IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2017 4222

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)
Section 67 of the Coroners Act 2008

Findings of:	Simon McGregor, Coroner
Deceased:	**Agostino Cutugno**
Date of birth:	13 December 1959
Date of death:	23 August 2017
Cause of death:	I(a) Small bowel perforation I(b) Small bowel obstruction I(c) Intra-abdominal adhesions
Contributing factors:	Status post remote self-inflicted stab wounds to abdomen, gastrointestinal haemorrhage, hepatic cirrhosis, atherosclerotic and hypertensive cardiovascular disease
Place of death:	St Vincent's Hospital Melbourne 41 Victoria Parade, Fitzroy, Victoria

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INTRODUCTION

1. Agostino Cutugno was a 57-year-old man who was a prisoner at the time of his death.

2. Mr Cutugno's health began to decline around June 2017. In August 2017 he became acutely unwell and was admitted to St Vincent's Hospital in Melbourne on 15 August 2017. His condition deteriorated and he passed away on 23 August 2017.

PURPOSE OF A CORONIAL INVESTIGATION

3. Mr Cutugno's death was reported to the coroner as he was a 'person placed in custody or care' for the purposes of the *Coroners Act 2008* and his death was therefore a 'reportable death'.

4. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.

5. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.

6. The Coroner's Investigator, Senior Constable Laurence Shanahan of Victoria Police, prepared a coronial brief in this matter. The brief includes statements from witnesses including family, the forensic pathologist who examined Mr Cutugno and treating clinicians. Further materials was provided by Corrections Victoria and St Vincent's Health Melbourne.

7. After considering all the material obtained during the coronial investigation I determined that I had sufficient information to complete my task as coroner and that further investigation was not required. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity.

8. I have based this finding on the evidence contained in the coronial brief. In the coronial jurisdiction facts must be established on the balance of probabilities.[1]

9. In considering the issues associated with this finding, I have been mindful of Mr Cutugno's basic human rights to dignity and wellbeing, as espoused in the *Charter of Human Rights and Responsibilities Act 2006*, in particular sections 8, 9 and 10.

CIRCUMSTANCES IN WHICH THE DEATH OCCURRED

10. Mr Cutugno was diagnosed with an intellectual disability at an IQ of 55 and had a long history of mental health issues, which at one point led to an attempt to take his own life by stabbing himself in the abdomen.[2] He generally was unable to live alone and was cared for by other members of his family.[3]

11. Mr Cutugno briefly lived in an assisted living facility in 2014, but was evicted a short time later after assaulting another resident.[4]

12. On 29 August 2014 Mr Cutugno was arrested and remanded in custody for armed robbery. He would remain in custody for the rest of his life and he arrived at Fulham Correctional Centre (FCC) on 2 July 2015.[5]

13. In June 2017 Mr Cutugno's health began to decline and he required a four-wheel walker. At around this time there was a cognitive assessment with a visiting psychiatrist as there were concerns about Mr Cutugno's memory and mental status.[6]

14. On 4 August 2017 Mr Cutugno was transferred from FCC to Central Gippsland Health Service (CGHS) at Sale Hospital. He was acutely unwell, pale and hypotensive with a distended abdomen.[7]

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1 This is subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

2 Statement of Dr David Fenn dated 5 February, Coronial Brief.

3 Statement of Heather Cutugno dated 21 November 2017, Coronial Brief.

4 Ibid.

5 Statement of Heather Cutugno dated 21 November 2017, Coronial Brief ; Statement of Dr Maithri Goonetilleke (undated), Coronial Brief.

6 Statement of Dr Maithri Goonetilleke (undated), Coronial Brief.

7 Ibid.

15. A CT scan performed at CGHS found a small bowel obstruction with transition point in the distal ileum. Mr Cutugno was admitted to hospital and treated conservatively. As of 6 August, the bowel obstruction appeared to be resolving.[8]

16. However, around this time Mr Cutugno became febrile and was suffering significant knee pain. His doctors became concerned that he may have septic arthritis in his knee and transferred him to Latrobe Regional Hospital (LRH) for examination.[9]

17. The staff at LRH concluded that he did not have septic arthritis, but were concerned by black stools. They performed a gastroscopy which revealed erosive gastritis. On 8 August they discharged Mr Cutugno directly to FCC with plans for further investigations in 6-8 weeks.[10]

18. Mr Cutugno was kept in the medical ward at FCC for several days. His condition worsened on 12 August 2017 and he was taken back to CGHS by ambulance.[11]

19. At CGHS he was found to be mildly tachycardic with a very low haemoglobin level. He received a blood transfusion and an infusion of proton pump inhibitors and was admitted to the Critical Care Unit.[12]

20. Over the next days his bleeding appeared to stabilise. On 14 August 2017, there was a plan to undertake a gastroscopy and colonoscopy the following day to determine the site of bleeding. An abdominal x-ray was performed which showed free gas under the diaphragm, indicating bowel perforation. A CT scan confirmed this finding.[13]

21. Mr Cutugno was deemed too high a risk for surgery at a country hospital as he was likely to require Intensive Care support post-surgery and there was limited capacity for this at CGHS. He was transferred to St Vincent's Hospital Melbourne (SVHM) for emergency surgery.[14]

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[8] Letter from Dr Joyce Ma to La Trobe Regional Hospital dated 6 August 2017, CGHS Medical Records.
[9] Ibid.
[10] Letter from Dr Subanki Rajanayagam to Ann Breddels dated 9 August 2017, LRH Medical Records.
[11] Statement of Dr Maithri Goonetilleke (undated), Coronial Brief.
[12] CGHS Medical Records.
[13] Ibid.
[14] Statement of Dr Wei Ming Ooi dated 24 January 2018, Coronial Brief; Statement of Dr Suhan Baskar dated 25 June 2018, Coronial Brief.

St Vincent's Hospital Melbourne

22. Mr Cutugno arrived at SVHM at approximately 12.30am on 15 August 2017.[15]

23. SVHM staff contacted Mr Cutugno's sister-in-law Heather Cutugno by phone and obtained consent to perform a laparotomy.[16]

24. The laparotomy showed a small bowel obstruction with transition point in the distal ileum, as in the CT scan at CGHS on 4 August. Additionally, SVHM staff noted two small bowel perforation sites. As the perforation sites were away from the transition point and the segment of small bowel appeared viable, the perforation sites were repaired primarily.[17]

25. Mr Cutugno was transferred to the Intensive Care Unit (ICU). Over the following 24 hours he had an increasingly distended abdomen and developed further bleeding. A CT angiogram confirmed an active intra-abdominal bleed within Mr Cutugno's small bowel.[18]

26. At some point on 15 August 2017 Heather and other family members attempted to visit Mr Cutugno. They were advised by prison officers that they were not allowed to visit him at that time and were not permitted to enter the ICU.[19]

27. It appears that prison officers gave Mr Cutugno's family information to the effect that they would not be able to visit Mr Cutugno until he had been in hospital for seven days. What exactly was communicated is unclear, but Heather recalls being given this information and progress notes taken by a nurse that day corroborate her account.[20] Corrections Victoria do not have any record of this interaction or of the family's attempt to visit on that day.[21]

28. On 16 August 2017 SVHM staff obtained consent for angio-embolisation of the small bowel from the hospital Chief Medical Officer. SVHM recorded that they made two attempts to contact Heather by phone but were unable to reach her.[22]

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[15] Statement of Dr Wei Ming Ooi dated 24 January 2018, Coronial Brief.
[16] Consent Form dated 15 August 2017, SVHM Medical Records.
[17] Statement of Dr Wei Ming Ooi dated 24 January 2018, Coronial Brief.
[18] Ibid.
[19] Email from Heather Cutugno to the Court dated 22 March 2018; Progress Note of CNS Suzanne de Graaf entered at 6.06pm on 15 August 2017, SVHM Medical Records.
[20] Ibid.
[21] Letter from Rod Wise to the Court dated 7 May 2019.
[22] Consent Form dated 16 August 2017, SVHM Medical Records.

29. The surgery was performed and Mr Cutugno was returned to the ICU, where he remained intubated and sedated throughout that day and the following day.[23]

30. On 18 August 2017 Mr Cutugno was extubated. He was delirious and agitated and showed signs of sepsis. The ICU registrar contacted Heather to update her on Mr Cutugno's condition and discuss end-of-life care.[24]

31. The family decided that they wished for Mr Cutugno to be pain-free from this point onward. They were able to visit Mr Cutugno in hospital on a daily basis and Heather played him his favourite music by his bedside.[25]

32. Mr Cutugno passed away in hospital in the evening of 23 August 2017.[26]

IDENTITY AND CAUSE OF DEATH

33. On 25 August 2017, Mr Cutugno's identity was confirmed by a comparison of his right thumb fingerprint to the print held on record for Agostino Cutugno, born 13 December 1959. Identity is not in dispute and requires no further investigation.

34. On 28 August 2017, Dr Joanna Glengarry, a Forensic Pathologist practising at the Victorian Institute of Forensic Medicine, conducted an autopsy upon Mr Cutugno's body and reviewed a post mortem computed tomography (CT) scan. Dr Glengarry completed a report, dated 12 September 2017, in which she formulated the cause of death as '*small bowel perforation complicating small bowel obstruction arising from intra-abdominal adhesions. Gastrointestinal haemorrhage and cirrhosis are considered contributory factors*'.

35. Dr Glengarry concluded that Mr Cutugno's death had resulted from a natural disease process. However, she noted that she could not conclusively identify a cause for Mr Cutugno's intra-abdominal adhesions, but raised the possibility that his past self-inflicted abdominal stab wounds necessitating a splenectomy may have been causative.

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[23] Statement of Dr Wei Ming Ooi dated 24 January 2018, Coronial Brief.
[24] Ibid.
[25] Statement of Heather Cutugno dated 21 November 2017, Coronial Brief.
[26] Ibid.

36. I accept Dr Glengarry's opinion as to the medical cause of death and, in accordance with subsection 52(3B) of the *Coroners Act 2008*, I consider that this death was due to natural causes.

COMMENTS

Review of care

37. In order to consider whether Mr Cutugno received appropriate medical treatment, this matter was referred to the Health and Medical Investigation Team (HMIT) of the Coroners Prevention Unit (CPU).[27]

38. The HMIT noted a number of challenges which Mr Cutugno's treating physicians faced regarding communication and continuity of care. Over the period of 4 August 2017 to 23 August 2017, Mr Cutugno's care was moved between locations five times and he was seen by a number of teams. Due to Mr Cutugno's cognitive disability, he had difficulty conveying his own medical history to those treating him, compounding each new team's difficulties in understanding his situation.

39. Nonetheless, the HMIT concluded that Mr Cutugno's medical and nursing teams overcame these challenges and provided reasonable care in a timely manner.

Consent for treatment

40. Mr Cutugno's cognitive disability and his family's inability to see him during his first several days in hospital raised concerns about whether proper consent was obtained for his treatment.

41. In response to these concerns, SVHM supplied a statement from Legal Counsel Donna Filippich dated 6 May 2019 along with copies of policies and guidelines.

42. Ms Filippich advised that SVHM had considered the surgeries performed on 15 and 16 August 2017 to be 'emergency treatment'. 'Emergency treatment' was defined as '*urgent treatment*

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[27] The Coroners Prevention Unit (CPU) was established in 2008 to strengthen the prevention role of the coroner. The unit assists the Coroner with research in matters related to public health and safety and in relation to the formulation of prevention recommendations. The CPU also reviews medical care and treatment in cases referred by the coroner. The CPU is comprised of health professionals with training in a range of areas including medicine, nursing, public health and mental health.

required to save a patient's life, prevent serious damage to the patient's health or prevent the patient from suffering or continuing to suffer significant pain or distress'.[28]

43. Due to Mr Cutugno's medical state at these times, he was unable to provide consent to treatment himself. On 15 August 2017 consent was obtained from Heather Cutugno by telephone. On 16 August 2017 SVHM staff were unable to make contact with Heather Cutugno and consent was provided by the Chief Medical Officer.

44. The Consent for Treatment Policy in place at the time provided that, where consent cannot be obtained from the patient or from a Person Responsible, the Chief Medical Officer is to provide consent.[29]

45. Having considered the materials provided by Ms Filippich along with the circumstances of Mr Cutugno's treatment, I find that SVHM acted appropriately in seeking consent in a situation where emergency treatment was required.

Family access to prisoner patients at SVHM

46. As discussed above, Mr Cutugno's family attempted to visit him in the ICU on 15 August 2017 but were turned away by correctional staff.

47. Prisoners are treated at St Vincent's Hospital mainly in St Augustine's ward, a ten-bed secure ward primarily for acute patient care. It is managed in partnership between G4S (the private company which operates Port Phillip Prison) and St Vincent's Correctional Health Service. St Vincent's staff are responsible for medical and nursing management while Port Phillip Prison Correctional staff are responsible for security and correctional management.[30]

48. The *Corrections Act 1986* provides that every prisoner has the right to receive at least one non-contact visit which is to last at least half an hour in each week.[31] Port Phillip Prison's Operational Instruction at the time of Mr Cutugno's death allowed for one 60-minute visit per week for prisoners in St Augustine's ward.[32]

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[28] Letter from Donna Filippich to the Coroners Court of Victoria dated 6 May 2019.
[29] Ibid.
[30] Port Phillip Prison Operational Instruction no 56 (version dated 7 August 2018).
[31] *Corrections Act 1986* s 47(1)(k).
[32] Port Phillip Prison Operational Instruction no 56 (version dated 20 April 2017) 56.9.

49. Mr Cutugno's situation is complicated by the fact that, at the time of his family's attempted visit on 15 August 2017, he was not located in St Augustine's ward but was being treated in the Intensive Care Unit.

50. Ms Filippich has provided information on SVHM's policies with respect to visitors to prisoner patients in the Intensive Care Unit:

'*The doors to the ICU are secured with access only possible for visitors through notice to reception staff or the intercom system. Visitors are asked what patient they are visiting. If they are visiting a prison patient, they are directed to present to the G4S prison officers located on St Augustine's ward for security clearance. All visitors for prisoners must be approved by G4S. Once cleared, they are escorted to the ICU by G4S officers.*'[33]

51. This process appears reasonable and that it is appropriate for SVHM to refer the question of admitting visitors for prisoner patients in the ICU to correctional staff.

52. Deputy Commissioner Rod Wise of Corrections Victoria has provided the following information about processes at St Augustine's ward relating to ICU visits:

'*Prisoners in ICU/HDU [High Dependency Unit] cannot have visits between 9am-11am & 4pm-6pm. All visits to ICU/HDU must be cleared by ICU/HDU unit manager .... Visitors must be processed via normal process at St Augustine's then escorted to ICU by correctional staff.*

Exceptions can be made to the above points if the prisoner's illness is life threatening. Consultation is to be made with St Augustine's medical staff, ICU/HDU unit manager, and escalated to St Augustine's Supervisor, Accommodation 3 Manager or Duty Manager for after-hours approval.'[34]

53. That Operational Instruction requires that visitors to prisoners on St Augustine's ward book their visits 24 hours in advance and contact St Augustine's ward on the day of their visit confirming their attendance and confirming that the prisoner is still in that location.[35]

54. It is uncertain why G4S correctional officers turned Mr Cutugno's family away on 15 August 2017, but it may have been due to their not having booked their visit 24 hours in advance. Strict adherence to this requirement would have made it impossible for family to visit until 24

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[33] Letter from Donna Filippich to the Coroners Court of Victoria dated 6 May 2019.
[34] Letter from Rod Wise to the Coroners Court of Victoria dated 7 May 2019.
[35] Ibid.

hours after Mr Cutugno's admission to SVHM. There is no information as to whether attempts were made to escalate the issue to obtain special approval in an emergency situation.

Medical communication and decision-making

55. During his treatment at St Vincent's, Mr Cutugno's condition often made him unable to make medical decisions. However, even at times when he was lucid, his cognitive disability would have limited his insight into his own condition and his ability to make his own medical decisions.

56. This issue had effects on the ability of medical and nursing staff to provide treatment in the time leading up to his death. When he was transferred between services, his difficulties in effectively communicating his condition and history impaired the ability of health services to provide him the best possible treatment.

57. Although this did not lead to any deficiencies of care in Mr Cutugno's case, the situation raises concerns for other prisoners who may be in similar situations in the future.

58. In circumstances where a prisoner has limited ability to communicate and understand their own health conditions, family or other carers may be able to assist treating health practitioners in understanding the nature and history of the prisoner's health issues.

59. In part they will be able to rely on their own independent knowledge of the prisoner's medical state and history, but it will often be helpful or necessary for them to see and (if possible) speak with the prisoner.

60. These issues become more significant when the prisoner lacks decision-making capacity. In such a case, a health practitioner must obtain decisions regarding care from the prisoner's 'medical treatment decision maker' in accordance with the *Medical Treatment Planning and Decisions Act 2016*. The criteria in that Act will often result in a carer or family member being placed in this position.[36]

61. The current policies and procedures regarding prisoners being treated at SVHM do not ensure that families or carers will be able to see unwell prisoners on short notice. I recognise that there is room for correctional staff to make exceptions, and Deputy Commissioner Wise has written that '*I have reminded all prison General Managers of the importance of family in*

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[36] *Medical Treatment Planning and Decisions Act 2016* (Vic) s 58.

these circumstances and to exercise discretion when it comes to the number of visits prisoners with end of life illness are afforded'.[37]

62. I also recognise the importance of managing the risks inherent in visits to prisoners even in cases where prisoners are dangerously unwell.

63. However, I consider that the importance of allowing family or carers to have access to prisoners who may have difficulty communicating their own medical state and history cannot be left simply up to discretion, especially as this issue is most crucial in times of medical emergency. For this reason, I will make a recommendation to Corrections Victoria that they put in place policies to ensure this is always possible.

FINDINGS

64. Having investigated the death, without holding an inquest, I make the following findings pursuant to section 67(1) of the *Coroners Act 2008*:

    (a) The identity of the deceased was Agostino Cutugno, born 13 December 1959;

    (b) The death occurred on 23 August 2017 at St Vincent's Hospital Melbourne from small bowel perforation complicating small bowel obstruction arising from intra-abdominal adhesions; and

    (c) The death occurred in the circumstances described above.

RECOMMENDATION

1. I recommend that **Corrections Victoria** develop procedures to ensure that, where prisoners have cognitive disabilities or communication difficulties, their families and carers are promptly granted access to visit them during times when those prisoners require medical care, and that Corrections Victoria engage with G4S to ensure that these procedures are put in place for prisoners being treated at St Vincent's Hospital.

Pursuant to section 73(1A) of the *Coroners Act 2008*, I order that this finding be published on the internet.

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[37] Letter from Rod Wise to the Coroners Court of Victoria dated 7 May 2019.

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

(a) Ms Heather Cutugno, senior next of kin;

(b) Corrections Victoria;

(c) St Vincent's Hospital Melbourne;

(d) Justice Health;

(e) Central Gippsland Health;

(f) Chief Medical Officer, Latrobe Regional Hospital;

(g) Justice Assurance and Review Office;

(h) Senior Constable Laurence Shanahan, Victoria Police, Coroner's Investigator.

Signature:

SIMON McGREGOR

CORONER

Date: 30 August 2019