

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2010 / 4416

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: YAZMINA MICHELINE ACAR

Delivered On: 30 November 2015

Delivered At: Coroners Court of Victoria
65 Kavanagh Street, Southbank

Hearing Dates: 21 October 2015

Findings of: JUDGE IAN L GRAY, STATE CORONER

Police Coronial Support Unit Leading Senior Constable R Antolini

I, JUDGE IAN L GRAY State Coroner, having investigated the death of Yazmina Micheline Acar

AND having held an inquest in relation to this death on 21 October 2015
at Melbourne

find that the identity of the deceased was YAZMINA MICHELINE ACAR

born on 23 November 2007

and the death occurred 17 November 2010

at the Greenvale Reserve area

from:

1 (a) ACUTE BLOOD LOSS AS A RESULT OF STABBING INJURIES

in the following circumstances:

Summary

1. Approximately 6.15 pm on Wednesday, 17 November 2010, Mr Ramazan Kerem Acar (Mr Acar), was in attendance at his ex-fiancé's home, situated in Hallam. Mr Acar's attendance was in breach of a current intervention order. Shortly after being requested to leave the address, Mr Acar stated to his ex-fiancé Ms Rachelle Olivia D'Argent (Ms D'Argent), that he intended to drive their daughter, Yazmina Micheline (Yazmina), to a local milk bar to purchase a Kinder Surprise chocolate for her.
2. Yazmina was seated in Mr Acar's vehicle at this time, and playing games with Mr Acar. At this point, he drove from the address, allegedly in an erratic manner. Over the ensuing hours, Mr Acar repeatedly contacted Ms D'Argent by both telephone call and short message service text messages, initially making excuses as to his whereabouts to justify why he had not returned Yazmina, however eventually these communications became suggestive of the fact that he did not intend to return Yazmina at all, and in fact intended to kill her.
3. At approximately 11.30 pm on 17 November 2010, Mr Acar was taken into custody by police in the Epping area. He subsequently directed investigators to a reserve in Greenvale area, where a child's body was located. Inquiries revealed this child to be Yazmina.

Background

4. Yazmina was born on 23 November 2007, at the Dandenong Hospital. Yazmina was the first and only child of the union of Ms D'Argent and Mr Acar.
5. Yazmina was described as a normal, healthy child, who developed at the expected rate and reached all developmental milestones within the appropriate timeframes.

6. Yazmina commenced her life residing in the Narre Warren area, however moved to Meadow Heights at approximately 7 months of age. At this time she was enrolled at the Roly Poly Early Learning Centre in Gladstone Park. She remained enrolled at this facility for approximately five months, prior to being enrolled at the Broadmeadows Multicultural Early Learning Centre. In June or July 2010, Ms D'Argent and Mr Acar ceased cohabitating. At this time, Ms D'Argent relocated to the Hallam area, where she and Yazmina moved into rental accommodation in Hallam. Yazmina attended Amberly Park Drive Child Care and Early Learning Centre from this time. Her last attendance was on the day of her death.
7. Yazmina was described as an active, intelligent and engaging child, who was deeply loved.
8. Yazmina was killed by her father. The death took place against the background of a tense and volatile relationship between her mother and her father. In that context there were a number of engagements with Victoria Police and there is a clear family violence dimension to this case.
9. The death was investigated within the context of the Court's Victorian Systemic Review of Family Violence Deaths (VSRFVD)¹. The criteria for inclusion in the Review are:
 - a. the death was caused, directly or indirectly, by an offender through the application of assaultive force or by criminal negligence;
 - b. the relevant parties (deceased and offender) were or had been (at any point in time) in an intimate or familial relationship as defined by the *Family Violence Protection Act 2008* (Vic); and
 - c. there was evidence of a history of family violence between the deceased and offender as defined by the *Family Violence Protection Act 2008* (Vic).
10. Yazmina's mother and father had originally met as teenagers in Melbourne. They maintained a relationship, involving some separations and a degree of conflict and tension. However in March 2007 Ms D'Argent became pregnant with Yazmina. Although originally, believing he was too young to be a father, Mr Acar was said to have become "*elated with the idea of becoming a father of the little girl*"².

¹ The VSRFVD provides assistance to Victorian Coroners to examine the circumstances in which family violence deaths occur. In addition, the VSRFVD collects and analyses information on family violence-related deaths. Together this information assists with the identification of systemic prevention-focussed recommendations aimed at reducing the incidence of family violence in the Victorian community.

² Inquest transcript pg. 6

11. However significant problems occurred within the relationship leading to the need to engage police and the courts.

12. I set out below the history of family violence occurrences:-

August 2010

Relationship between Ms D'Argent and Mr Acar ends.

12 September 2010

Ms D'Argent made a complaint against Mr Acar in relation to criminal damage to Constable Glen James at Narre Warren Police Station. Statement obtained by Constable Jenny McCulloch.

Application and Warrant of Intervention Order granted by afterhours Magistrate. Warrant faxed to Broadmeadows Police.

13 September 2010

Senior Constable (SC) Michael Soloma served and executed the Application and Warrant on Mr Acar.

Mr Acar was bailed with conditions to Dandenong Magistrates court on 16 September 2010.

16 September 2010

An Intervention Order was issued at Dandenong Magistrates Court.

17 September 2010

An Intervention Order was served on Mr Acar at Broadmeadows Police Station by Constable Alison Heap.

27 September 2010

Constable James' file relating to 12 September 2010, was forwarded to Broadmeadows Police State with a request for Mr Acar to be interviewed.

28 September 2010

Ms D'Argent reported a breach of intervention order in relation to receiving text messages from Mr Acar (the date of the alleged offence was 25 September 2010) to SC Lisa Carroll at Narre Warren Police Station.

Constable James' file is received at Broadmeadows Police Station.

30 September 2010

Ms D'Argent reports a breach of the intervention order in relation to receiving text messages from Mr Acar (date of alleged offence, 29 September 2010) to Constable Dilbar Singh at Narre Warren Police Station.

14 October 2010

SC Carroll's file was forwarded to Broadmeadows Police Station.

15 October 2010

SC Carroll's file is received at Broadmeadows Police Station.

Mr Acar is taken into custody and interviewed at Broadmeadows Police Station by Leading Senior Constables (LSC) Christina Wallis and SC Soloma. Mr Acar was interviewed in relation to SC Carroll and Constable James' matters.

At this time Mr Acar admitted to the breaches and attempted to justify his actions due to his desire to have contact with his daughter, Yazmina.

Mr Acar was released pending enquires.

19 October 2010

SC Carroll and Constable James' files were returned to Narre Warren Police Station.

25 October 2010

Constable Singh submits telephone record requests regarding 30 September 2010 incident.

16 November 2010

Constable Singh's file was forwarded to Broadmeadows Police Station.

17 November 2010

The death of Yazmina. Mr Acar was arrested, interviewed and remanded into custody on a single count of murder.

18 November 2010

Constable Singh's file is received at Broadmeadows Police Station.

1 July 2011

Following a plea of guilty, Mr Acar is sentenced to life imprisonment with a non-parole period of thirty three years by Her Honour Justice Curtain.

13. As part of the investigation, I examined the police compliance with requirements under the Victoria Police Family Violence Code of Practice when responding to family violence incidents.
14. I accept the assessment of Detective Senior Constable (DSC) Scott Jones, in his memo to the Coroners Court dated 19 July 2013 that:
*"Essentially in September/October 2010 the requisite procedures to be adopted when incidents such as those reported by Rachelle D'Argent were brought to the attention of police, were followed by all police members involved. On 12 September 2010 Constables' James and McCulloch acted completely appropriately at the time the report was made. The statement, family violence brief of evidence, relevant LEAP reports and applications and warrant for intervention order were all compiled and submitted."*³
15. DSC Jones gave a detailed account of the police response to the actions on 13 September 2010, the serving of the intervention order on 17 September 2010 and the explanation of its contents to Mr Acar, and the handling of a complaint by Ms D'Argent to the Narre Warren

³ Coronial Assistance file - Memo from Detective Senior Constable Scott Jones – 19 July 2013

Police Station about a breach of the intervention order. Statements were taken and relevant LEAP reports were made as required.

16. The only issue in relation to Victoria Police arose from the fact that SC Carroll and Constable Singh of the Narre Warren Police Station, who received the reported breaches, were not in a position to travel to Meadow Heights where Mr Acar was living (to arrest and interview Mr Acar). The protocol at the time was that the file was to be forwarded to the nearest police station – Broadmeadows. Some of the alleged offending in relation to the breach reported on 28 September was of an indictable nature – the offences were alleged to have been committed on 12 September 2010. Mr Acar was not interviewed until 15 October 2010.

17. As is conceded in the memo prepared by DSC Jones:

“Had the reporting members interviewed Mr Acar, it may well be that he would have been charged on that date, (15 October 2010) potentially breached a bail undertaking entered into on 13 September 2010, (with reference to the James/McCulloch matters) and a Bail Justice may have then become involved. Further, had all three informants (James, Carroll and Singh) been fully aware of each other’s files, it may have also lead to the situations being handled differently.”⁴

18. DSC Jones went on to state:

“...there is absolutely no evidence to suggest that had any of these files be handled differently, that the outcome on 17 November 2010, would have been any different. Further if Acar had been remanded on 15 October 2010, there is no evidence to suggest that by 17 November 2010 he would still have been in custody.”⁵

19. I accept that it could not be inferred that even if Mr Acar had been remanded into custody on 15 October 2010, he would still have been in custody on 17 November 2010, or sentenced on a non-custodial basis.

20. At my request, LSC Antolini, who provided me with very constructive assistance in the case, prepared a document setting out the relevant police policy at the time of the family violence incidents. As previously noted, Mr Acar was interviewed by Broadmeadows police on 15 October 2010. This was a consequence of the reported breach on 30 September 2010. Mr Acar admitted breaches of the intervention order and tried to justify his actions. He was released by police pending further inquiries. As already stated, even if he had been remanded in custody at that point, it cannot be inferred that he would not have been at liberty on 17 November 2010, the day he killed his daughter.

⁴ Coronial Assistance file - Memo from Detective Senior Constable Scott Jones – 19 July 2013

⁵ Coronial Assistance file - Memo from Detective Senior Constable Scott Jones – 19 July 2013

21. The relevant policy provisions are set out in Exhibit 4. I set below those applicable at the time, and the current policy and practice.

“Victoria Police policy

The Victoria Police members involved were guided by the following policies as they were in September and October 2010:

- *The Code of Practice for the Investigation of Family Violence.*
- *The relevant Victoria Police Manual – Policy Rules.*
- *The relevant Victoria Police Manual – Procedures and Guidelines.*

The Code of Practice for the Investigation of Family Violence then (2010) and current, in relation to Contravention of an Intervention Order.

Then (2010) –

The Code of Practice for the Investigation of Family Violence August 2004

The Code of Practice for the Investigation of Family Violence August 2004 was the applicable code as of September and October 2010.

4.2.1 Pro Arrest Policy

Arrest of an offender is based on the evidence available.

4.6.2 What police do if they detect a breach

4.6.2.1 If alleged offender is at the scene

If there are no other apparent criminal charges involved and no immediate action is necessary to ensure the safety of the Aggrieved Family Member or to protect property, police must still take appropriate action. This may mean pursuing charges for the breach by charge and summons.

4.6.2.2 If alleged offender is not at the scene

Regardless of the seriousness of the alleged breach, police must conduct a thorough investigation to identify and locate the offender.

When the offender is located they must be interviewed regarding the alleged breach. Police must then pursue one of the criminal options.

Current (2015)

The Code of Practice for the Investigation of Family Violence – 3rd Edition. Edition 3 v2 2014.

The Code of Practice for the Investigation of Family Violence 3rd Edition, Edition 3 v2 2014 is the current applicable Code.

4.3.1 Pro-arrest and pro change

Similar to the original version, although more descriptive and precise in detailing the options available.

4.8 Contravention of a FVIO or FVSN

Similar to the original version although includes new powers and legislation strengthening Victoria Polices’ powers when dealing with Family Violence related matters.

Includes amendments made in 2013 of the Family Violence Protection Act 2008 to include the introduction of three indictable offences for contravention of FVSN or FVIO.

The offence of persistent contravention of notices and orders Section 125A of the Act could have been considered if available in 2010.

4.8.2 What police do if a contravention is reported

4.8.2.1 If accused person is at scene

Similar to the original version, although more descriptive and precise in detailing the options available.

4.8.2.2 Investigation

Similar to the original version, although more descriptive and precise in detailing the options available.

One relevant change is investigation and interview for a contravention offence should occur within 24 hours.

Of note 4.2.5 Specialised investigative Response

Although included in previous update Edition 2. The original Code of Practice August 2004 does not mention when the CIU must either take responsibility for, or actively oversee an investigation.

Further the current Code specifically mentions stalking, including by Technology where edition 2 only specifies stalking. As stated, the original Code remains mute on this point.

Family Violence Teams (Current)

Role:

- *Immediate specialist response to a family violence incident*
- *Secondary response unit in support of primary units*
- *Proactive investigations and case management of recidivist offenders, repeat AFM's and high risk clients*
- *Investigation of criminal offences (including breach of intervention orders)*
- *Applications for intervention orders*
- *Making appropriate referrals for all parties*
- *Provide an expert point of reference, advice and assistance to other police members*
- *Identify, implement and co-ordinate proactive strategies*
- *Develop and maintain partnerships with external agencies and support services.*

Charter:

Family Violence Teams manage recidivist Aggrieved Family Members and respondents.

Welfare risk assessment in first 48 hours of all family violence matters reported.”⁶

22. The document also set out the counselling that had been provided to Mr Acar, and provided the following information:-

⁶ Exhibit 4

“Counselling attended by Ramazan

Ramazan attended two formal counselling services. Positive Lifestyle Counselling Services, Dandenong and Kildonan Unity Care Male Family Violence Counselling.

Positive Lifestyle Counselling

Ramazan attended Positive Lifestyles Counselling Service Dandenong between 23 February and 25 March 2009. Ramazan’s employer was concerned about Ramazan’s life style and attitude to work and suspended him from work for two weeks with no pay until he sought counselling. Ramazan and Rachelle attended the first three appointments together and positive progress had been achieved. Prior to the scheduled fourth visit, 25 April 2009, Ramazan had assaulted Ms D’Argent on 22 April 2009 resulting in an intervention order being granted and Ramazan moving back to his parents’ house in Broadmeadows. Ramazan did not attend any further sessions in Dandenong due to his relocation.

Kildonan

Ramazan attended Kildonan Family Violence Intervention Program between 19 May 2009 and 4 November 2009. Ramazan completed all seven sessions of the program prior to attending Court on 19 November 2009, for his assault charge against Ms D’Argent from 22 April 2009.

Ramazan had a further session scheduled for 15 December 2009 to discuss participation in a 12 week Men’s Behaviour Change Program.

On 19 November 2009, at the Dandenong Magistrates’ Court, Ramazan was found guilty of recklessly cause injury. He was sentenced to 2 months imprisonment the sentence is wholly suspended for 12 months pursuant to section 27 of the Sentencing Act 1991. The Magistrate took into account the following reasons for his disposition. Reasons: working and supporting victim and their child. Also attending counselling with Uniting Care at Men’s Behaviour Change Program.

Although Ramazan was scheduled to commence the Men’s Behaviour Change Program with Kildonan in the 15 December 2009, he did not attend this session. It appears the sentencing Magistrate may have taken into account Ramazan’s current and ongoing involvement with Kildonan and not ordered that Ramazan attend the Men’s Behaviour Change Program as part of the sentence.

Ramazan did not re-attend Kildonan after his court appearance on 19 November 2009, therefore he did not participate in any aspect of the Men’s Behaviour Change Program.”⁷

23. I accept the summary of the documents set out in paragraphs 21 and 22 above, I also accept the evidence of DSC Jones on the matters referred to in his memorandum to the Court dated 19 July 2013. In particular I note the development of the Family Violence Units and the “First 48” program within Victoria Police. As he noted there was “Casey Family Violence Unit in operation at the time of the incident, however as he put it, it was in its infancy and has been developed and improved since that time.”⁸

⁷ Exhibit 4

⁸ Coronial Assistance file - Memo from Detective Senior Constable Scott Jones – 19 July 2013

24. I do not comment adversely on any of the police actions. Generally there was compliance with requirements that applied at the time. The delay in interviewing arising from the serious September breach of the intervention order was noted and accepted by police. The fact that Mr Acar was interviewed was strictly compliant with the requirements of 4.6.2.2 of the Code of Practice titled "*if an alleged offender is not at the scene*". However the delay represented a lost opportunity to bring Mr Acar to account for that breach. As I have said earlier, it is a matter of speculation whether an earlier interview, even if combined with arrest and remand in custody, would have affected the tragic outcome.
25. In relation to interventions intended to influence Mr Acar's behaviour, I conclude that he was appropriately referred to programs for that purpose. His most intensive participation was in 2009 and ended approximately one year before the death. It is clear that the programs he attended had no ultimate impact on his behaviour. That fact does not in any sense imply a criticism of those who conducted the programs and who sought to influence Mr Acar in a positive way.
26. At his trial for murder, Mr Acar admitted to thirty one prior convictions. A psychiatric report was prepared and submitted by Dr Danny Sullivan. Dr Sullivan was of the view that Mr Acar has a "*mixed personality disorder with borderline antisocial and narcissistic traits*".⁹ Dr Sullivan was of the opinion that there was no sign of significant cognitive impairment, no indication of psychotic illness or psychotic systems apparent at the time of the offence (the killing of his daughter) although "*Ramazan may have had some depressive symptoms*".¹⁰
27. Dr Sullivan stated in evidence at the Supreme Court that at the time of the offence Mr Acar appeared to have been consumed with hatred for his ex-partner and a desire to punish her for restricting access to his daughter. There were in his view, no psychotic elements to his behaviour at the time, although Mr Acar was clearly intoxicated with alcohol. Dr Sullivan agreed at trial that this was "*an overwhelming picture of a man who had become so consumed with punishing his ex-partner that everything else fell by the wayside.*"¹¹
28. In sentencing Mr Acar, Justice Curtain said:
"Further you committed this murder with the worst possible motives, revenge and spite. You killed you daughter to get back at her mother. You used your daughter, an innocent victim, as the instrument of your overarching desire to inflict pain on your former partner. This

⁹ Exhibit 4

¹⁰ Exhibit 4

¹¹ Exhibit 4

murder occurred in the context of a relationship which had at times, been violent, where intervention orders were in place and where you were serving the operation period of a suspended sentence in respect of an assault on Ms D'Argent.”¹²

29. These powerful sentencing remarks need no elaboration from me in describing the motivation behind the death of Yazmina.
30. It is clear, and I formally find, that Ramazan Acar caused the death of his daughter, Yazmina.

I extend my condolences to the family of Yazmina.

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

Ms Rachelle D'Argent, Senior Next of Kin

Mr George Apap

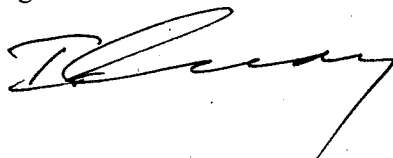
Detective Senior Constable Scott Jones, Victoria Police

Ms Belinda McMaster, Victoria Police

Mr Bernie Geary, Child Safety Commissioner

Leading Senior Constable Remo Antolini

Signature:



JUDGE IAN L GRAY
STATE CORONER

Date: 30/11/15.



¹² Sentencing comments of Her Honour Justice Curtain