

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2012 0298

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

I, PETER WHITE, Coroner having investigated the death of JAMES TERRANCE SULLIVAN without holding an inquest:

find that the identity of the deceased was JAMES TERRANCE SULLIVAN born on 8 June 1940

and the death occurred on 24 January 2012

at 100 metres west of Freemans Road Beach, Mount Eliza, Port Phillip Bay, Victoria

from:

1 (a) DROWNING

Pursuant to section 67(1) of the *Coroners Act 2008* I make findings with respect to the following circumstances:

1. James Terrance Sullivan (Terry) was a 71 year old man who lived in Mooroolbark. Terry is survived by his son, Colin. Approximately four years before his death, Terry became friends with Shawn Day. Shawn was in his twenties and was a keen fisherman.
2. On 24 January 2012, Terry and Shawn went fishing in Shawn's vessel that he had purchased on 13 January 2012. While out on the water, the vessel began to sink. Terry used a jerry can to stay afloat however he succumbed to the waves. A witness to the boat sinking entered the water to assist Terry to shore. Police and paramedics attended and conducted cardio pulmonary resuscitation but he was unable to be revived. Terry was formally identified by his son Colin.

MEDICAL INVESTIGATION

3. Forensic Pathologist, Dr Heinrich Bouwer of the Victorian Institute of Forensic Medicine performed a post mortem medical examination. Dr Bouwer provided a report of his findings at autopsy. The post mortem examination revealed heavy and congested lungs and fluid in the stomach. The coronary arteries showed moderate atherosclerosis and may have contributed to death. In Dr Bouwer's opinion, the circumstances and post mortem findings indicate that the cause of Terry's death was consistent with drowning. I adopt Dr Bouwer's findings in relation to the medical cause of death.

CORONIAL INVESTIGATION

4. As part of my investigation, I was provided with a coronial brief of evidence prepared by Leading Senior Constable Lee Barton of the Water Police. That brief contained statements and exhibits that I have relied on in setting out the circumstances in this finding. I note that a prosecution brief was prepared against Shawn. Shawn was originally charged with the offences of Manslaughter under the *Crimes Act 1958* (Vic), Recklessly engaging in conduct placing persons in danger of death under the *Crimes Act 1958* (Vic), and offences under the *Marine Act 1998* (Vic)¹ of acts tending to endanger crew or cargo, unlicensed operation of a vessel and operating an unregistered vessel. Shawn ultimately pleaded guilty to the offences of unlicensed operation of a vessel and operating an unregistered vessel. He was convicted and fined \$4000.
5. On 13 January 2012, Shawn purchased a 4.5 metre long fibreglass boat that was advertised on E-Bay. The vessel was produced in the 1970s by Savage Fibreglass Industries. Shawn purchased the vessel and trailer from Alistair Fletcher for \$1500. Prior to Mr Fletcher owning the vessel, it was owned by Brett Bradley, and before that, Rodney Kerr.
6. Mr Bradley and Mr Kerr had both performed modifications to the vessel. The sealed deck area had been removed along with the rear deck area and non water tight plywood flooring had been installed. The electronic equipment used for lighting and communication had been dismantled and the forward windscreen and upper windshield had been removed. These modifications exposed the sealed void space below the deck which had been solely intended to provide buoyancy to the vessel.

¹ I note that the Marine Safety Act 2010 (Vic) came in to force on 1 July 2012 and replaced the Marine Act 1998.

7. Mr Fletcher, on purchasing the vessel from Mr Bradley, had it inspected by Alan Stanilovich of Precision Marine Services. On 28 December 2011, Mr Stanilovich conducted an inspection of the vessel and the trailer. He provided a statement outlining the results of his inspection. He reported that the vessel was in a poor state of repair and the cost of repairing it would far exceed the value of the boat. Among other things, the floor was rotten, the electrical accessories had been cut, the motor was barely running, the oil pump was disconnected and leaking fuel and the battery cable needed new lugs. He informed Mr Fletcher that the vessel was not seaworthy and that it was dangerous. He stated that he further told Mr Fletcher that if he was going to sell it for parts, the buyer needed to be informed of the issues with the vessel.
8. Mr Fletcher also provided a statement included in the coronial brief. Mr Fletcher purchased the boat in November 2011 from Mr Bradley. He was unsure of its sea worthiness so he decided to get it inspected. He reported that Mr Stanilovich advised him that the vessel was not worth the cost of repairing it so he decided to sell it on E-Bay. Mr Fletcher did not make any modifications to the boat. Shawn purchased the vessel on 5 January 2012 and came to pick it up on 13 January with Terry.
9. Mr Fletcher discussed the vessel with Shawn and told him that he had had the boat inspected and informed him about the problems with the motor. He also told Shawn about the plywood floor and that there was a soft spot on the rear right hand side. In a further statement signed by Mr Fletcher on 24 December 2012, he reported that in his E-Bay ad, he advertised the boat as being able to be 'taken out' tomorrow but that it would need some work in the future. He did not relay to Shawn what Mr Stanilovich had told him in relation to the cost of repairing the vessel outweighing its worth. He stated he did not tell Shawn this as he wanted to sell the boat, but that Shawn was aware of the faults with it. He stated that he kept one life jacket but gave one to Shawn with the boat.
10. After Shawn had taken possession of the vessel, he and Terry painted it with grey and white house paint and placed a plywood floor, covered in carpet, on to the rear deck of the vessel and removed the forward windscreen.
11. On 24 January 2012, Terry went to Shawn's house and they drove to the boat ramp at Oliver's Hill in Frankston arriving at 6.40am. They launched the vessel at approximately 6.50am. Neither Shawn nor Terry wore any kind of Personal Flotation Device. They drove the vessel for approximately five minutes and anchored. They fished for over an hour and

then raised the anchor and travelled to another location near Daveys Bay at Mount Eliza. They attempted to set anchor again but continued with a slight drift. They raised the anchor again and drove on for another five minutes to get closer to the shore as the wind and the waves had increased. A number of waves washed over the stern of the vessel at this time. They decided not to fish at this time as their equipment had tangled so they drove the boat to the shore where they beached it.

12. At this point, Shawn monitored waves breaking over the vessel. Terry went back to the boat to get his mobile phone and found that it was ruined by water. Shawn decided to re launch the vessel from the beach and travel back to Oliver's Hill. Shawn provided a statement and participated in a record of interview with police. Shawn stated that Terry was complaining of being tired and short of breath at this point. He was concerned that Terry would not make it back to the car on foot. This influenced his decision to relaunch the boat.
13. A passer by assisted Shawn and Terry to push the boat in to the water. Shawn eventually was able to get in to the vessel and start the engine. As they were trying to make headway, the propeller struck the sea floor causing extensive damage. They attempted at least three times to relaunch the vessel but it washed back on to the shore. The vessel at this time was unstable as water was filling the bilge of the boat. It did not have a bilge pump.
14. They continued to try to launch the boat and were eventually successful. Terry was experiencing physical difficulty and Shawn contemplated calling an ambulance for him. Terry refused this. They travelled a short distance but the vessel began to take on water rapidly. The vessel sank quickly and Shaun and Terry were cast into the water.
15. As mentioned above, a bystander entered the water to assist Terry as he became unconscious in the water. Shawn was able to retrieve the life jacket from the vessel and was assisted to shore by police after they had attended to Terry.
16. On 2 March 2012, Mark McLellan, Manager of Survey Services, Maritime Safety at Transport Safety Victoria inspected the vessel. Mr McLellan provided a Technical Report detailing his inspection. He found the vessel to be in 'average to poor condition structurally and had various modifications that reduced the inherent buoyancy of the hull'.² Mr McLellan noted that the vessel would have been manufactured with a sealed deck to create a buoyant void below the deck. As the deck had been cut out, the hull no longer had the

² Inquest brief page 141.

buoyant support of the void below deck. The hull therefore had reduced buoyant capacity that would have reduced the possibility of the vessel remaining afloat during capsize or swamping. Mr McLellan noted that the hull was found to be watertight. For the vessel to have taken water on deck, the water would have to come over the bow, sides or transom. This is consistent with the reported circumstances.

Seaworthiness of second hand vessels

17. I note that in the Inquest into the death of Jennifer and Alexander Elliot (COR 1880 and 1881 of 2008), I made a recommendation that the State of Victoria introduced legislation which will require that all non-commercial, petrol powered inboard motor cruisers, boats or other similar vessels operated within Victorian waters, which are greater than 15 years old, be surveyed by a suitably qualified marine surveyor.
18. I further recommended that all new non-commercial petrol powered inboard motor cruisers boats or other similar vessels be surveyed on first registration, and thereafter on each occasion that a change of ownership registration in respect of any such vessel is sought.
19. As part of my investigation in to Terry's death, I sought input from Transport Safety Victoria and the Department of Economic Development, Jobs, Transport & Resources (the Department) as to the viability of a seaworthiness inspection regime for second hand vessels on transfer to be implemented in Victoria. I sought an update to the responses provided in response to the recommendations in Elliot. I have received responses from both TSV and the Department.
20. The Secretary of the Department, Mr Richard Bolt outlined that in August 2011, the Department released a Regulatory Impact Statement in relation to the draft of the Marine Safety Regulations. The RIS included an analysis of the merits of setting vessel standards and monitoring and enforcing those standards through seaworthiness checks. The RIS also considered the case for establishing a system of seaworthiness checks that could apply to all registered vessels. Apparently the conclusion from the analysis is that the establishment of standards and the periodic assessment of compliance with those standards through a seaworthiness check would result in compliance costs that are likely to exceed the value of safety benefits. Instead, an offence was created for a person to cause or allow a recreational vessel to be operated unless it is fit for purpose.

21. Mr Peter Corcoran, the Director of Maritime Safety at Maritime Safety Victoria (a branch of TSV) provided a response to the Court that indicated that TSV supports the concept of vessel inspections regime but the implementation of such a scheme is costly and would require significant additional resourcing to implement. Research has been conducted into the practicality of introducing mandatory pre-transfer of registration vessel inspection and the research concluded that while not impossible, its development and implementation in the short term would be administratively complicated and resource intensive.
22. Mr Corcoran did note that there may be other possible options to address the safety of Victoria second-hand recreation vessel fleet.
23. I take on board the Department and TSV's comments as to the cost involved in setting up such a scheme and I note that loss of life is occurring as a result of vessels that are used in a poor condition and in circumstances where they have been significantly modified from their initial design.

FINDINGS

24. I find that the deceased was James Terrance Sullivan, known as Terry. I find that Terry died as a result of drowning.
25. I am satisfied that the vessel use on 24 January 2012 had been modified to such an extent that it was no longer safe to use however Shawn and Terry did not appreciate the risks involved in using the vessel. I am satisfied that at the point that the vessel was transferred to Shawn, it was not seaworthy. I accept Mr Stanilovich's evidence that he told Mr Fletcher that the vessel was not seaworthy, it was dangerous and it should not be put on the water. It is a matter of great concern that Mr Fletcher did not convey this information to Shawn when he purchased the vessel.

RECOMMENDATIONS

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

26. I recommend that the State of Victoria continue to investigate viable ways to regulate the seaworthiness of recreational vessels. I support the recommendation made by Coroner English in the Finding into the death without inquest of Kevin Caithness and Paul Robert Washington (COR 2011 4499 and COR 2011 4500) that Transport Safety Victoria continue

to explore potential models for a non commercial vessel seaworthy inspection and certificate regime as a means of ensuring the seaworthiness of vessels at points of registration, transfer of ownership and after any modifications. I extend this recommendation to the Department for consideration.

27. In so doing, I maintain the views as set out in my finding into the deaths of Jennifer and Alexander Elliot (COR 1880 and 1881 of 2008). I further consider that a survey scheme requiring inspection of all vessels 15 years or over or of second hand vessels offered for sale, is the least restrictive registration scheme needed to provide a reasonable level of protection to our boating community.

Pursuant to Rule 64(3) of the Coroners Court Rules 2009, I order that this finding be published on the Website.

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

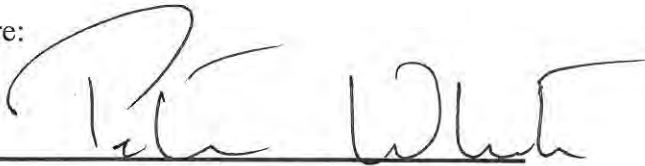
Colin Sullivan, senior next of kin

Mr Richard Bolt, Secretary, Department of Economic Development, Jobs, Transport and Resources

Mr Peter Corcoran, Director, Maritime Safety, Transport Safety Victoria

Leading Senior Constable Lee Barton, Coroner's Investigator

Signature:



PETER WHITE
CORONER

Date: 19 October 2015

