



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

COR 2011 2487

**In the matter of the investigation into the death of Brenda Goudge**

**Ruling on the Application of Paul Callaway under section 57 *Coroners Act 2008***

### **Introduction**

1. During the course of the Inquest into the death of Brenda Goudge Mr Paul Callaway, an interested party in this proceeding, has made an application to be excused from giving evidence. On Tuesday 26 April 2016 his Counsel, Mr Shane Gardener provided written submissions in support of his application. Further oral submissions were heard on Monday 2 May 2016.
2. Brenda Goudge was found deceased at her home, under the pool blanket in her swimming pool on the morning of 8 July 2011. Her body was discovered by her daughter, Rebecca Goudge and Mr Callaway, Mrs Goudge's business partner, when they attended her house to look for her after she failed to arrive at work on the morning of 8 July 2011.
3. Following an extensive investigation into her death by Victoria Police Homicide squad there was insufficient evidence to charge any one individual. The circumstantial evidence led investigators to focus particular interest on Mr Callaway and he has been named as the 'primary' suspect.
4. As this death is a suspected homicide, I am required to hold an inquest into Mrs Goudge's death (section 52(2) (a) *Coroners Act 2008*).
5. Section 67 *Coroners Act 2008* sets out the findings I must make, if possible, and they are the identity of the deceased person, the cause of death and the circumstances of the death. I also have a preventative role under the Act, which does not have relevance in this case.
6. Whilst I am prevented from making any statement in a finding or a comment that a person may be guilty of an offence, I do have direction from the Court of Appeal<sup>1</sup> that I must undertake investigations to lead to the identification of a person who may have caused the death.
7. The focus of the Inquest was firstly, to clarify aspects of the medical cause of death of Mrs Goudge. Secondly, it was to clarify the circumstances of her death and this includes the identification of person or persons causally involved in her death.

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<sup>1</sup> Priest v West & Anor [2012] VSCA 327

8. Currently the Inquest is hearing from the 27 witnesses and the Inquest is listed for a nine day hearing.

### **Section 57 Application**

9. Section 57 sets out the process to be followed where an objection on the grounds of self-incrimination is made.

10. Mr Callaway was sworn in the witness box on the afternoon of 2 May 2016 and has objected to giving evidence on the grounds of self-incrimination.

11. Once the objection is made by a witness, I must determine under section 57(2) whether there are reasonable grounds for the objection.

12. If I am satisfied there are reasonable grounds for the objection, then the process in section 57(3) must be followed.

13. Mr Callaway has been named in the summary in the coronial brief prepared by the coroner's investigator, Detective LSC Megan Adams as the 'primary' suspect.

14. I have considered the contents of the coronial brief, and the written submission by Mr Gardiner and the written submission by Mr Mandy for the Goudge family.

15. Both submissions support there being reasonable grounds for the objection. I take into account the circumstances of this case and the nature of the evidence Mr Callaway is being called to give.

16. I am satisfied there are reasonable grounds that there is a risk that the evidence of Mr Callaway may tend to prove the commission of an offence of murder and or offences against the Australian Taxation Administration Act 1953 (CW).

17. Pursuant to section 57(3), I advised Mr Callaway he need not give evidence unless required by me under s 57(4) and if he willingly gave evidence I would grant him a certificate under section 57(5). The effect of the certificate was that the evidence he gave cannot be used against him. He replied that he was not willing to give evidence. I subsequently advised that I would consider whether I should require him to give evidence under section 57(4).

18. I may require him to give evidence if I am satisfied the interests of justice require him to give evidence.

### **Mr Callaway's submission**

19. In written submissions Mr Gardener, Counsel on behalf of Mr Callaway submitted it was not in the interests of justice for him to be compelled to give evidence for the following reasons (summarised):

- Paragraphs (a), (b) and (c) recite the findings a coroner investigating a death must find, and two facts of the case.

- On the day Brenda Goudge's body was discovered, 8 July 2011, Mr Callaway gave a five page statement to police, accounting for his whereabouts and movements on the 7 & 8 July 2011 (paragraph (d));
- On 12 July 2011 he provided a 22 page statement to police detailing the same topic (paragraph (e));
- On 24 July 2012, he participated in a significant witness interview of 234 pages in which he again spoke of his movements over that period. He swore a statement adopting the contents of the interview as true and correct (paragraph (f));
- He has consistently maintained the same position regarding his whereabouts and any evidence he was required to give at Inquest would be consistent with the statements and interview he has already provided (paragraphs (g) & (h));
- His children aged 14 years will be impacted negatively by media reporting if he were to be required to give evidence (paragraph (i));
- If he were to be charged with murder in the future, evidence given in the inquest may impact or limit his forensic choices open to him at trial and a certificate will not protect against that prejudice (paragraph (j));
- The same argument applies if he were to be charged with tax related offences (paragraph (k));
- The fact he remains the main suspect despite his statements and interview indicates police do not believe his position and this exposes him to potential perjury charges were he be required to give evidence and a certificate will not provide protection for perjury charges (paragraph (l));
- If he were required to give evidence he would be cross examined on his credit and character: a coroner is prohibited from including in a finding any comment a person is guilty of a criminal offence ( s69(1) Coroners Act 2008) (paragraph (m));
- There have been no previous cases where a primary suspect in a murder investigation has been compelled to give evidence at an Inquest (paragraph (n));
- An article, 'The privilege against self –incrimination in Coroners' Inquests' by Dr Ian Freckleton, QC was cited, with various page references (paragraph (o));
- This is not a case where Mr Callaway's evidence would be relevant to any prevention issues as these considerations are not in issue in this Inquest (paragraph (p));

- A certificate will not protect Mr Callaway from a civil damages suit and Mr Adam Goudge has been quoted in *The Age* that he is seeking, at a minimum, to pursue civil action if no criminal charges are laid (paragraph (q)).

20. On 2 May 2016, in court, Mr Gardener adopted his written submissions.

**Submission by Mr Adam Goudge**

21. On 26 April 2016, Mr Mandy, Counsel for Mr Adam Goudge (Mrs Goudge's son) submitted written submissions as to why the interests of justice required Mr Callaway to give evidence.

22. He noted the following coronial duties: 'to pursue all reasonable lines of inquiry; to do anything possible to determine the cause and circumstances of death; to promote the administration of justice; to provide more answers for families as to what happened to their loved ones.'

23. He submitted that Mr Callaway is a relevant witness, being the first person, with Rebecca Goudge at the scene, the first to enter the house and the first to touch the deceased. Therefore, the Coroner and the family will be assisted by his evidence.

24. He made the following further submissions:

- The proper pursuit of the coronial investigative function is that all relevant witnesses should give evidence.
- A certificate will safeguard Mr Callaway's rights and he should be compelled to give evidence.
- He is an integral and first-hand witness who has already given detailed accounts on several occasions. This means his prospects for self-incrimination are 'insignificant' and the interests of justice require him to give evidence and he will be afforded the protection of a certificate.

25. In oral submissions made on 2 May 2016, Mr Mandy adopted his written submissions and added the following points in respect of Mr Gardener's submissions:

26. He further noted that some of the reasons submitted by Mr Gardener, at paragraph 18 (a) - (q) were narrative and not relevant to my consideration of the interests of justice. These included delay, and the impact the publicity of Mr Callaway giving evidence would have on his family.

27. Whilst paragraphs (d),(e),(f) & (g) related to the explanations Mr Callaway had given in his two statements and significant witness interview, Mr Mandy disputed the conclusion in paragraph (h), that any evidence Mr Callaway would be required to give would be consistent with the material already contained in the Inquest brief.

28. Mr Mandy submitted there were internal inconsistencies contained in that material noted in paragraphs (d),(e),(f) & (g) and the point of Mr Callaway giving evidence would be to test that through cross examination.
29. In respect to paragraph (k) Mr Mandy assured the court he had no interest in cross examining Mr Callaway regarding potential taxation/ fraud matters.
30. Mr Mandy disputed paragraph (l) whereby any person who was subsequently found to be guilty of an offence after having given evidence of their innocence could potentially be then exposed to perjury charges. The reality of this occurring was remote.
31. He noted paragraph (m) that the coroner is prohibited from including in a finding any comment that a person is or may be guilty of an offence.
32. He did however accept the contents of paragraphs (j), (n), (p) and (q).
33. In conclusion Mr Mandy submitted the public interest in this case is the resolution and investigation of unsolved murders and that Mr Callaway was a 'first hand witness', in that he was first at the scene, he touched the deceased and was the first to enter the house. Mr Mandy's submission was that Mr Callaway was a suspect as a result of his own conduct after the event, and that Mrs Goudge's family want to hear his explanations as to why he made the statements that he did and this will also benefit the court's investigation.

#### **Assessing the interests of justice**

34. I note I must undertake a balancing exercise of relevant and competing factors to determine whether the interests of justice require the compelling of Mr Callaway to give evidence.
35. I am obliged to take 'an evaluative assessment of the interests of justice.'<sup>2</sup> This involves balancing the privilege against self-incrimination as a 'fundamental freedom central to the criminal justice system' against the public interest in the resolution of unsolved murders.
36. I further note it is a longstanding approach of the coronial jurisdiction not to compel a witness to give evidence where it may prejudice their right to a fair trial or limit forensic choices available to them.
37. In the absence of express guidance in the Coroners Act as to the meaning of the expression 'interests of justice', I have regard to the subject matter, purpose and scope of the Act.
38. I also note s 57(4) permits compulsion only where the interests of justice require it, not merely because it would be highly desirable to hear the evidence.
39. This recognises the privilege against self-incrimination is a fundamental freedom that a person should be compelled only where the interests of justice clearly require it.
40. In the Hodsons ruling, the State Coroner Judge Gray concluded the following factors are relevant to determine whether the interests of justice required him to compel the two

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<sup>2</sup> Rich v Attorney General of NSW & Ors[2013] NSWCA 419

witnesses to give evidence. I adopt these factors and consider them in the context of this inquest.

### **The character and nature of the death under investigation**

41. Brenda Goudge's death is an unsolved homicide. The unforced entry to her house late at night supports the Victoria Police theory that she may have been killed by someone she was close to, by someone who knew her routine and was voluntarily admitted to the house by her, or was able to access the house through knowledge of the whereabouts of the spare key.
42. The manner of her death was violent and the lack of forensic evidence is suggestive of careful pre- planning.
43. There is always a public interest in solving murders in our community. The identification of a perpetrator is within the scope of this Inquest, and *Priest v West* requires me to pursue all reasonable avenues of inquiry to identify her killer.
44. Mr Mandy submitted the public interest in this case is the resolution and investigation of unsolved murders and that Mr Callaway was a 'first hand witness.'
45. I accept that this is probably the strongest factor in the balancing exercise of the interests of justice in favour of compulsion, that is, to identify the perpetrator of Mrs Goudge's death.

### **Evidence likely to be adduced from Mr Callaway**

46. Mr Callaway has not been charged but remains the primary suspect in Brenda Goudge's death.
47. He has not made any admissions to any involvement in her death and is likely to maintain that position.
48. It has been put that Mr Callaway's evidence will allow an opportunity to cross-examine him as to the inconsistencies in his statements and significant witness interview regarding, particularly regarding his movements on the evening of 7 July 2011.
49. I note Mr Callaway has already provided two statements and an interview as his explanation of his movements and whereabouts on the evening of 7 July 2011.
50. Mr Mandy has indicated his intention to cross examine Mr Callaway about the inconsistencies in his statements and interview.
51. I am of the view that this type of evidence is of less assistance to my inquiry and likely to be the subject of cross examination in any future criminal trial. An Inquest has a different purpose than a criminal trial.
52. Nevertheless, as Mr Callaway does not have an alibi for the night of 7 July 2011, he is the only person able to give evidence accounting for his whereabouts and actions on the evening of 7 July 2011.

### **Other evidence provided by Mr Callaway**

53. The two statements and the significant witness interview completed by Mr Callaway form part of the Inquest brief.
54. In addition, Mr Callaway has voluntarily provided Police with his mobile phone and computer, his clothes and shoes, and he has shown Detective Senior Constable Lenihan his bare leg to demonstrate a lack of injury. He voluntarily provided a DNA sample to Police and participated in the audio testing of his vehicles.
55. On 10 October 2012 he participated in a taped record of interview with Detective Sergeant Mark Hatt as a suspect and made a 'No comment' record of interview.
56. In his two statements and the significant witness interview he has given substantively the same account of his movements and whereabouts on the evening of 7 July 2011.
57. If he were compelled to give evidence it is likely he would give evidence consistent with that already contained in the Inquest brief.

### **Other means of obtaining the evidence**

58. Mr Mandy submitted that the evidence Mr Callaway would give is not available from other sources and he distinguished the facts in cases such as Tang where there was CCTV footage of the incident.
59. The Inquest brief contains statements from 65 witnesses, contains 89 exhibits (some subject to public interest immunity) and is in excess of 2900 pages.
60. The brief contains some circumstantial evidence against Mr Callaway. It contains no evidence of a forensic nature that implicates Mr Callaway and no direct witness evidence which implicates him in the death of Brenda Goudge.
61. There are however 19 more witnesses to give evidence at this Inquest which is now in day five. These witnesses include the coroner's investigator and Tim Miller who will give evidence regarding the analysis of Mr Callaway's phone on the evening of 7 July 2011 and the results of investigation concerning its location. I will hear from the Coroner's investigator whether there are any outstanding inquiries to be made.
62. There is no other direct source for the evidence as to Mr Callaway's actions and movements on the evening of 7 July 2011 except from Mr Callaway himself. He has already provided detailed explanations to Police regarding his movements and whereabouts on the evening of 7 July 2011.
63. However there is other evidence of his account of his actions on 7 July 2011 from witnesses such as his wife, Lisa Callaway, his brother and work colleagues. There are phone records detailing calls and texts from his phone with his wife on the evening of 7 July 2011. Rebecca Goudge was with Mr Callaway on the morning of 8 July 2011 has given

detailed evidence about the circumstances of them going to her house and discovering Mrs Goudge deceased.

**The significance of Mr Callaway's evidence in the context of the coroner's functions**

64. I note the preamble, purposes and objects as well as section 67 of the Coroners Act 2008 are relevant to my consideration in balancing the interests of justice.
65. Mr Callaway's evidence may assist to identify the perpetrator of Brenda Goudge's death. However his evidence is not relevant to my determining of the medical cause of Mrs Goudge's death, nor does the preventive focus of the Act play a role in this Inquest.

**The nature and extent of the risk to Mr Callaway and the seriousness of potential charges faced by him.**

66. I have found Mr Callaway had reasonable grounds to object to giving evidence on the basis he may incriminate himself with respect to the charge of murder and tax fraud charges.
67. Mr Mandy has submitted that as Mr Callaway has not been charged, this distinguishes his position from the witnesses in Hodson and Mr Tang's position in Chan.
68. Whilst Mr Callaway has not been charged, he is part of a small and finite number of people who have been intensely investigated by police. The police theory regarding Mr Callaway's 'demonstrated deceptive behaviour' as the primary suspect is detailed in the summary as follows:
- (i) Providing differing versions about his movements in the bedroom, assumedly because he believes he may be linked to the bedroom via forensic evidence;
  - (ii) Providing differing versions in regard to performing CPR on the Deceased;
  - (iii) Not disclosing his full involvement in purchasing and negotiating the Life Insurance Policy, in an apparent attempt to minimise his financial motive;
  - (iv) Withholding information regarding his movements on the morning of 8 July 2011;
  - (v) He had the interior of his motor vehicle UGB 763 extensively cleaned on 9 July 2011, to remove any forensic evidence transferred to his vehicle and withheld the information regarding the cleaning of his vehicle to avoid suspicion;
  - (vi) Refusing to participate in a polygraph and lying about advice provided to him by his psychologist in regard to his anxiety affecting the results of a polygraph.
69. Further, already during the course of evidence at the Inquest, Detective Senior Constable Lenihan has reiterated in evidence under oath his belief Mr Callaway deliberately contaminated the scene by entering the pool and placing his knee or hand on the bedhead.
70. The seriousness of the potential charge is a matter I am required to consider. The offence of murder is the most serious in the Crimes Act 1958.



71. A certificate pursuant to section 57 means that evidence and derivative evidence cannot be used against him in future criminal proceedings.
72. However, I accept Mr Gardener's submission, which was conceded by Mr Mandy, that by giving evidence, even with the protection of a certificate, the compulsion will restrict the forensic choices open to Mr Callaway were he to be charged with murder, and this amounts to a real prejudice.
73. If he were to give evidence, efforts will be made through his cross examination for him to give evidence beyond that contained in his statements and significant witness interview, to impact on his credit and character and this may place him at significant risk of being charged with murder.
74. The Victoria Police case theory has Mr Callaway as the only suspect and the present case against him is based on the nature of his prior relationship with Mrs Goudge, together with what he has said and done after Mrs Goudge's death.
75. There is a practice in the Coroners court of not calling a witness likely to be implicated in a serious crime. The public interest in compelling a witness to give evidence is reduced when the giving of evidence would incriminate the witness for murder.
76. I note in the article relied on by Mr Gardener by Dr Ian Freckleton QC, when outlining a number of considerations relevant for arriving at whether the interests of justice require a witness to be compelled to give evidence, states:  
'However, equal weight is not likely to be given to these considerations - the most important relate (and should relate) to the potential prejudice to a witness in future proceedings, in particular proceedings which relate to serious criminal charges.'<sup>3</sup>

### **Conclusion**

77. Whilst it would be desirable to hear from Mr Callaway, I am not positively satisfied the interests of justice require it.
78. I note Mr Callaway has given consistent accounts to Police of his movements on the evening of 7 July 2011 and thus the potential value of his evidence must be weighed against his risk facing a serious criminal charge. I balance this against the Court of Appeal in *Priest v West*:  
*'If, in the course of the investigation of a death it appears that a person may have caused the death, then the Coroner must undertake such investigations as may lead to the identification of that person.'* [2012] VSCA 327 at 3.
79. Whilst there is a strong public interest in the resolving of unsolved murders, the requirement of a coroner to 'undertake such investigations' as envisaged by the Court of Appeal does not mean that in each case involving an unsolved murder compulsion will be required. I am satisfied I am undertaking 'such investigations' through consideration of the contents of the

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<sup>3</sup> Freckleton, I, *The privilege against self-incrimination in Coroners' Inquests*, (2015) 22 JLM 491 at 505

brief, the gathering of additional material and the forensic examination of the evidence through the Inquest hearing.

80. The significance of the potential charge, together with the nature and utility of Mr Callaway's evidence combine for me to form the view that compulsion is not required in the interests of justice and Mr Callaway is excused him from giving evidence.

Caitlin English  
CORONER



3 May 2016

