

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2012 / 4465

AMENDED FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Paragraph 8 amended pursuant to section 76 of the Coroners Act 2008 on 20 February 2015.

Inquest into the Death of: RICHARD JAMES PURCELL

Delivered On: 14 January 2015

Delivered At: Coroners Court of Victoria
65 Kavanagh Street
South Bank Victoria 3006

Hearing Dates: 26 August 2014

Findings of: JUDGE IAN L GRAY, STATE CORONER

Representation: Mr A Shwartz, counsel for Ms Shirley Purcell

Police Coronial Support Unit Leading Senior Constable Tania Cristiano

I, JUDGE IAN L GRAY State Coroner, having investigated the death of RICHARD JAMES PURCELL

AND having held an inquest in relation to this death on 26 August 2014
at Melbourne

find that the identity of the deceased was RICHARD JAMES PURCELL

born on 31 January 1959

and the death occurred on 21 October 2012

at Baxter-Tooradin Road, Pearcedale Victoria 3912

from:

1 (a) MULTIPLE INJURIES

Pursuant to section 67(2) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

BACKGROUND

1. On Sunday 21 October 2012, a single vehicle and pedestrian collision occurred on Baxter-Tooradin Road, Pearcedale. The collision occurred when a westbound vehicle struck a male pedestrian who was lying prone on the roadway. A forensic pathologist attended the scene and determined that he had appeared to have been killed as a result of an impact by a motor vehicle. The vehicle involved did not stop at the collision scene.
2. The deceased was Richard Purcell aged 53, a resident of Pearcedale. He lived with his family at an address near where the collision occurred. Mr Purcell left a party in nearby Pearcedale between 2.00 and 2.30am. The direction of Mr Purcell's travel was unknown, but it is most likely that he walked along Oakden Street to either Evans Street or Apple Street and out onto Pearcedale Road. From there Mr Purcell appears to have walked south to Baxter-Tooradin Road. At the intersection of Baxter-Tooradin Road Mr Purcell turned right and was observed on CCTV footage to walk west along the northern side of Baxter-Tooradin Road, past the BP Service Station and Pearcedale shopping centre. Mr Purcell is observed in that footage to be unsteady on his feet.
3. At some point beyond the service station to the west Mr Purcell is presumed to have crossed to the southern side of Baxter-Tooradin Road and continued walking west. The roadside to the south of Baxter-Tooradin Road eventually become a grassed and dirt uneven verge with

no provisions for pedestrian traffic. The area west of the Pearcedale Township is semi-rural with sizable residential properties abutting the roadway.

4. When Mr Purcell was in the vicinity of the driveway of 66 Baxter-Tooradin Road he became prone on the roadway on the westbound lane. It is unknown if Mr Purcell fell to the ground or laid down on the road intentionally. (There were no injuries or marks located on Mr Purcell during post mortem examinations other than the injuries caused by the collision with the vehicle).
5. At or near the same time, a large 4WD vehicle driven by Kade Williams was travelling west on Baxter-Tooradin Road. Mr Williams was travelling to Karingal in the company of Ms Miranda Gordon, taking her home. They travelled through the Pearcedale Township and continued driving towards the Westernport Highway.
6. As the vehicle approached the location of Mr Purcell, there was no indication or prior warning of Mr Purcell being on the roadway. The area where Mr Purcell lay was dark and the road unlit. Without any application of emergency braking or steering, the vehicle struck Mr Purcell with the front passenger wheel.
7. Mr Williams, believed the object he had struck was possibly a log or something similar on the roadway. He did not think there was anything to be untoward, or that his vehicle had incurred any damage, and continued on without stopping. There were no independent witnesses to the actual collision. A passerby soon after, located Mr Purcell in situ on the roadway and called emergency services.
8. Conversations with family and friends have not revealed any propensity for suicide by Mr Purcell. There is no evidence to indicate that this is the reason or cause for Mr Purcell being on the roadway. Mr Purcell's wife declined to make a statement in relation to this matter, but was vehement in her insistence that Mr Purcell would not have intentionally laid on the road. Mr Purcell had a Blood Alcohol Concentration (BAC) of between 0.20% and 0.25%.

MEDICAL CAUSE OF DEATH/AUTOPSY

9. An autopsy was conducted by Dr Heinrich Bouwer on the 21 October 2012. Dr Bouwer had attended the scene of the accident. He had observed the body of a male lying on the side of

the road covered with a sheet and a small patch of blood, of approximately 15 cm in maximum extent on the road's surface near Mr Purcell. He made observations about the state of Mr Purcell including minor lacerations/abrasions to the head and hands. He observed a laceration to the cranium. He subsequently conducted an autopsy. He summarised the injuries found at autopsy as follows:

- Multiple bilateral comminuted rib fractures.
- Comminuted pelvic fractures.
- Sternal fractures.
- Lower vertebral fractures, including spinous processes.
- Left medial thigh subcutaneous bruise/avulsion.
- Left anterior knee avulsion/bruise, 15 x 9 cm, 56 cm from the heel.
- Right lower leg anterior bruise, 5 x 5 cm, 20 cm above the heel.
- Right lower leg anterior bruise, 7 x 3, 20 cm above the heel.
- Right medial knee cluster haemorrhages, 15 x 9 cm, 1-2 cm in maximum extent, 39 cm from the heel.
- Right medial thigh avulsion/bruise, 34 x 20 cm, 60 cm from the heel
- Left arm lateral elbow bruise, 6 x 4 cm.
- Left cubital fossa bruise, 5 x 1 cm.
- Left hand bruise and underlying fractures, 4th and 5th fingers, posterior, 5 x 4 cm.
- Left hand 2nd finger bruise posterior, 3 x 7 cm.
- Anterior chest subcutaneous bruise.
- Right popliteal fossa bruise, 10 cm, 42 cm from the heel.
- Left popliteal fossa bruise, 15 cm, 44 cm from the heel.
- Mid back/sacral haemorrhage with comminuted sacral fractures, 25 x 20 cm.
- Stellate occipital scalp laceration with underlying haematoma.

- Abrasion mid forehead with underlying haematoma.¹
10. The results of toxicology revealed alcohol at a level of 0.20 in vitreous humour. Diazepam was detected in cavity blood, and Oxazepam was also detected in cavity blood.
 11. Dr Bouwer gave the formal cause of death as 1(a) MULTIPLE INJURIES. Under the heading “comments” in his autopsy report he stated as follows:

“The post mortem examination showed multiple injuries mainly centred on the chest, abdomen and pelvic area. The pattern of injuries is consistent with being run over by a vehicle while the deceased was on or near the ground. There was no evidence to suggest that he was struck on the lower legs.

The stellate laceration on the back of the head is not a typical injury seen in an individual who have been run over. It represents a blunt force impact at this point. People who collapse and hit the back of their heads usually sustain occipital injuries, thus this is a slightly unusual site. However, there were directional abrasions extending to the occiput that would indicate movement of the deceased head (or object causing the injury) at the time of its infliction.

Post mortem toxicological analysis detected a markedly elevated level of alcohol in the blood and vitreous humour (0.2% and 0.25% respectively). In addition benzodiazepines (Diazepam, Nordiazepam and Oxazepam) were also detected. A blood alcohol concentration in excess of 0.15% can cause considerable depression of the central nervous system. The central nervous system depressant effects of alcohol may be further potentiated by co-administration of benzodiazepines.

It is possible that the deceased was lying on the road in an intoxicated state prior to being run over.

There was no overt evidence of an assault. In particular there were no significant facial lacerations, bruising or nasal bone fractures.”²

¹ Autopsy report of Dr Heinrich Bouwer dated 29 January 2013

EVIDENCE AT INQUEST

12. The only oral evidence was that of Detective Senior Constable (D.S.C.) Shane Miles, of the Major Collision Investigation Unit, Glen Waverley. He expanded on his statement. He gave evidence of a series of videos made of “run-throughs” which were taken shortly after the accident. When those run-through videos were played it revealed that at the 80kph and 60kph, a vehicle of the type driven by the driver (a Nissan Patrol), which is relatively high, with headlights on low beam (as stated by the driver) and driving towards a human body in dark clothing and with dark hair, on the side of the road but protruding into the road, the driver would either not see the body at all or would see it when virtually on top of it, or would see it having just driven over it. D.S.C. Miles has very considerable experience in dealing with matters of this type. I accept the evidence he gave and accept his conclusions based on the run-throughs which were performed.
13. Mr Purcell’s family was represented by Counsel. There were some challenges to the evidence of D.S.C. Miles on the analysis based on the run-throughs, however, I ultimately fully accept that evidence. I also accept D.S.C. Miles’ evidence about the dynamics of the movement of the body being struck by a vehicle in circumstances such as this.
14. I accept Dr Bouwer’s medical assessment and the outcomes of the post-mortem.
15. Clearly, Mr Purcell’s alcohol and drug level was relevant to his behaviour on the night. The CCTV footage shown at the inquest, revealed him walking past a petrol station in a “trudging” fashion and it is reasonable to infer that he was affected by alcohol at the time, albeit that he was a seasoned drinker. The toxicology report disclosed a high BAC.
16. It is not possible to determine why Mr Purcell was lying on the road. Whether he sat down or lay down will never be known. He did not have injuries consistent with being assaulted. There is no reason to conclude that he intended to take his own life.
17. The family did not seek to call any expert evidence to provide any alternative theory as to how Mr Purcell died. I accept the analysis and assessment of D.S.C. MILES as to the manner and circumstances of the death as best they can be retrospectively described.

² Autopsy report by Dr Heinrich Bouwer dated 29 January 2013, page 15.

18. I note that there was a formal decision not to charge the driver, who was at all times highly cooperative with the police. Although the family was implicitly critical of this decision, in the light of the evidence, the decision was understandable.

COMMENTS

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

19. At the end of the inquest, Mr Schwartz on behalf of the family raised a question about whether I should make a comment about the driver. I have already indicated that I can understand why the driver was not charged.
20. Mr Schwartz said:- *“The only matter I wanted to raise with Your Honour, sir, is that I repeat what concern the family has about events, such as this whether a comment is appropriate and it has been urged on behalf the family that a comment should be made about circumstances where, on a country road such as this, an event occurs where an object is ridden over, there should be some comment made about the fact that in that event, by reason of the fact that there is a township not far from where the event occurred, it would be incumbent upon a driver to stop and make some observation to see whether anything adverse has occurred in such circumstances. It's a matter for you.”*³
21. I indicated to Mr Schwartz that if I was to make any adverse comment about driver I would have to give him the chance to be heard and to do so would need to resume the inquest.
22. I have considered whether it is appropriate to do this. Ultimately, I do not believe it appropriate to make an adverse comment about the driver. As I said at the time, it would be prudent for a driver in this situation to stop and check what he or she had driven over when the bump was unexpected, and could not be immediately explained. As a matter of ordinary curiosity, it would be understandable to go back and check. However clearly the driver was not aware that he might have struck a human being on the road; he actually thought he may have struck a tree branch.
23. While it would be reasonable to expect a driver to go back and double check what he or she had driven over, it would not be fair to adversely criticise this driver or his passenger. Given the physical circumstances, and the evidence of the run-throughs, I accept that it was not

³ Inquest transcript page 83.

possible for the driver of this vehicle on that dark stretch of road to see a figure lying partly on the road dressed in dark clothing, with dark hair, before he made contact with it. The objective circumstances, as demonstrated by the retrospective analysis conducted by D.S.C. Miles, leave me satisfied that an adverse comment would not be justified. In short, I do not criticise the driver or the driving. Mr Purcell's death was an accident. The driver could not have seen him and it will never be known why Mr Purcell was on the road.

I extend my condolences to Mr Purcell's family.

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

Family of Mr Richard Purcell

Mr Aaron Shwartz - Barrister

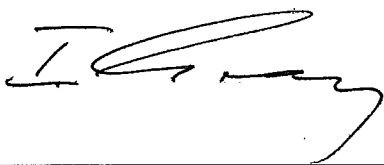
D/LSC Shame Miles – Major Collision Investigation Unit, Glen Waverley

Mr William Griffiths – Taylor Splatt and Partners

Ms Tina Kouvelas – Total Claims Solutions Pty Ltd

Leading Senior Constable Tania Cristiano – Police Coronial Support Unit

Signature:



JUDGE IAN L GRAY
STATE CORONER

Date: 14/1/15

