



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2017 004281

FINDING INTO DEATH WITHOUT INQUEST¹

Form 38 Rule 63(2)

Section 67 of the Coroners Act 2008

Findings of:	Judge John Cain, State Coroner
Deceased:	Dustin Buckley
Date of birth:	19 January 2000
Date of death:	27 August 2017
Cause of death:	1(a) Gunshot wound to the head
Place of death:	Royal Melbourne Hospital, 300 Grattan Street, Parkville, Vic, 3052

¹ This Finding has been de-identified by order of Judge John Cain which includes an order to replace the names of the people under the age of 18 at the time of the death, with pseudonyms for the purposes of publication.

INTRODUCTION

1. On 27 August 2017, Dustin Buckley was 17 years old when he died at the Royal Melbourne Hospital (**RMH**). At the time of his death, Dustin lived at Nayook, Victoria, with his family. He is survived by his sisters Raelene, Rebecca, Naomi and Nina. He held various jobs after leaving school, including working on a dairy farm, pest and weed control, planting pine trees and a carpentry apprenticeship.

THE CORONIAL INVESTIGATION

2. Dustin's death was reported to the coroner as it fell within the definition of a reportable death in the *Coroners Act 2008* (**the Act**). Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.
3. 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.
4. 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.
5. Victoria Police assigned Detective Senior Constable Vin Schalken to be the Coronial Investigator for the investigation of Dustin's death. The Coronial Investigator conducted inquiries on my behalf, including taking statements from witnesses – such as family, the forensic pathologist, treating clinicians and investigating officers – and submitted a coronial brief of evidence.
6. This finding draws on the totality of the coronial investigation into the death of Dustin Buckley including evidence contained in the coronial brief. 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. In the coronial jurisdiction, facts must be established on the balance of probabilities.²

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Identity of the deceased

7. On 27 August 2017, Dustin Buckley, born 19 January 2000, was visually identified by his father, David Roy Buckley.
8. Identity is not in dispute and requires no further investigation.

Medical cause of death

9. Forensic Pathologist Dr Heinrich Bower, from the Victorian Institute of Forensic Medicine (VIFM) conducted an autopsy on 30 August 2017 and provided a written report of his findings dated 18 December 2017.
10. At autopsy, there was a gunshot entry wound on the right side of the forehead with the wound path extending superficially across the right side of the brain, slightly upwards and outwards. A metallic projectile was retrieved within the brain at the time of autopsy. There was no exit wound. Fine gunpowder tattooing/stippling was present immediately below and towards the midline of the entry wound. With this in mind, Dr Bower noted that the pathological range of discharge was considered immediate range. He further noted that the wound morphology and other evidence of firearm discharge may have been altered given the amount of time between the time of the incident and the time the wound was examined at autopsy. The wound was also sutured by medical staff, which may have further altered the morphology.
11. The deceased underwent internal organ retrieval at the RMH immediately after he was pronounced dead. The heart was subsequently returned to the VIFM as it was deemed not suitable for transplantation due to subepicardial haemorrhage. Cardiac valves were however retrieved for donation purposes. Histological examination of the heart confirmed acute subepicardial haemorrhage without significant vital reaction. There was no evidence of subepicardial haemorrhage at the time of organ retrieval and Dr Bower therefore opined that

² 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.

the cause of the haemorrhage is unknown and was most likely an artefact of the retrieval or transplantation process.

12. There was no significant disease detected that may have caused or contributed to the death.
13. Toxicological analysis of post-mortem samples identified the presence of lignocaine. Toxicological analysis of ante-mortem samples detected midazolam, ketamine, lignocaine, morphine and its metabolite codeine, paracetamol and fentanyl. These were administered by treating medical practitioners.
14. Dr Bower provided an opinion that the medical cause of death was *gunshot wound to the head*.
15. I accept Dr Bower's opinion.

Circumstances in which the death occurred

16. On 26 August 2017, Dustin was collected from his home by his friend, KD and KD's cousin, Daniel McConnell. The trio went driving in Daniel's four-wheel drive and returned to KD's home at about 8.00pm. The trio stayed the night at KD's home.
17. At about 12.30pm the next day, the trio travelled to Cat Track, Neerim East, in Daniel's vehicle. They all took firearms with them; two of which were registered in KD's mother's name, and one which was registered in Daniel's name. At the time, Dustin had an expired junior firearms licence, KD held a junior firearms licence and Daniel held an adult firearms licence. The group also brought a discarded television with them.
18. The group arrived at Cat Track at about 1.30pm and set up the television so that they could practice shooting it. At some point, KD and Dustin started shooting at one another's feet and into nearby puddles, trying to splash water onto the other person. Daniel reportedly warned the pair to stop, however Dustin stood near the television whilst KD fired about ten shots into it.
19. The trio eventually returned to Daniel's vehicle, where KD loaded a .22 calibre Savage branded rifle with four bullets. He fired the rifle several times, later claiming to police that he believed he had fired all four bullets, before laying the rifle on the bonnet of the vehicle. KD claimed that Dustin picked up the rifle by the barrel and pointed it towards his own head. KD then reported that he grabbed the rifle by the barrel near the magazine, he attempted to take the rifle from Dustin and during this time the rifle discharged, shooting Dustin in the head.

20. Daniel advised he did not see Dustin being shot and only heard a muffled shot followed by KD saying “*I’ve hit Dustin*” or words to that effect. Daniel observed Dustin stand up and tell them that he thought he had been hit by an electric fence. Dustin was bleeding from his head wound, so KD and Daniel attempted to stem the bleeding and drove him to the Neerim District Soldier’s Memorial Hospital (NDSMH).
21. KD and Daniel told staff at NDSMH that they were out yabbing when Dustin was hit by a ricocheting bullet and that they did not have any firearms in their possession. The pair had conversations with several other witnesses and provided the same story they provided to NDSMH staff. They also told these witnesses that the incident occurred in an area known as Memory Lane, Neerim South.
22. Paramedics attended NDSMH and transported Dustin via air ambulance to the RMH. Upon arrival at the RMH, Dustin was unconscious and unresponsive. The treating team at the RMH determined that Dustin’s injuries were not survivable and commenced palliative care. After brain death was confirmed, his family graciously agreed to donate his organs.

POLICE INVESTIGATION AND CRIMINAL PROSECUTIONS

23. KD and Daniel initially provided police with the story they gave to staff at NDSMH as outlined above. They directed police to a location known as ‘Big Dam’ in Memory Lane, Neerim South, about nine kilometres from Cat Track. KD told police that they were looking for yabbies, they heard gunshots in the area and Dustin was shot by an unknown person. KD admitted that he did have a .243 calibre rifle with him at the time but claimed that it had not been fired by any of them on the day of the incident.
24. Police investigated these claims and were unable to find any physical evidence to corroborate the version of events provided by KD and Daniel. The pair attended Warragul Police Station on 27 August 2017 and provided further information. In his first statement, KD stated that the group heard about 16 gunshots, some of which sounded close, and some sounded further away. KD and Daniel were walking ahead of Dustin when KD heard another gunshot. When he turned around, he observed a red dot on his head. Upon inspection, he believed this was a gunshot wound so the pair provided first aid and transported Dustin to NDMSH.

KD’s version of events

25. KD was arrested by police in the early hours of 28 August 2017. During this interview, he told police that the trio were target shooting in the area known as Big Dam, off Memory Lane

and only had two firearms with them – a Savage brand .22 calibre rifle and the .243 calibre rifle. KD explained that Dustin fired one shot at a tree at a distance of about 20 metres, which hit a rock and ricocheted back at him, hitting him in the head. He conceded that he told police a false story when they were at Big Dam the previous day.

26. When KD was further interviewed, he told police that Dustin being shot was an accident and that everything he had previously said was a lie. He explained the group were shooting at a discarded television at Cat Track, he loaded four bullets in the .22 Savage rifle, fired the rifle several times and believed the rifle was empty. He then placed the rifle on the bonnet of Daniel's vehicle. He advised that Dustin picked up the rifle, pointed it towards his own head but did not pull the trigger. When he and Dustin were laughing and joking around, KD grabbed the rifle and it fired, hitting Dustin in the head. When police asked which person actually pulled the trigger, KD stated that it was him and not Dustin.
27. Police attended KD's home where they seized the .22 Savage branded rifle, and a Browning branded .22 rifle. Police also examined Daniel's vehicle and collected blood swabs and ammunition.
28. KD accompanied police to the location at Cat Track where the incident reportedly occurred. He performed a re-enactment of the incident and police collected further blood swabs and ammunition. Ballistics experts tested the seized rifles and concluded that the projectile removed from Dustin could have been fired from a Savage .22 rifle or another rifle with the same number, width and direction of twist and land grooves, and similar barrel characteristics. The tests also indicated that the muzzle of the Savage .22 rifle was more than 20cm but less than 55cm away from Dustin's temple at the time it discharged.
29. On 19 September 2018, the Homicide Squad undertook a further interview with KD. During this interview, KD advised that shortly before placing the rifle on the bonnet of Daniel's car, he cycled the bolt and relied on his hearing to be satisfied that the rifle was empty. He did not visually inspect the rifle and did not pull the trigger when Dustin was shot.

Daniel's version of events

30. On 27 and 28 August 2017, Daniel made several statements to police; one written statement and three audio-video recorded 'significant witness' statements. In his first written statement, Daniel stated that the trio travelled to Big Dam, off Memory Lane and arrived at about 1.30pm. At this time, they heard gunshots in the distance. At about 1.45pm, he and KD were walking

back towards the vehicle when they heard another gunshot. When KD and Daniel turned around, they observed Dustin on the ground, who told the pair that he thought he had been hit by an electric fence. He told police that the .243 calibre rifle that was with them on the trip remained in his vehicle for the entire time and was not discharged.

31. In his subsequent ‘significant witness’ statements, Daniel provided a different version of events. He admitted that the group had two .22 calibre rifles with them and KD fired both of those rifles. He claimed that when Dustin was shot, he heard KD say “*I’ve hit Dustin*” or words to that effect. He explained that the incident occurred at Cat Track, and not at Big Dam as he previously claimed and conceded that he and KD made an agreement to tell police that Dustin had been hit by a ricocheted bullet and that there were other, unknown, shooters in the area.
32. Daniel reported that KD and Dustin had been shooting at each other’s feet and into nearby puddles, trying to splash each other with water and shot more than 15 rounds between the pair. He claimed that he had his back to the others when he heard a shot which sounded “*a half-powered, half-quiet, muffled shot*”. He then heard KD say, “*I fucked up, I fucked up*” and “*I’ve killed him, I’ve killed him*”.
33. Daniel was arrested by police on 19 September 2018 and was interviewed again. He told police that on the day of the incident, he used his own .22 calibre rifle whilst KD used his .22 and .243 calibre rifles. Dustin also used KD’s .22 calibre rifle. He again confirmed the pair formed a pact to claim that Dustin had been hit by a ricocheted bullet and conceded that he had failed to adequately supervise KD and Dustin, as the holder of junior firearms licences.

Criminal prosecution

34. KD and Daniel were both originally charged with manslaughter, reckless conduct endangering life, reckless conduct endangering serious injury, perverting the course of justice and perjury. Daniel pleaded guilty to a charge of attempting to pervert the course of justice, for which he was convicted and sentenced to an 18-month adjourned undertaking. KD pleaded guilty to reckless conduct endangering life and attempting to pervert the course of justice, for which he was convicted and sentenced to a three-year community corrections order and ordered to perform 200 hours of unpaid community work.

CPU REVIEW

35. To understand the prevalence of deaths that occurred in circumstances similar to that of Dustin's, I requested the Coroners Prevention Unit (CPU) research deaths that have been reported to the Court since 1 January 2000. The CPU located 33 unintentional firearms deaths from 1 January 2020 to mid-2024. Among the 33 cases, there were four (including Dustin's death) that met the following criteria:
- a) The death was unintentional
 - b) The death was caused by a firearm
 - c) The death was caused by an individual other than the deceased
 - d) At least one of the individuals involved was displaying irresponsible behaviour with the firearm in the period immediately prior to the death.
36. All four cases involved young men. Three, including Dustin, were younger than 18 years old and resulted from irresponsible behaviour with a firearm. Only one death definitively involved individuals who had been using alcohol or drugs prior to the fatal incident. None of the cases appeared to involve individuals who had a history of animosity or violence towards each other.
37. Three of the four cases involved some element of irresponsible behaviour or poor supervision on the part of an adult. One case involved a minor finding an unsecured firearm on his father's rural property which ultimately caused his death. Another minor was killed by a friend who was waving around an unregistered firearm owned by his father. The third was Dustin's case.
38. The CPU concluded that deaths occurring in circumstances similar to that of Dustin were not commonplace, however they were deeply distressing and potentially preventable.

FAMILY CONCERNS

39. Following conclusion of the criminal proceedings and upon reviewing the brief of evidence, Dustin's family wrote to the Court to express some concerns about the criminal proceedings and evidence that did not form part of the criminal brief. These concerns are summarised below:

- a) Dispute over the trajectory of the bullet and that it was not consistent with him being accidentally shot whilst he wrestled for the rifle with KD, as it appeared to have been fired on a level plane.
- b) KD allegedly had a history of pointing firearms at other people and pulling the trigger. He allegedly did the same to Dustin in the past which was captured on a Snapchat video, however this was not taken into account during the criminal proceedings. Dustin's family asserted that had this video been considered as part of the criminal proceedings, it would have led to a manslaughter conviction for KD.
- c) Even if KD did point the firearm at Dustin's head, the family noted that police told them that such an act did not automatically permit police to charge KD with manslaughter as there is no offence of pointing a weapon at a person. They requested that I make a recommendation to create such an offence to be added to the *Crimes Act 1958* (Vic) and/or the *Firearms Act 1996* (Vic).
- d) Why KD and Daniel were not tested for drugs and alcohol after the incident and why it is not a requirement under the relevant act for police to test for drug and alcohol intoxication after a firearms incident. Dustin's family suggested that I make a recommendation for legislative change, namely, that all people involved in a firearms incident must be drug and alcohol tested, and that any licenced supervisor of a junior licence holder must be required to undergo drug and alcohol testing in the event of an incident.
- e) Belief that the initial response by Victoria Police was inappropriate and that this provided KD and Daniel with additional time to delete video footage from Dustin's phone and fabricate stories.
- f) Why KD and Daniel were not charged with firearms offences and should have been made prohibited persons, and suggested I recommend legislative changes to ensure that one licence shooter should only be permitted to supervise one junior licence holder at a time.

Victoria Police response to family concerns

- 40. Victoria Police were provided with an opportunity to respond to the family's concerns as outlined above.

Trajectory of bullet

41. Police explained that a thorough criminal investigation was undertaken, including a re-enactment and input from a ballistics expert. Police concluded that there was a strong possibility that when the bullet was fired, Dustin's head was pointed downwards, whilst the bullet was fired at a corresponding upwards trajectory. This may give the impression that the bullet travelled on a level plane.

Manslaughter charges

42. Police considered manslaughter charges for both KD and Daniel, and these matters were referred to the Office of Public Prosecution (**OPP**) for review. However, after careful consideration, a decision was made not to proceed with these charges. The sentencing judge in KD's matter commented that a manslaughter charge would have been difficult to prove in his case.
43. As outlined above, it is not the role of the coroner to lay blame or apportion civil or criminal liability. I cannot critique the decisions made by Victoria Police or the OPP with respect to charging a person with an offence. Similarly, I cannot determine the appropriateness of the evidence that was deemed admissible or inadmissible during KD's criminal proceedings. If the sentencing judge made an error of law, the most appropriate response would involve an appeal to a higher court. The Court does not and cannot interfere in such matters.

Conduct of Victoria Police's investigation post-incident

44. Victoria Police explained that in the immediate aftermath of the incident, KD and Daniel left NDMSH prior to police arriving on scene. Police first spoke to KD at 3.18pm on the day of the incident and he remained in the company of police until about 4.30pm the next day after his interview was concluded. During that time, police seized his clothing, firearms and ammunition, and his house was searched. He accompanied police to the offence location twice (the first one being false) and took part in a formal re-enactment with police. Daniel was treated as a witness on 27 August 2017 and provided statements to police prior to his release. His vehicle was also searched, and ammunition was seized.
45. As KD and Daniel did not call 000 and instead transported Dustin to hospital, police were not immediately notified of the incident. Once they *were* notified of the incident, they took immediate steps to speak to KD and Daniel and obtain relevant evidence. I am satisfied that police responded appropriately to the incident, within the confines of the situation they were

confronted with. Unfortunately, there was an opportunity for KD and Daniel to create a false narrative, as police were not immediately called to the incident scene. I have not identified any prevention opportunities with respect to the police investigation.

Why KD and Daniel were not charged with firearms offences; did not become prohibited persons

46. Victoria Police explained that they conducted a thorough search of the *Firearms Act* and the *Firearms Regulations 2018* (Vic) but were unable find any offences which may have been applicable to KD or Daniel. Victoria Police noted that there is already a power in the *Firearms Act* to prevent someone from holding a firearms licence if they have not displayed the appropriate level of responsibility in handling firearms which has resulted in a fatality or injury. The Chief Commissioner of Police may suspend or cancel a licence where a person is no longer considered a fit and proper person or for a variety of reasons pursuant to Part 2, Division 9. The Chief Commissioner can also make a firearm prohibition order for 10 years for an adult (five years for those under 18) pursuant to section 112D of the *Firearms Act*. This can restrict a person from acquiring, possessing, carrying or using a firearm.
47. Victoria Police was similarly unable to find a provision under the *Firearms Act* or the *Firearms Regulations* that places a legal burden on an adult to adequately supervise junior licence holders when they possess or use firearms. Victoria Police's website recommends that adult licence holders who supervise juniors remain within one metre of the junior and pay close attention to them in all instances where they are in possession and/or use of a firearm.

Legislative changes

48. Victoria Police explained that suggested changes to the *Firearms Act* and/or the *Crimes Act* to introduce an offence for pointing a firearm at someone's head, to drug/alcohol test individuals involved a firearms incident and changes to the supervision of junior firearms licence holders are matters for the Coroner to consider.
49. With respect to pointing a firearm at someone's head, Victoria Police opined that section 23 of the *Crimes Act* (conduct endangering persons) suitably covers the act of pointing a firearm at a person. Section 23 states that "a person who, without lawful excuse, recklessly engages in conduct that places or may place another person in danger of serious injury is guilty of an indictable offence". This is the section under which KD was charged. I agree with Victoria Police's submission. Sections 16-18, 22-24 of the *Crimes Act* cover a wide array of situations

in which a person's conduct (whether reckless, intentional or negligent) causes harm to a person, and these are sufficient to cover KD's conduct in this situation.

50. Victoria Police did not oppose legislative change to implement a more specific offence, however explained that they would need to see how the provision would be drafted before confirming support. Victoria Police noted concerns that there may be some issues in relation to how close an individual would need to be to the incident to be captured by such a provision. I accept that this may be a nuanced and complex issue and may require consultation with various stakeholders.
51. With respect to alcohol and drug testing, Victoria Police confirmed that there is no current power for police to compel a person to be drug and alcohol tested following a firearms incident, hence this was not performed on KD and Daniel. Section 132 of the *Firearms Act* prohibits a person from using or carrying a firearm whilst under the influence of drugs or alcohol. Victoria Police did not oppose legislative amendments to permit drug and alcohol testing of people involved in a firearms incident.
52. As these are complex issues and that will likely require input from several interested parties, I am of the view that it would be appropriate to review the current legislative framework and consult with appropriate bodies to determine the appropriateness of any such changes. I intend to make a recommendation to the Attorney-General to that effect.

FINDINGS AND CONCLUSION

53. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:
 - a) the identity of the deceased was Dustin Buckley, born 19 January 2000;
 - b) the death occurred on 27 August 2017 at Royal Melbourne Hospital, 300 Grattan Street, Parkville, Vic, 3052, from *gunshot wound to the head*; and
 - c) the death occurred in the circumstances described above.

RECOMMENDATIONS

Pursuant to section 72(2) of the Act, I make the following recommendations:

- (i) That the **Attorney-General** consider amendments to *Crimes Act 1958* (Vic), *Firearms Act 1996* (Vic) and/or the *Firearms Regulations 2018* (Vic) to address the following issues:
- a) Creation of an offence prohibiting the pointing of a firearm at another person's face/head.
 - b) Changes to the supervision of junior firearms licence holders so that an adult licence holder can only supervise one junior licence holder at one time.
 - c) Requirement for a person involved in a fatal or serious firearms incident to undergo mandatory drug and alcohol testing.

I convey my sincere condolences to Dustin's family for their loss.

Pursuant to section 73(1A) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

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

David and Ruth Buckley, Senior Next of Kin

Coby Buckley

DonateLife Victoria

Royal Melbourne Hospital

The Hon. Sonya Kilkenny, Attorney-General

Detective Senior Constable Vin Schalken, Coronial Investigator

Signature:



Judge John Cain
State Coroner
Date: 28 January 2025

NOTE: Under section 83 of the *Coroners Act 2008* ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.
