IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2013 / 1550

FINDING INTO DEATH WITH INQUEST

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

Inquest into the Death of: Nicholas William Moorby

Delivered On:	16 April 2015
Delivered At:	Coroners Court of Victoria 65 Kavanagh Street Southbank Melbourne 3006
Hearing Dates:	20 – 24 October 2014
Findings of:	Coroner Caitlin English
Representation:	Mr Neil Hutton and Mr Michael Mori of Counsel Instructed by Shine Lawyers For Lorraine Viliamu and David Moorby
Counsel Assisting the Coroner:	Ms Naomi Hodgson of Counsel Instructed by Ms Sarah Gebert, Coroners Court of Victoria

I, Caitlin English, Coroner, having investigated the death of Nicholas William Moorby

AND having held an inquest in relation to his death on 20-24 October 2014
at Melbourne
find that the identity of the deceased was Nicholas William Moorby
born on 2 January 1978
and the death occurred between Tuesday 9 April and Thursday 11 April 2013
at 32 Henry Lawson Drive, Lynbrook, Victoria
from:

1 (a) SERATONIN SYNDROME

in the following circumstances:

Introduction

1. Mr Moorby was discovered, deceased at home, on the evening of Thursday 11 April 2013 by family members. He had last been seen alive in the early morning of Tuesday 9 April 2013. The house was in a chaotic state, with blood stains and smears on the carpet and walls. The two main issues at inquest were; Mr Moorby's cause of death and whether the circumstances of his death were properly investigated.

Background

2. Mr Moorby was 35 years old at the time of his death. He was the youngest of a sibship of three, with eldest brother, David Moorby and older sister, Lorraine Viliamu. Mr Moorby lived alone in the home he and his father had shared at 32 Henry Lawson Drive, Lynbrook. His mother died in 2007 and his father had died in February 2013.
3. Mr Moorby left school at the age of fifteen. He had struggled at school with anxiety and self esteem issues, compounded by learning difficulties and dyslexia.[1]

[1] Personal details of Mr Moorby's life are taken from the oral presentation of Lorraine Viliamu at Inquest on 23/10/2014, which commences at Transcript p 33.

4. He worked variously in the transport industry, at one stage owning a small food delivery business. At the time of his death, he and his brother owned a transport company and Mr Moorby worked as a truck driver.

5. Mr Moorby suffered from a number of physical and mental health issues. In 2010, as a result of a work injury he went on WorkCover and provided monthly incapacity certificates. He subsequently developed severe depression.[2]

6. In 2012, he was in car accident. As well as suffering concussion and a brain injury, he had multiple injuries to his right ankle, knee and shoulder, as well as left shoulder, lower back and suffered from weight gain.

7. He was treated by his General Practitioner, Dr Sze Wong and psychiatrist, Dr George Camilleri.

8. At the time of his death Mr Moorby was prescribed painkillers; OxyContin, Endone and Panadol Osteo. He was also taking anti-depressants, Cymbalta and Seroquel. He also took Clexane, a blood thinner, for deep vein thrombosis.[3] Mr Moorby weighed 180 kilograms and had a BMI of 57.5[4].

9. In around 2006, Mr Moorby began using heavy illicit drugs and engaged in criminal activities. He was eventually found guilty of drug offences and spent time in jail.

10. At the time of his death, Mr Moorby was using illicit drugs and was in a partnership selling illicit drugs with Mr Joshua Dayal.

11. Prior to his death, Mr Moorby had a friend, Stephanie O'Bryan, over on the afternoon of Sunday 7 April 2013. She stayed overnight and left on Monday 8 April 2013 at about 5.30pm. On the Sunday night, Mr Anthony Ford, Mr Moorby's neighbour, visited briefly. Mr Moorby saw another neighbour, Mr Clifford Landers, on the evening of Monday 8 April 2013, and also spoke with his other neighbour, Mr Anthony Ford on the phone at about 8pm. Mr Dayal saw him twice on Monday 8 April 2013; firstly at about 11.00am and

---

[2] Statement of Dr S Wong, Exhibit 7.

[3] Statement Dr S Wong, Exhibit 7.

[4] Medical Examiners Report Exhibit 3.

then later at around 7.30pm. Mr Dayal also saw Mr Moorby in the early hours of Tuesday 9 April 2013 at about 3.30am, making him the last person to see him alive.

12. Mr Moorby was discovered, deceased, in his house by his brother Mr David Moorby on the evening of Thursday 11 April 2013, at about 7.30pm. He alerted a neighbour, Mr Landers, who attended the premises with him. Shortly afterwards, Ms Viliamu arrived. She called the police.

13. Casey Uniform Police attended the address, as did Casey Crime Investigation Unit (CIU), the Homicide Squad and Forensic Pathologist Dr Melissa Baker. The scene was deemed non-suspicious and the investigation was transferred from the Homicide Squad back to Casey CIU.

14. Dr Heinrich Bouwer, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted an autopsy on Monday 15 April 2013. Dr Bouwer determined the cause of death as 'unascertained.'

Reportable death

15. Mr Moorby's death is reportable pursuant to the *Coroners Act* 2008 (Vic) [the Act]. In addition to having the jurisdictional nexus with Victoria, it is a death that appears to have been 'unexpected, unnatural or violent or to have resulted directly or indirectly from an accident or injury.' [s 4(2) *Coroners Act* 2008 (Vic)].

Inquest – Request by Ms Viliamu

16. A coroner may hold an inquest into any death that the coroner is investigating.

17. This is not a case where an inquest is mandated by s 57(2) *Coroners Act* 2008 (Vic); it falls into a discretionary category: [s 52(1)].

18. A request for inquest pursuant to s 52(5) *Coroners Act* 2008 (Vic) was made by Ms Viliamu by way of Form 26 dated 8 April 2013. Her reason for requesting an inquest was that the investigation into Mr Moorby's death was not satisfactory.

19. In addition to the Form 26, Ms Viliamu also wrote to the Forensic Pathologist, Dr Bouwer seeking answers to nine questions regarding his examination of Mr Moorby. Dr Bouwer had a meeting with Ms Viliamu and her family on 21

August 2013, and provided a supplementary report addressing her questions dated 20 February 2014.

20. Further, Ms Viliamu wrote to Detective Senior Constable (DSC) Daniel Jacobi seeking answers to 20 questions about the crime scene. DSC Jacobi provided a supplementary statement responding to those questions dated 19 March 2013.

21. Ms Viliamu also sent an email listing six matters she asked the coroner to consider dated 29 July 2013.

22. The purpose of a coronial investigation is to ascertain if possible, the identity of the deceased, the medical cause of death and the circumstances in which the death occurred.

23. In this case, the medical cause of Mr Moorby's death is 'unascertained.' Further, Mr Moorby was last seen alive in the early hours of Tuesday 11 April 2013 by Mr Dayal. The events between that time and him being discovered deceased, by his family members on the evening of Thursday 13 April 2013, are unknown. Further, Mr Moorby's house was in a state of disarray, with blood smeared on the walls and carpet of the house.

24. The coroner has a discretion as to whether to hold an inquest. That discretion must be exercised in a manner which is consistent with and in accordance with the preamble and purposes of the Act. Although the Act gives no explicit guidance as to how the discretion to hold an inquest should be exercised, I have considered the aspects of this investigation that remain unresolved, and the concerns raised by the family.

25. To that end, an inquest provides an opportunity to elucidate a possible cause of death and the circumstances of Mr Moorby's death by examining the evidence of the forensic pathologist, witnesses who saw and spent time with Mr Moorby prior to his death and those police officers who attended and examined the scene of his death. In my view, the uncertainty of the evidence justifies the use of the judicial forensic process. There is a likelihood that an inquest will assist to maintain public confidence in the administration of justice and other public agencies, such as Victoria Police.

26. A decision was made to hold an inquest into Mr Moorby's death.

Focus of the inquest

27. Part of the purpose of a coronial investigation of a reportable death is to ascertain, if possible, the circumstances in which the death occurred.

28. The 'circumstances' refer to the context of background and surrounding circumstances. It is confined to circumstances that are sufficiently proximate and causally relevant to the death. This means there should be a proper connection between the inquiry and the death of Mr Moorby. Whilst the inquiry is not confined only to matters of strict causation, neither does it extend to include all circumstances, which might be part of the narrative culminating in death. [5] Ms Viliamu raised a number of matters that occurred after Mr Moorby's death; namely, 32 Henry Lawson Drive being burgled sometime between Friday 12 April and Saturday 13 April 2013; that Mr Moorby's credit card was used after his death and that threatening text messages were sent to his phone. These matters may be related to Mr Moorby's involvement with illicit drug use however they do not appear to have a causal connection to his death and are therefore outside the scope of my consideration.

29. As identity was not in issue, the inquest focused on the cause of Mr Moorby's death and the circumstances in which his death occurred. The inquest considered possible causes of death and whether a third party was involved.

30. A related but separate issue was the adequacy of the police investigation, particularly when police arrived at the scene, their response, and their assessment regarding non-suspicious circumstances.

Sources of Evidence

31. This finding is based on the totality of material that is the product of the coronial investigation, including the coronial brief, which includes statements and notes of police officers who attended the scene.

32. The other main source of evidence was from the witnesses who were called at the inquest and the tendered exhibits.

---

[5] Thales Australia Limited v The Coroners Court of Victoria and Anor [2011] VSC 133 (11 April 2011).

33. There were essentially three different sets of witnesses. Firstly, those witnesses who were friends and neighbours of Mr Moorby, who gave evidence of seeing him in the days leading up to his death.

34. Secondly, those witnesses who were police personnel called to investigate the scene. The investigating member was DSC Daniel Jacobi from Casey CIU. Officers from Casey Uniform were first on the scene, responding to the call from Ms Viliamu. DSC Jacobi was the officer on crime response duty in the evening. The control of the scene then shifted to the Homicide Squad when Officer Towner arrived and together with Crime Scene Officer Carrick and forensic pathologist Dr Melissa Baker conducted their examination of the scene. The scene then reverted back to the control of Casey CIU.

35. Other witnesses were Dr Sze Wong, Mr Moorby's general practitioner and Dr Heinrich Bouwer, the forensic pathologist who conducted the autopsy. Dr Baker was unavailable to give evidence due to health reasons.

Cause of Death

- **Possibilities canvassed with forensic pathologist**

36. Dr Heinrich Bouwer was examined in respect of his Medical Examiners Report,[6] Toxicology Report,[7] Supplementary Report, [8]and Dr Baker's Preliminary Examination Report.[9] A number of possible causes of death were canvassed in evidence.

37. The results of the toxicology report detected ethanol .02g/100ml, methylamphetamine .5 mg/L and amphetamine .02mg/L, oxycodone .05mg/L, promethazine .03 mg/L and duloxetine 740 ng/mL.

38. In light of Mr Moorby having an inferior vena cava filter fitted and being on Clexane, a blood thinning medication, Dr Bouwer was of the view that the likelihood of a pulmonary embolism as the cause of death was '*very low.*'[10]

---

[6] Exhibit 3.

[7] Exhibit 4.

[8] Exhibit 5.

[9] Exhibit 6.

[10] Transcript p 81.

39. Dr Bouwer was of the view that the reading of 740 ng/mL of duloxetine in the toxicology report was 'not interpretable' owing to the fact that '*duloxetine is subject to significant post mortem redistribution.*' [11] The toxicology report also noted that decomposition '*can change the concentration of any drugs or poisons if they were present at death...*'[12]

40. When it was put that Mr Moorby was prescribed 4 x 60 mg capsules of Cymbalta daily, Dr Bouwer noted that duloxetine, as a selective serotonin and noradrenaline uptake inhibitor, can have interactions with other drugs and the illegal drugs, amphetamines and methylamphetamine were detected in Mr Moorby's post mortem blood results.

41. Further, Dr Bouwer gave evidence that an adverse drug reaction to duloxetine called 'serotonin syndrome' can occur with or without the interaction of other drugs, when there is a build up of too much serotonin in the brain, blocking its reabsorbtion. Classical symptoms of serotonin syndrome are agitation and confusion. However he noted this is a diagnosis which is based on observed clinical symptoms, and usually not diagnosable post mortem:

> *'I am not saying this man did have serotonin syndrome. It's just one of the postulations of why he died, given the drugs that were found in his system and the sort of circumstances in which his body was found...it's a fatal drug reaction...there will be no specific findings at autopsy. This is...a diagnosis ...made on the circumstances, the drugs that the person [is] taking and the clinical presentation.'*[13]

42. When asked as the likelihood of serotonin syndrome being the cause of Mr Moorby's death, Dr Bouwer stated:

> *'I would say it's highly likely...I examined the photographs of ...Victoria Police...that suggests the person was in a confused state maybe or an agitated state and given that these drugs were on board*

---

[11] Transcript p. 82.

[12] Exhibit 4.

[13] Transcript p 86.

may explain it. I'm not saying that this is what happened. This is just one of the hypothesis.'[14]

43. Dr Bouwer was of the view that depression of the central nervous system as a cause of death was less likely, given the low level of promethazine and therapeutic levels of oxycodone in the toxicology report. He was of the view that an arrhythmia as a cause of death was '*less likely*' given it is usually a sudden death. He also considered smothering as a cause of death to be '*highly unlikely.*'[15]

44. Dr Bouwer's opinion was that; given the superficial nature of the injuries observed on Mr Moorby's body, death by exsanguination was '*unlikely.*'[16]

- **Mr Moorbys' mental state: evidence in support of serotonin syndrome**

45. With respect to Mr Moorby's mental state in the days leading up to his death, I heard evidence from friends and neighbours.

46. Ms Stephanie O'Bryan stayed the night at Mr Moorby's house on Sunday 7 April 2013. When examined by Counsel assisting, Ms Hodgson, she stated she and Mr Moorby smoked ice together. She stated he '*...sounded pretty normal...he was just upset...he just wasn't happy.*'[17]

47. Ms O'Bryan did not notice his lips were an odd colour, nor that he was '*mumbling*': she stated '*I recall him being pretty normal.*'[18]

48. Mr Anthony Ford, Mr Moorby's neighbour, visited him on the evening of Sunday 7 April 2013 and stayed for around 20 minutes. He stated; '*Everything seemed pretty normal.*'[19]

49. Mr Ford also had a telephone conversation with Mr Moorby on the evening of Monday 8 April 2013 at about 8pm. He described Mr Moorby as stating '*the*

---

[14] Transcript p 88.

[15] Transcript pp 91-92.

[16] Transcript p 93.

[17] Transcript pp 170-171.

[18] Transcript p 173.

[19] Exhibit 2.

Lebos are coming' and sounding '*really agitated...afraid definitely*'[20]. Despite Mr Ford phoning Mr Moorby a few times over the next days, that was his last contact with him.

50. When neighbour, Mr Clifford Landers saw Mr Moorby on Monday 8 April 2013, in the evening at about 6.30pm, he described him as sitting on the floor in the lounge room next to the couch; '*His lips were blue, I hadn't seen him like that before. I thought he'd been in a fight.*'[21] Mr Moorby stated to Mr Landers that he had five people coming to buy stuff, which Mr Landers stated he understood to be a reference to drugs. Mr Landers in cross examination explained Mr Moorby's behaviour as '*agitated...fidgeting with stuff...muttering a lot of stuff that didn't make sense...*'[22]

51. Later, Mr Landers saw Mr Moorby at about 9.30pm from across the street. He described him as; '*he was obviously not - not normal...*' and stated he was '*...sort of blabbering...*'[23].

52. Mr Joshua Dayal saw Mr Moorby at around 11.00 am on Monday 8 April 2013. He had visited his house as Mr Moorby had not dropped off the drugs the day before as arranged, that Mr Dayal was going to sell. He described him as:

'...really out of it. His lips were a weird white colour and he was really out of it. He wasn't making much sense...Nick kept on mumbling and making no sense.'[24]

53. In cross examination he described Mr Moorby's behaviour as:

' ...he just didn't make sense, like he - he really couldn't keep the thoughts in his head. Like he was just sayin' just saying random stuff...he was talking ramble.'[25]

---

[20] Transcript pp 44-45.

[21] Exhibit 1.

[22] Transcript p 10.

[23] Transcript p 14.

[24] Exhibit 11.

[25] Transcript p 197.

54. Mr Dayal distinguished Mr Moorby's behaviour from being drug affected:

'It was different drug affected. It was different altogether.'[26]

55. Mr Dayal returned to the house later that evening. He described Mr Moorby as *'looking a little bit better.'*[27] He also stated he gave Mr Moorby three Xanax tablets.

56. Mr Dayal returned to the house again at about 3.30 am on Tuesday 9 April 2013, after collecting Mr Moorby's car. He found Mr Moorby in the bathroom. As he could only open the door about ten centimetres, he kicked the door in and located Mr Moorby sitting on two sheets of glass. The shower was running and bloodied water was everywhere. Mr Moorby was *'talking to himself and making no sense.'*[28] Mr Dayal described it as *'one of the freakiest situations I've ever been in in my life.'*[29]

57. When questioned by Mr Dayal, Mr Moorby denied having been 'bashed,' but to most of Mr Dayal's questions answered 'I don't know.' Mr Dayal believed Mr Moorby had fallen in the shower.

58. Mr Dayal helped Mr Moorby back to the bedroom (describing him as still wet from the shower) with his walking frame and pulled a sheet over the mattress. Mr Dayal described Mr Moorby as *'disoriented... [and] ...confused.'*[30] He described his behaviour as similar to his presentation on Monday morning.

- **The state of the house as evidence of Mr Moorby's 'disorientation.'**

59. Each witness was asked about the state of Mr Moorby's house when they saw it. The evidence is contradictory as to whether it was messier in the scene photos taken by police, than on the Sunday 7 April or Monday 8 April 2013. Mr Dayal's evidence was that the bathroom where he found Mr Moorby was in disarray, with glass shower panels shattered. However the only blood he

---

[26] Transcript p 197.

[27] Transcript p 203.

[28] Exhinit 11.

[29] Transcript p 213.

[30] Transcript pp 217-218.

saw was on the tiles in the bathroom, not on the walls as depicted in the police photographs.

60. Mr Ford gave evidence that at about 10.30pm on the evening of Tuesday 9 April 2013, he heard the back sliding door open and male voices in Mr Moorby's back yard. He stated that the outside light came on and he heard someone say 'What do you think you're fucking doing?' and then the door shut. Mr Ford stated of the incident: '*it was all over in about 10 seconds flat.*'[31]

61. Mr Ford's evidence and the inconclusive evidence of the state of the house, is the only evidence before me that is suggestive of some third party being at Mr Moorby's house between his last sighting alive by Mr Dayal in the early hours of Tuesday morning and the discovery of his body on the Thursday evening by family members.

62. In my view the evidence is insufficient to find that a burglary or 'run through' by unknown third parties had taken place at Mr Moorby's house prior to his body being discovered on Thursday evening.

- **Medical evidence – Mr Moorby's medications**

63. Dr Sze Wong from the Family Medical Centre, Boronia, was Mr Moorby's general practitioner who treated him from around July 2010 until his death.

64. In cross examination, Dr Wong agreed the records ('Past Prescriptions for Nicholas Moorby' a print out forming part of Dr Wong's statement, Exhibit 7) showed he first prescribed 60 mg Cymbalta (1 daily) for Mr Moorby on 7 May 2011. On 7 July 2011, this increased to twice daily and Dr Wong stated:

'*I believe the doubling of cymbalta from 60 to 120 is because of Nicholas's severe depression.*'[32]

65. On 20 September 2012, the dosage of Cymbalta prescribed to Mr Moorby increased to three times daily. When asked about this, Dr Wong denied prescribing this amount; '*I never use three, maximum for me is two.*'[33]

---

[31] Transcript p 52.

[32] Transcript p 112.

66. Dr Wong eventually agreed with the record (Exhibit 7), but thought Dr Camilleri, psychiatrist, had recommended the increase.

67. Dr Wong stated that he accepted self-reporting from his patient, Mr Moorby, as to when to increase the amount of Cymbalta he was prescribing. He stated he did not receive a report from Dr Camilleri, but that Mr Moorby would say words to the effect of '*I'm on three now, can I have a script for three.*'[34]

68. Dr Wong further gave evidence that the increase in Cymbalta to 4 daily on 19 December 2012, was also a change initiated by Mr Moorby. He stated: '*I didn't have any concern because I – I trust Nicholas at that time.*'[35]

69. Dr Wong was asked if he was aware of serotonin syndrome and stated he did, but that '*I did not suspect or notice any serotonin syndrome whenever I saw him.*'[36] Dr Wong was seeing Mr Moorby at least every 28 days for his WorkCover certificate and saw him frequently in the months prior to his death. The medical records from The Family Medical Centre (Exhibit 23) confirm Mr Moorby had appointments to see Dr Wong on 14 January, 30 January, 18 February, 6 March, 20 March and 3 April 2013, prior to his death.

70. When questioned as to why Mr Moorby's psychiatrist did not write a prescription for Mr Moorby for Cymbalta, Dr Wong stated;

    'Unfortunately, a lot of the specialists nowadays do not write scripts, they would tell the patient, 'Go and see your GP and get the GP to write them.'[37]

    Dr Wong described this as the practice of specialists in general. When asked about checking with the specialist directly, rather than relying on the patient reportage Dr Wong stated;

    '...there are many cases where specialists prescribe big doses of anti-depressive so while I go to one or two tablets it's not unusual for specialists to go to four, so I did not question him on that.'[38]

---

[33] Transcript p 113.

[34] Transcript p 114.

[35] Transcript p 115.

[36] Transcript p 116.

[37] Transcript p 122.

71. Mr Hutton put to Dr Wong: '..I find it extraordinary that you trust a patient to that extent that you would agree to prescribe double what your normal practice is, on the say so of a particular client. Do you want to say anything to that?' Dr Wong answered:

'*yes. As I said, I know Nicholas , we went to the same church so I know him from church, I see him every Sunday. There's trust there.*'[39]

When asked whether Dr Wong was aware Mr Moorby was taking illegal drugs, such as cannabis and methylamphetamine, Dr Wong answered: '*I'm not aware of that.*'[40]

72. After the inquest, I requested Mr Moorby's Medicare and Pharmaceutical Benefits Scheme claims information. This information was to assist to ascertain whether Mr Moorby had been filling his prescriptions for Cymbalta, prior to his death, given the absence of that medication from his Webster pack. The records reveal that he had duloxetine (the medicine containing the drug Cymbalta) supplied on 24 January, 21 February and 20 March 2013 (as well as on 14 November, 22 November 29 November and 19 December 2012).

73. On the basis of that evidence, I am of the view that Mr Moorby, at the time of his death, was taking his prescribed duloxetine

- **Cause of death**

74. I accept the evidence that Mr Moorby was in a confused and disoriented state on Monday evening, described as 'agitated' and 'blabbering.' Further, I accept he was disoriented and confused when assisted by Mr Dayal on Tuesday morning out of the shower to bed. There is evidence Mr Moorby had smoked methylamphetamine with Ms O'Bryan on the Sunday afternoon and Monday, '*...two or three times over that period...*'[41] and had been given 3 Xanax tablets by Mr Dayal on the Monday.

---

[38] Transcripy p 122.

[39] Transcript p 129.

[40] Ibid.

[41] Transcript p 171.

75. The evidence of Mr Moorby's agitated mental state, the state of his house, together with evidence from PBS records that Mr Moorby was taking his duloxetine, is relied on by both Counsel in submissions, for me to find Mr Moorby died from serotonin syndrome.

76. Mr Moorby's last appointment with Dr Wong was on the Wednesday 3 April 2013 and Dr Wong's evidence was that he did not display any sign of serotonin syndrome when he saw Mr Moorby, although he was not asked in evidence directly about his last consultation. He was unaware of Mr Moorby's illicit drug taking.

77. Dr Bouwer highlighted the shortcomings of a diagnosis of serotonin syndrome post mortem. There is no expert evidence before the court of the usual time between a display of symptoms and death. There is no test post mortem to reveal serotonin syndrome and Dr Bouwer relies on the medications Mr Moorby was taking, together with the scene photos revealing the house in disarray.

78. The evidence of Mr Moorby's mental state and the results of the PBS records also strengthen the evidence in support of serotonin syndrome as a cause of death. As does the state of the house, if it was caused by Mr Moorby. I have rejected the evidence suggesting third party responsibility for the state of the house as insufficient.

79. On the basis of Dr Bouwer's evidence, the evidence of Mr Moorby's mental state, the state of the house most likely caused by him, the PBS records that he was filling scripts for duroloxine and most likely taking them, together with his illicit drug use (from direct evidence of witnesses and the toxicology results), I find on the balance of probabilities, Mr Moorby died from serotonin syndrome.

Circumstances in which Mr Moorby's death occurred

- **Relevance of Mr Moorby's criminal activity**

80. The events in the days prior to Mr Moorby's death have been considered in some detail above.

81. In the days preceding his death there is clear evidence Mr Moorby was involved with selling drugs and on the Sunday 7 April 2013, had gone to collect 2-3 pounds of cannabis, but had thought the police were following him so had 'dumped' his car.

82. Mr Landers gave evidence of seeing two vehicles outside Mr Moorby's house for the supposed purposes of buying drugs from Mr Moorby.[42]

83. Mr Landers stated he rang Ms Viliamu on the evening of Monday 8 April 2013 to inform her he was not happy with the situation.

84. In Ms O'Bryan's evidence she recalled someone coming to the house to buy drugs when she was there.[43]

85. Mr Moorby had also spoken to Mr Landers about the events on Sunday when he had been in a car chase and had to leave his car and come home by taxi. He also told Mr Landers that he had '*about five people coming...to do the deal.*'[44]

86. Mr Dayal reported he had paid Mr Moorby to collect drugs and deliver them back to his house on the Sunday, but Mr Moorby never returned. On the Monday he went to his house to find out what had happened. Mr Moorby had told him: '*...him and a mate were driving through Altona and they freaked out and thought the cops were chasing him...Nick then left the car with the drugs in it on the side of the road and went home.*'[45]

87. I am of the view that whilst Mr Moorby's drug taking and involvement in drug trafficking with Mr Dayal forms the back drop to the circumstances surrounding his death, nevertheless, there is no probative evidence, aside from his own illicit drug taking, of a causal nexus between this high risk activity and his death.

---

[42] These were an old model maroon Holden looking for number 32, and a white van with four males sitting outside Mr Moorby's house.

[43] Transcript p 176.

[44] Transcript p 13.

[45] Transcript p 200.

- **Police Investigation**

88. Criticism has been raised by Mr Moorby's family regarding the adequacy of the police investigation into Mr Moorby's death.

89. The specific concern of the family was the way in which the scene was deemed to be 'non-suspicious.'

90. Five police officers gave evidence at inquest regarding their role in the investigation.

91. The Coroners Investigator, Detective Senior Constable Daniel Jacobi attended the scene, 32 Henry Lawson Drive, Lynbrook, at approximately 9pm on Thursday 11 April 2013. Casey CIU was the response unit for the area that night. When the Homicide Squad attended, they took over responsibility for the scene. When it was deemed 'non-suspicious,' Casey CIU resumed responsibility.

92. Detective Senior Sergeant Ian Snare was the duty officer on that night and he received a call from the Major Crime Desk. At that point he was in charge of the investigation. He then called Detective Senior Constable Michelle Chiang from Casey CIU. He then rang Leading Senior Constable Bernard Carrick from Major Crime Scene Unit and he co-ordinated the video response, to photograph and video the scene. He then called Coronial Services to get a case number and ascertain who the on-call duty pathologist was.

93. Detective Senior Sergeant Snare then attended the scene, and after a more detailed briefing from Detective Senior Constable Michelle Chiang, he entered the scene with Leading Senior Constable Carrick.

94. Leading Senior Constable Carrick attended the scene on the evening of Thursday 11 April 2013 to conduct a visual examination of the blood at the scene. Leading Senior Constable Carrick gave evidence of concluding, after examining the rear bathroom, that:

'The condition of this room and the preliminary examination of the body suggested that the deceased had fallen whilst showering with the result that the glass frame collapsed and shattered on the floor.'[46]

95. Leading Senior Constable Carrick went on to say it was his view there was not a large amount of blood either in the rear bathroom or throughout the house in its entirety. He stated it was a 'collective' agreement that the scene was non – suspicious, due to the minor nature of Mr Moorby's external injuries and the disturbance within the rear bathroom.

96. When asked about the state of the house, Leading Senior Constable Carrick stated:

'...the last bedroom appeared to be untouched but the second bedroom there certainly was an appearance of disturbance that would initially suggest that someone was looking for something, now whether that was the deceased or another person, I don't know. That was discussed at the time. But as far as the scene, and this is my role, to determine whether or not it's suspicious or not based on the physical evidence that [is] there, we made that assessment and anything beyond that was subject to the investigator.'[47]

97. When questioned about the scene being 'suspicious' or 'non-suspicious' Detective Senior Sergeant Snare agreed the decision fell to him as the investigator, but stated:

'Yes...but in consultation with – in these circumstances, the pathologist, crime officers and information that's been received.'[48]

98. When questioned about Senior Constable Carrick's notes[49] which noted the scene as *'Appears non-suspicious / pending post mortem,'*[50] Detective Senior Sergeant Snare stated *'...my notes indicate that it's purely non-suspicious.'*[51]

---

[46] Transcript p 141.

[47] Transcript p 148.

[48] Transcript p 279-280.

[49] These notes were referred to in Leading Senior Constable Carrick's evidence but were not tendered separately. They formed pp 301-309 of the Coronial Brief.

[50] Coronial Brief p 309.

99. It appears at no stage did police members consider an application under s 27 of the *Coroners Act* 2008 (Vic) seeking the coroner direct an urgent autopsy.

100. The evidence of Detective Senior Sergeant Snare indicated he relied on the advice relayed to him regarding Dr Baker and Leading Senior Constable Carrick's opinions that the scene was non-suspicious; *'... if the pathologist deems that its not suspicious, then that finishes our involvement...we wouldn't have any role.'*[52]

101. Detective Leading Senior Constable Peter Towner attended from the Homicide Squad. If the matter was suspicious, he was assigned to be the lead investigator. He was the Homicide Squad member who discussed the scene with Dr Baker and Leading Senior Constable Carrick.

102. He stated;

'...clearly the fact that it was a 'not urgent' post mortem, satisfies in my mind that the conversation was on the lines of they couldn't determine anything suspicious at the scene that warranted any further investigation or immediate investigation, which we would normally do had it been a suspicious death...if it had warranted further investigation then the house would have been locked up and crime scene guards would have been placed and it would have been retained under police control...and kept sterile until we determined other.'[53]

103. In respect to Mr Moorby's injuries; Detective Leading Senior Constable Towner noted;

'...nil visible injuries, minor cuts and abrasions to the hands and bottom of the feet.'[54]

104. There was some dispute in the evidence as to the status of the scene. I am satisfied from Detective Senior Sergeant Snare and Detective Leading Senior Constable Towner's evidence that the scene was considered non-suspicious and that this assessment was not made on a provisional 'pending

---

[51] Transcript p 280.

[52] Transcript 281.

[53] Transcript pp251-2.

[54] Transcript p 250.

autopsy' basis. There was no basis for the scene to be 'secured' and the suggestion that it should have been secured is not made out.

105. Detective Senior Sergeant Snare was cross examined by Mr Mori as to whether factors might 'raise a flag' of suspicion, such as threats made, or other people attending the residence to search for something. Detective Senior Sergeant Snare replied: '*Not if a pathologist says to me that there's nothing suspicious.*'

106. He was also asked whether he gave consideration to the possible involvement of a third party, to which Detective Senior Sergeant Snare replied: '*In the shower it just seemed to be a fall...I don't know. We would be hoping there would be some evidence to indicate that.*'[55]

107. Detective Senior Sergeant Snare's answers were somewhat contradictory: when pointed to other potential evidence he dismissed it because the pathologist has said the scene was 'non-suspicious', but when asked if alternative scenarios were considered, he replied that he would require further evidence.

108. The evidence supports a process by which police examined the scene. The matter was originally dealt with by Casey CIU and then transferred, after a briefing, to the Homicide Squad. A member of the Major Crime Scene Unit attended, as did forensic pathologist Dr Baker. There was a 'collective agreeance' between a Homicide Squad member, the Major Crime Scene Unit investigator and the forensic pathologist that the scene was 'non-suspicious'. After which there was a meeting at Narre Warren Police Station later on that morning to do an 'official hand-over.'[56] I am not satisfied investigation was 'haphazard and cavalier.'

109. There was no evidence to support the position that the house should have been secured as a crime scene. Leading Senior Constable Carrick described that the blood staining in the house consisted of '*swipes*' and '*transfer or*

[55] Transcript p 290.

[56] Transcript p 311.

*contact smear*ing'[57] on doors, walls and cupboards. The trail of blood was consistent with an incident in the bathroom (diluted, suggesting Mr Moorby was wet) and the amount of blood was consistent with the minor nature of Mr Moorby's injuries. Despite appearances, it was Leading Senior Constable Carrick's evidence that there was '*not a lot of blood.*'[58] The lack of evidence of third party involvement, as conceded by Mr Hutton in submissions, explained the lack of any further blood testing.

110. The police investigation was also referred to as 'cavalier and insensitive.' I reject that the investigation was 'cavalier' for the reasons outlined above. The family's concerns that oxycodone was described by police members as 'hillbilly heroin' within their hearing was denied by Detective Leading Senior Constable Towner and Detective Senior Constable Jacobi. I can make no factual finding on that matter. It goes without saying that at all times when police members investigate, particularly those matters within the Coroners Court jurisdiction, courtesy, respect and sensitivity be afforded to family members.

111. Ms Viliamu was of the view that after the discovery of Mr Moorby's body, the house was ransacked and threatening text messages were left on Mr Moorby's mobile phone. Further, his credit card was used after his death. It is clear from the evidence of Mr Ford, Mr Landers and Mr Dayal that Mr Moorby expressed to them he believed himself to be under some threat from persons unknown. No causal connection has been established between these events and with his death.

112. Concerns were raised in Counsel's submissions regarding Dr Wong's prescribing practices. After the conclusion of the Inquest, I wrote to Dr Wong to advise him that whilst I was not intending to make an adverse comment in my finding, I intended to forward a copy of my finding to the Australian Health Practitioner Regulation Agency (AHPRA) and asked if he had any submissions to make about that. Dr Wong replied by letter dated 19 March 2015, that; *'...this has made me realise that I have made an error of*

---

[57] Transcript, p 138, p 142.

[58] Transcript p 153.

judgement and I will definitely be more careful in future and this will not happen again.'

Finding

I find that Nicholas Moorby died from serotonin syndrome.

I direct a copy of this finding be distributed to:

Ms Lorraine Viliamu

Mr David Moorby

Detective Senior Constable Daniel Jacobi

Dr Sze Wong

Australian Health Practitioner Regulation Agency

Signature:

CAITLIN ENGLISH
CORONER
Date: 16 April 2015