to return to the hotel, but was informed by Mr Alkemade that it was not necessary, as the person looking into their room had gone.

20. Neither Mr Alkemade nor Ms Lampier telephoned the police at that time to report the matter, as David had left the area.

21. Mr Alkemade and Ms Lampier then walked around the grounds of the Warburton Lodge in an attempt to locate David, but could not find him. Following this, Ms Lampier returned to the hotel room. During this time, Mr Alkemade continued to walk around the grounds.

22. At about 1.08pm, Mr Alkemade had walked back to the hotel room, when he heard a noise and looked out the door to see David in the garden near the verandah in front of his hotel room. Mr Alkemade yelled out to David, who ran from the garden and onto a pathway that led to the bottom of the driveway of Warburton Lodge.

23. Mr Alkemade immediately gave chase, and chased David along the pathway, through the bottom car park and into a vacant block of land that is situated to the northern side of the Warburton Lodge. This block of land is located between the Lodge and the Warburton Highway.

24. Mr Alkemade caught up to David in this block of land and tackled him to the ground. The distance from the front door area of Room 13 to where the foot chase ended was later measured as 98.7 metres.

25. After being brought down, David ended up face down on the ground, where he was held down by Mr Alkemade.

26. At 1.09pm, Mr Alkemade received a telephone call from his brother, Mr Trent Alkemade. At the time of receiving this call, Mr Alkemade had just tackled David to the ground and was holding him down. Mr Alkemade told his brother that he was not in a position to speak.

27. At 1.10pm, Ms Lampier again called Mr Berry and explained that David had returned and had been chased by Mr Alkemade. Mr Berry informed Ms Lampier that he would come down to Room 13 to meet her.

28. At 1.12pm, whilst waiting for Mr Berry to arrive, Mr Alkemade telephoned Ms Lampier and advised her that he had caught David and asked her to call the police.

29. At 1.13pm, Ms Lampier telephoned 000 and requested police attend the scene. This call was dispatched to a police unit from the Yarra Junction Police Station manned by Leading Senior Constable (LSC) Kevin Hall and Senior Constable (SC) Arin Eker.

30. At about 1.27pm, LSC Hall and SC Eker arrived on scene in the carpark of the Warburton Lodge, where they were met by Ms Lampier. Ms Lampier then led them to the vacant block of land where they observed Mr Alkemade holding David down. Police observed Mr Alkemade to be restraining David by pinning him down, with both hands on David's shoulders and with his hip over David's lower back.

31. On seeing the police approach, Mr Alkemade released his hold on David and got to his feet. SC Eker attempted to speak to David, but David did not respond. LSC Hall then shook

David's right shoulder and upon receiving no response, rolled David onto his back. David was found not to be breathing and his face was purple in colour. LSC Hall checked for a pulse but no pulse was detected. David's eyes were found to be open and in a fixed blank gaze.

32. LSC Hall formed the belief that David was dead, however still requested, via police communications, that an ambulance attend the scene to check him. No attempt was made by police to resuscitate David.

33. At 1.30pm, Ambulance Victoria received the call from police communications to attend the scene. This request was dispatched to an ambulance based at the Yarra Junction Ambulance Branch at 1.30pm. The ambulance was staffed by MICA Paramedic Kevin Commins and Paramedic Caz Haymes.

34. At 1.43pm, paramedics arrived and examined David. There were no signs of life and no attempts were made to resuscitate David. Paramedics did not observe any obvious traumatic injuries to David's head, neck or trunk, and there were no signs of obvious haemorrhage.

PURPOSE OF A CORONIAL INVESTIGATION

35. This finding is based on the totality of the material, the product of the coronial investigation of David Sinclair's death. That is, the brief of evidence compiled by the Coroner's Investigator Detective Senior Constable (DSC) Paul Edyvane, the statements, reports and testimony of those witnesses who testified at inquest and any documents tendered through them, and the final submissions. All of this material, together with the inquest transcript, will remain on the coronial file. In writing this finding, I do not purport to summarise all the material and evidence, but will refer to it only in such detail as is warranted by its forensic significance and in the interests of narrative clarity.

36. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death, and are specifically prohibited from including in a finding or comment any statement that a person is, or may be guilty of an offence.[1] However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if the coroner believes an indictable offence may have been committed in connection with the death.[2]

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[1] Section 69 *Coroners Act 2008* (Vic).

[2] Section 49(1) Coroners Act 2008.

FINDINGS AS TO UNCONTENTIOUS MATTERS

37. In relation to David's death, most of the matters I am required to ascertain were uncontentious from the outset. His identity and the date and place of death were not at issue. I find, as a matter of formality, that David Allan Ronald Sinclair, born on 27 February 1989, aged 23, died on vacant land at the rear of 18 Park Road, Warburton Victoria 3799, on 2 June 2012.

38. Nor was the medical cause of death contentious. On 4 June 2012, an autopsy of David's body and post mortem CT scanning (PMCT) were performed by Forensic Pathologist, Dr Heinrich Bouwer, at the Victorian Institute of Forensic Medicine, who formed the opinion that the cause of his death was *mechanical asphyxia*.[3] David was measured at approximately 170cm and weighed 62kg.

39. The post mortem examination revealed florid petechiae over the face, conjunctivae and oral mucosa, and fresh subcutaneous bruises to the left anterior shoulder extending to the lower portions of the left strap muscles. Bruises to the hip, thighs and left elbow, and abrasions over the lateral left knee and medial right knee were also noted. Dr Bouwer stated that histological examination of the bruises showed acute haemorrhage, consistent with recent bruising all of a similar age. Dr Bouwer concluded that the findings were consistent with an asphyxial mode of death.

40. Post mortem toxicology testing did not reveal the presence of ethanol (alcohol) or any other common drugs or poisons.

THE INQUEST

41. I was assisted by LSC Amanda Maybury. Ms Mykytowycz appeared for the Sinclair family and, when the inquest resumed in November 2014, Mr Galbally appeared for Mr Alkemade.

42. The witnesses called at inquest were:

- Forensic Pathologist Dr Heinrich Bouwer
- Mr David Waters
- DSC Paul Edyvane
- Mr Baden Berry

[3] Exhibit 1, Report of Dr Heinrich Bouwer dated 17 August 2012.

- LSC Kevin Hall
- SC Arin Eker
- Mr Kieren Alkemade.

43. At the end of the hearing, David's mother, Annette, delivered a heartfelt statement to the Court on behalf of herself and her husband. It described their son in loving terms and detailed the profound effect of his death on their family.

Scope of Inquest

44. The principal focus was on the actions of Mr Alkemade after he pursued David, who was found peering into the hotel room occupied by Mr Alkemade and Ms Lampier.

The key questions were:

- Did Mr Alkemade use excessive force in bringing David to the ground and restraining him on the ground?
- Should Mr Alkemade have relaxed his hold on David earlier?
- Did Mr Alkemade apply excessive pressure or force to David?

A secondary question was:

- Did attending police attempt to resuscitate David and if not, why not?

MEDICAL CAUSE OF DEATH

45. As stated above, the medical cause of David's death is not in dispute. David died of mechanical asphyxia, as a consequence of the inability to inflate his lungs. As Dr Bouwer pointed out, asphyxia can be caused by a number of factors, including '*external chest, abdominal and/or neck compression, for example by a person or other object, or "choke hold" that may restrict ... respiratory movement and breathing*'.[4]

46. Mr Alkemade has maintained throughout the investigation and inquest that, although he maintained pressure on David's shoulders and back for a period of time, he did not believe that he was pushing excessively hard, and did not know that he was restricting David's breathing.

[4] Exhibit 1, Report of Dr Heinrich Bouwer dated 17 August 2012, page 14.

47. It is clear, as a matter of causation, that the actions of Mr Alkemade caused the death of David. There is no other contributing medical cause of death other than mechanical asphyxiation. It is also clear that Mr Alkemade did not intend to cause David's death.

Medical Evidence

48. In his report, Dr Bouwer made comments consistent with the reported circumstances contained in the Form 83 Police Report of Death for the Coroner. In explaining his finding of petechiae over the face and the conjunctivae, Dr Bouwer described petechiae as '*little dots all over the face, in the eye and in the mouth*'.[5] He explained that the presence of petechiae is *'basically due to compression, so the ... veins draining the blood from the head were compressed either by the chest being compressed, in other words, the blood could not return back so building up. So it's a pressure effect*'.[6] He agreed with the proposition that petechiae is caused by the application of pressure.

49. Asked whether the pressure could be from a person lying on the ground and having pressure applied from above, Dr Bouwer explained that it is a non-specific sign, and gave examples of other forms of death where these petechiae appear.[7] However, Dr Bouwer explained that in the setting of an asphyxial mode of death, it is often present and is due to a build up of pressure within the small vessels.[8]

50. Dr Bouwer explained further that '*there's blood going from the heart in the arterial system to the head but there's lack of return of the blood flowing back to the heart*'. He described the build up of pressure that causes the very small vessels to rupture, causing the petechiae.[9] When asked about where the pressure would need to be applied to produce the petechiae, Dr Bouwer stated that the post mortem findings do not indicate the level of obstruction, but only mean that there was increased pressure at some point in that region.[10]

51. In reference to his comment that petechiae can result from compression of the chest, abdomen or neck, or a chokehold, Dr Bouwer was asked whether there was anything to indicate one over the other in this case. He replied that this was not possible to distinguish,

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[5] Inquest transcript page 11.

[6] Ibid pages 11-12.

[7] Ibid page 14.

[8] Ibid pages 14-15.

[9] Ibid page 15.

[10] Ibid.

but could only find that external compression was applied to the body. However, Dr Bouwer did state that '*but according to the circumstances I think it's all consistent with that*'.[11] When asked where the pressure was applied, Dr Bouwer formed the view that it was from the chest upwards, because this was where the petechiae effect was found.[12]

52. When asked about the hyoid and larynx, both of which were intact at post mortem, Dr Bouwer testified that this indicated that the person was not 'throttled or strangulated', and that a finding of some damage to the area was to be expected if pressure had been applied.[13] Dr Bouwer was not able to state with certainty whether damage to the hyoid or larynx would be expected if someone had the crook of their elbow around a person's neck.[14]

53. As to bruising, Dr Bouwer's report referred to '*extensive subcutaneous haemorrhage 12x10cm overlying the anterior left shoulder extending to the base of the left neck*'.[15] At inquest, he further commented that this referred to bruising under the skin at this region of the neck, indicating the left neck and shoulder region.[16] As to Dr Bouwer's reference in his report to the left sternocleidomastoid muscle, he explained that the haemorrhage extended to the muscle on the left side of the neck between the head and the clavicle.[17] The report also noted the presence of intramuscular haemorrhage in the anterior head of the right sternocleidomastoid muscle.

54. Dr Bouwer was asked whether he could state with certainty when the bruises occurred. His evidence was, after having sampled the bruises for histology testing, that they revealed the presence of '*fresh bleeding with no evidence of organisation, meaning, it all happens soon with no time for the body to clean it up, and there was no evidence of that process happening in the sampled bruises*'.[18]

55. Dr Bouwer was unable to attribute the bruising to a particular cause, but stated that the finding meant that blunt trauma had been applied to the region at some point. He was unable

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[11] Inquest transcript page 12.

[12] Ibid.

[13] Ibid pages 12-13.

[14] Ibid page 13.

[15] Exhibit 1, Report of Dr Heinrich Bouwer dated 17 August 2012, page 8.

[16] Inquest transcript page 13.

[17] Ibid page 14.

[18] Ibid page 15.

to form a view on the evidence as to whether David had been placed in a chokehold.[19] Dr Bouwer could not specifically state what kind of pressure was required in order to cause mechanical asphyxia, and that this depends on several factors including the size of the person or object causing the asphyxia, and the strength of a person's own muscles and whether they can resist that pressure. Dr Bouwer went on to say that:

> *[w]hen someone dies of mechanical asphyxia all it means is their chest is splintered, they are unable to move their muscles to inhale to get breath in, and whatever that may be, how high or how low, it depends on the circumstances, depends on the person, depends on so many things, and I can't answer that.*[20]

56. As to the period of time that it might take for a person to become unconscious as a consequence of mechanical asphyxia, his evidence was that this was '*[i]n the order of tens of seconds*', but that a specific value could not be attributed and that a person would usually lose consciousness first.[21] Asked what kind of response the person under pressure might exhibit, Dr Bouwer stated that the person might '*struggle trying to get the person off them in order to breathe*', but might then become unconscious and exhibit no further response.[22]

57. Asked his opinion about a lay person's likely understanding of how mechanical asphyxia works, he said '*I don't think people may know that they can cause someone's death accidentally or intentionally if they do put pressure on their chest. It's not something I really can answer*'.[23]

58. In relation to Mr Alkemade's reference in his record of interview to David 'coughing and spluttering' and 'mucous coming out of his nose', Dr Bouwer's evidence was that it did not point to anything specific aside from David struggling to breathe, and that the presence of mucous in the nose was not unusual. Dr Bouwer further stated that '*if he did cough it meant that...he was able to get some air in and he was able to cough*'.[24]

59. Under cross-examination from Ms Mykytowycz for the Sinclair family, Dr Bouwer essentially confirmed the points he made in his report and in his evidence in chief. Ms

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[19] Inquest transcript page 16.

[20] Ibid page 17.

[21] Ibid.

[22] Ibid pages 17-18.

[23] Ibid page 18.

[24] Ibid page 19.

Mykytowycz asked where pressure would have to be applied to prevent breathing. Dr Bouwer's evidence was:

> *[t]here's no specific point where this pressure has to occur in order to prevent someone from breathing. As the chest is a like an oval shaped, barrel shaped thing, it needs to expand in order for us to take a breath in, so if that process is interfered with, so the rib cage is unable to expand, then there's no negative pressure in the chest cavity to suck in air. So when that is interfered with we can't breathe.*[25]

60. Dr Bouwer clarified the position of the bruising as being to the lower area of the left sternocleidomastoid muscle, but noted that the majority of the bruising was situated in the soft tissue on the left side of the neck.[26] Ms Mykytowycz asked about bruising to the lower portion of the back on the left hand side, and Dr Bouwer agreed that that was at the mid back area on the left hand side.[27]

61. As to the causation of that bruising, Dr Bouwer's evidence was that it was consistent with '*any force and could have happened any time not necessarily by someone pushing their hip*'. He attributed all of the bruising to '*some level of trauma, blunt trauma*'.[28]

62. Ms Mykytowycz asked Dr Bouwer whether he could form an opinion about the presence of the different bruises at the different sites. Dr Bouwer replied that it indicated *'that different forces were applied at different times. It may be that some of them occurred at the same time by the same force, but it would mean some of the bruises were at least inflicted by separate events*'.[29]

63. In relation to the statements by Mr Alkemade in his record of interview (and subsequently in evidence) about David clenching his fists when on the ground, Ms Mykytowycz asked Dr Bouwer whether this would be a reflex action. He responded that it was possible, but that he could not be more definite. He further stated that when a person loses consciousness due to lack of oxygen, they might convulse or experience a seizure due to lack of oxygen to the brain.[30]

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[25] Inquest transcript pages 22-3.

[26] Ibid page 29.

[27] Ibid page 31.

[28] Ibid page 32.

[29] Ibid page 33.

[30] Inquest transcript page 36.

64. Dr Bouwer viewed the interview conducted with Mr Alkemade, and was asked to comment on his evidence regarding the effort required and his application of body weight and pressure on David's body. Dr Bouwer responded as follows:

> *the fact that his neck was bent forward, his chin was into his chest, that may have pushed his tongue back into his throat, and obviously the inability to breathe when he was pinned down because he was pinned on the lower back and the shoulders and that will make it very hard to breathe.*[31]

65. Dr Bouwer agreed with the proposition that David might have been unconscious at the point his neck was tucked in.

66. I asked Dr Bouwer about his inability to conclude that there was any particular level of force applied to produce the bruising found at autopsy, and whether this applied to all the bruises. Dr Bouwer explained that the more force is applied, the deeper a bruise can extend and the greater the extent of the bruise,[32] and agreed that where he described bruising as 'deep', this was indicative of a likely greater degree of force.[33]

67. Ms Mykytowycz asked Dr Bouwer whether the deep bruising to the muscles beside the spine towards the base of the skull, was indicative that some degree of force had been applied. He agreed but could not state whether the force would have had to have come from behind, noting that it was evidence of blunt trauma to the region. He agreed that it could have occurred due to the trauma of David hitting the ground.[34]

68. I accept the evidence, observations and conclusions of Dr Bouwer. It is clear from his evidence that the pressure required to cause death by mechanical asphyxia could not be quantified. On the basis of Dr Bouwer's opinion, I accept the submission made on behalf of David's family that petechiae over David's face, mucosal surface and conjunctivae was consistent with the fact of external compression on his body from the chest upwards.

THE PURSUIT AND 'ARREST'

69. I accept Mr Alkemade's account of the pursuit which, in summary, was that he chased David, caught up with him, placed his arm around David's right shoulder, then pulled David's body weight towards him, pushed his hip out and that they fell to the ground. As Ms Mykytowycz's submission notes, Mr Alkemade conceded that he was '*very fast coming at*

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[31] Ibid page 42.

[32] Ibid pages 48-9.

[33] Ibid page 49.

[34] Ibid pages 49-50.

him and...it was sort of...like a sudden slam into the back, sort of, and then we just fell to the ground, so it wasn't very controlled.[35] Mr Alkemade agreed that when he took David to the ground he had a bit of momentum, because he was both running and leaning into him at the same time. Witness Mr David Waters observed that it was a very solid impact on the ground.

70. I accept Mr Alkemade's description, corroborated by Mr Waters, of this part of the incident. Mr Alkemade chased David because he believed him to be a 'peeping tom'; he and his girlfriend were offended by David's behaviour and Mr Alkemade believed he was entitled to arrest David because he had committed an offence. In his mind, he was effecting a 'citizen's arrest'.

71. The principal focus of the coronial investigation and inquest is on what occurred after Mr Alkemade took David to the ground. It is agreed that they fell at the point depicted in the scene photographs (there is a manhole on the ground at that point).

Physical comparison

72. David was 23 years old, weighed 62kg and measured 170cm in height. Dr Bouwer stated in his report that David's body appeared '*compatible with the stated age of 23 years*'.[36]

73. Mr Alkemade was at the time and on his own evidence, a fit, healthy man who participated in the 2012 Winter Olympics. At inquest, he agreed that he was a very fit person.[37] He was at the time aged 20, 177cm tall and weighed 75-76kg. In his record of interview, Mr Alkemade said that he thought David was probably a little taller and a bigger build than him.[38]

74. On the whole of the evidence, I infer that Mr Alkemade was probably significantly stronger than David. Any physical differences between them as to height and weight are not significant in the circumstances.

Time on the ground

75. According to the timeline, the maximum time for which David was held down in a prone position was 15 minutes. Mr Alkemade was asked in his recorded interview how long in

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[35] Submissions on behalf of the Sinclair Family, page 20, and inquest transcript page 237.

[36] Exhibit 1, Report of Dr Heinrich Bouwer dated 17 August 2012, page 3.

[37] Inquest transcript pages 233-4.

[38] Transcript of recorded interview with Mr Alkemade, Exhibit 19, coronial brief page 188.

total he believed that he would have been holding David. He replied that he believed it to have been 10 to 12 minutes.[39]

76. Witness Mr David Waters, a credible and reasonable witness, saw Mr Alkemade chase David, grab him and bring him to the ground. Mr Waters estimated that the time from when he first saw the two men to the time the police arrived was '*maybe 15 minutes*'.[40]

77. There is overall consistency in the evidence. I conclude that David was in a prone position on the ground with Mr Alkemade holding him down for 10 to 15 minutes.

Position of the two men on the ground

78. Mr Alkemade testified at inquest that after pulling David to the ground, he lay on top of him with his arm around David, and that after about ten seconds he placed both arms on the back of David's shoulders and moved his hips down, so that he was lying across David with his right hip in David's lower back region.[41]

79. In his record of interview, Mr Alkemade stated that David was face down,[42] that he was on David's side before climbing on top of him and putting his hip into the bottom of David's back, with both feet out to the side and holding David's shoulders down with his hands.[43] Mr Alkemade stated that David was trying to '*reach out and grab stones*', so he applied more pressure to David's shoulders and torso.[44]

80. Mr Alkemade stated in his record of interview that it looked to him as if David was trying to use a stone as a weapon, and that he therefore applied more pressure, before David let the stone go and stopped resisting. Mr Alkemade stated that he then got up and '*just, sort of, just watched him*', and that the police then arrived.[45]

81. In his evidence, Mr Alkemade was consistent with what he had said to the police at the time. He agreed that David was unable to move his chest because Mr Alkemade was restraining

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[39] Ibid page 173.

[40] Inquest transcript page 77.

[41] Ibid page 238.

[42] Transcript of recorded interview with Mr Alkemade, Exhibit 19, coronial brief page 171.

[43] Ibid pages 171-2.

[44] Transcript of recorded interview with Mr Alkemade, Exhibit 19, coronial brief pages 172-3.

[45] Ibid pages 173-4.

him so that his chest was kept to the ground.[46] Mr Alkemade agreed that his own body weight was displaced over three points, being David's shoulders and lower back. He also agreed that the restraint that he was using was such that David was unable to turn his head.[47]

82. Witnesses Mr Waters and Mr Berry also gave evidence on the point. Mr Waters described Mr Alkemade as lying over David '*at about a 45 degree angle*'[48] and could not see David moving throughout the whole time.[49] Mr Berry described Mr Alkemade as being on David with '*the side of his chest across his back, and his arm around grabbing his shoulder, so sort of immobilising his upper torso*'.[50]

83. Mr Berry was asked for his impression of the amount of pressure or force that Mr Alkemade was applying. He replied that '*it seemed secure but not forceful - you know, there was no - that's really the only way I could describe it really*'.[51] Mr Berry stated that he did not see Mr Alkemade hold David in a headlock at any point.[52]

84. Police officers LSC Hall and SC Eker also described the positions of the two men on the ground. LSC Hall agreed that he saw Mr Alkemade with his right hip in David's lower back, and his upper body leaning forward and the weight of his upper chest over David's back.[53]

85. In his evidence, SC Eker described Mr Alkemade as leaning over David, with his hip against David's body and leaning on the back of his shoulders with both hands.[54]

86. I accept that Mr Alkemade had most of his body weight distributed across those three points – the two shoulders of David and the right hip in the lower back region. He had David pinned to the ground.

87. The depth of the bruising is a relevant consideration in assessing the degree of force and pressure applied. Dr Bouwer's evidence was that he could not confidently state what degree of pressure had been applied to David. The submissions of the parties also make various

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[46] Inquest transcript page 253.

[47] Ibid page 255.

[48] Ibid page 58.

[49] Ibid page 70.

[50] Ibid pages 171-2.

[51] Ibid page 172.

[52] Ibid.

[53] Inquest transcript page 199.

[54] Ibid page 213.

points about the depth of the bruises, the pressure and force applied, but Dr Bouwer's evidence is the key, and he could not quantify it. I further note that Dr Bouwer could state that David had not been throttled or strangulated, having found no evidence of fractures in the neck or up the neck that might suggest this.

88. Ultimately, the outcome of Mr Alkemade holding David prone on the ground was that David died from mechanical asphyxia. Whatever the degree of pressure or force, and whatever the depth of bruising or injury in and around the neck, head and back, the medical cause of death is mechanical asphyxia. As Dr Bouwer pointed out, the kind of pressure required to cause death in this case could not be quantified.

89. However, on the evidence, the pressure was sufficient to cause David to lose the ability to breathe, lose consciousness and then die. The time taken to die in circumstances such as this can clearly vary. As Dr Bouwer put it, losing consciousness due to a lack of oxygen takes in the order of tens of seconds, and it is speculation as to when a person dies after that.

90. I find on the whole of the evidence, that Mr Alkemade chased David a distance of just under 99 metres, tackled him to the ground, and then pinned him to the ground and held him prone for between 10 and 15 minutes, with sufficient force to keep David flat on the ground, face down and effectively unable to move his torso and therefore unable to inflate his chest and properly breathe. As a consequence, he died due to mechanical asphyxia.

103. The standard of proof for coronial findings of fact is the civil standard of proof, on the balance of probabilities (with the *Briginshaw* gloss or explication). The effect of the authorities is that coroners should not make adverse findings against or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

104. For the purposes of section 67(1)(b) of the Coroners Act, I am satisfied that the death of David Sinclair was a result of the actions of Kieren Alkemade on 2 June 2012.

THE POLICE ACTIONS

106. The two attending police members, LSC Kevin Hall and SC Arin Eker, were highly experienced. Both testified at inquest that they had attended many scenes involving seriously injured, dying and deceased persons. Their observations of lividity and the absence of signs of life were a credible basis upon which to conclude that David was probably deceased. However, they did not know when they arrived exactly how long David had been on the ground, how long it had been since he had shown any signs of life or become

completely still, and whether there was a chance of resuscitation being successful. Understandably, David's family queried why police did not at least make an attempt at resuscitation immediately on arrival and before the arrival of paramedics. However, given the evidence of their experience and their observations at the scene, it would not be appropriate to make any adverse comment in respect of their actions. I note also that police officers have a discretion as to whether or not they perform CPR on a person and are expected to make a judgement in the circumstances of a case.

107. I note that Mr Alkemade gave evidence without the benefit of a section 57 certificate[66] and I commend him for doing so. He was clear, and in my opinion, honest in his answers in the witness box. They were consistent with his answers in his record of interview. However, I thought it regrettable that he did not see fit, at any stage during the time he was in the witness box, to turn to the members of David's family and express any recognition of their loss and grief.

COMMENTS

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

108. As this inquest and others have revealed, there is little general understanding of positional asphyxia. The speed with which a person can succumb to this cause of death once restrained in a prone position and unable to inflate their lungs, is something that should be better understood. The medical profession, police, security officers and others with responsibility for containing and restraining, treating and assisting people understand it, but the general public probably does not.

[66] Section 57 of the Coroners Act applies if a witness objects to giving evidence, or evidence on a particular matter, at an inquest on the ground that the evidence may tend to prove that the witness has committed an offence or is liable to a civil penalty. If the coroner determines that there are reasonable grounds for the objection, the witness need not give evidence unless required by the coroner to do so; and the coroner will give a certificate under section 57 if the witness willingly gives the evidence or gives the evidence after being required to do so.

I extend my condolences to David Sinclair's family and friends on their loss.

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

Ms Annette and Mr Douglas Sinclair, Senior Next of Kin c/o Ms N Hope, Holding Redlich

Mr Kieren Alkemade c/o Mr R Galbally, Galbally Rolfe

Mr Dexter Bourke, Yarra Valley Youth Theatre Group

DSC Paul Edyvane, Victoria Police, Coroner's Investigator

LSC Amanda Maybury, Police Coronial Support Unit

Signature:

JUDGE IAN L GRAY
STATE CORONER
Date: 14/7/15