

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2007 / 0957

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: BENJAMIN JASON PAPPAS

Delivered On:	10 December 2012
Delivered At:	Coroners Court of Victoria Level 11, 222 Exhibition Street, Melbourne, Vic, 3000
Hearing Dates:	22 September 2011
Findings of:	Judge Jennifer Coate
Representation:	Vanessa Nicholson, Avant Law, for Dr Michael Kozminsky
Police Coronial Support Unit	Sergeant Tracy Weir and LSC Kennedy
Family	In person

I, JUDGE JENNIFER COATE, Coroner, having investigated the death of BENJAMIN PAPPAS

AND having held an inquest in relation to this death on 22 September 2011

at MELBOURNE

find that the identity of the deceased was BENJAMIN JASON PAPPAS

born 13 May 1978, aged 28 years

and the death occurred between 4 March 2007 and 10 March 2007

at Victoria Dock, Docklands

from:

1 (a) CONSISTENT WITH DROWNING

in the following circumstances:

Summary overview:

1. On the afternoon of 2 March 2007, the body of Lynette May Phillips (“Lynette”)¹ was discovered in the Yarra River at Dight’s Falls, Abbotsford. Later that day, the discovery of her body was reported in several media outlets. Benjamin Pappas (“Ben”)² had been in a relationship with Lynette and she had been last seen alive in his company.
2. In the wake of the discovery of Lynette’s body, police investigators commenced trying to locate Ben in order to pursue their investigation into the circumstances in which her death occurred. Ben did not have any fixed address but was living variously with friends and family. During the days in the wake of the discovery of Lynette’s body, Ben was sleeping on the couch at the home of his longtime friend, Dominic Kekich.
3. On 3 March 2007, Ben attended the emergency department at the Alfred Hospital expressing thoughts of self harm. Ben was assessed and several hours later, he was released after he confirmed that these thoughts had subsided.

¹ See Coronial Finding : Lynette May Phillips: 0860/2007.

² The family advised that this is the form of address they wished for Ben during the Inquest and Finding.

4. On Sunday 4 March 2007, Ben spoke to a friend, who stated that he spoke with Ben about a news story relating to the discovery of Lynette's body. Later that day, Ben rang the Alfred Hospital Crisis Assessment and Treatment Team ("C.A.T. team") and requested a home visit at Dominic Kekich's place. Ben was described as in an agitated state at the time of this visit.
5. On the evening of 4 March 2007 Ben left Dominic Kekich's place around 10.30pm, stating he had found alternative accommodation. After leaving Dominic's home, Ben was not seen or heard from again by friends or family.
6. On Saturday 10 March 2007, Ben's body was found beneath a pier at Victoria Dock. It was the opinion of Victoria police investigators that Ben had killed Lynette and disposed of her body in the Yarra River before killing himself on or soon after 4 March 2007 in the wake of learning that her body had been discovered.³
7. Ben was the only suspect identified by police in their investigation into the death of Lynette Phillips. The police found no evidence of any other person involved in the death of Ben and no suspicious circumstances surrounding his death.

Background

8. Benjamin Jason Pappas was 28 years old at the time of his death. He grew up with his parents, Kerrie Bardot and Bill Pappas, in the Maribyrnong area until his parents separated in 1985. Ben had a brother, Tas Pappas, and two half brothers, Coco and Levi Nkrumah, who were born after his mother re-married.
9. Ben and his brother Tas were internationally renowned skateboard riders. From about age 13, Ben started to participate in tournaments and receive sponsorship. When Ben was 14, he and his brother Tas went to the United States to pursue skateboarding opportunities. In 1998, in a world cup event in the USA, Ben's brother Tas came first and Ben came second. At this time, the boys were primarily residing with their father who had also relocated to the USA.⁴ Between the ages of about 15 to 21, Ben spent most of his time living overseas.
10. During his time on the world skateboarding circuit, Ben was introduced to drugs including cocaine. In 1999, aged 21, Ben was detected trying to bring cocaine into Australia. As a result

³ See also the Findings for Lynette Phillips 860/ 2007

⁴ Statement of Kerry Bardot, Inquest Brief p.235

of this incident he lost his passport, which effectively ended his international career. Ben had been living in the USA at that time, and was reportedly devastated by not being able to return to his life there. Subsequent to this, Ben's drug use became more pronounced and he began using heroin.

11. After Ben's return to Australia in 1999, he married. The marriage lasted for approximately two years. Ben appeared to have a somewhat transient lifestyle from this point, staying with different friends, occasionally with his mother, or the father of his half-brothers, David Nkrumah.
12. In February 2005, Ben met Lynette Phillips. They began a relationship and about a month later, Ben moved into Lynette's flat. The relationship between Ben and Lynette featured a clearly documented history of family violence, with accounts provided of Ben's violent and controlling behaviour directed at Lynette.⁵ Aspects of this history are summarised below⁶ together with Ben's own history of substance abuse and mental health issues.
13. The evidence included details of physical and verbal abuse perpetrated by Ben against Lynette, and instances of Ben intentionally destroying Lynette's property.
14. Lynette had made several attempts to end her relationship with Ben, and from July 2006, she received the assistance of a family violence outreach worker.⁷ Lynette was supported to enter crisis accommodation and transitional housing, however over the course of several months, contact between Ben and Lynette occurred, and Ben later found out where Lynette was living. Police investigators believe Ben had been staying at Lynette's flat prior to her death.⁸
15. Lynette obtained an interim-intervention order against Ben in February 2006 following an incident that occurred at a party in which Lynette was physically assaulted and had her property damaged by Ben. This incident was not reported to the police. This order was

⁵ Inquest Brief, p.3

⁶ See also Finding into the death of Lynette Phillips : 0860/2007

⁷ Statement of Alison Baillie, Inquest Brief, p. 168

⁸ Inquest Brief, p.11

revoked on the return date of 23 March 2006 on Lynette's application.⁹ The reason entered in the court record is that Lynette hoped "they could work things out".¹⁰

16. A few months after this date another incident occurred which came to the attention of the police. On 6 July 2006, Ben was alleged to have become abusive and threatening toward Lynette at the Flinders Street Railway Station.¹¹ In the statement provided to police by Lynette at the time, she described herself as fearful of Ben, and scared that he would come after her and assault her.¹² As a result of this incident, police applied for an intervention order which was made on 11 July 2006.¹³ This prevented Ben from having further contact with Lynette, however the evidence indicates that contact continued to occur. This order was still in place at the time of Lynette's death.
17. Family violence was recognised by Ben's general practitioner, Dr Michael Kozminsky. Ben had known Dr Kozminsky for a period of seven years up until the time he died. During this period, Dr Kozminsky had treated Ben for both physical and mental health issues, as well as his drug use.
18. Through her association with Ben, Lynette had also become a patient of Dr Kozminsky. Dr Kozminsky gave evidence that Ben had an explosive temper and was controlling and dominating in his relationships.

Mandatory Findings

19. Section 67 (1) of the *Coroners Act 2008 (Vic)* sets out the mandatory matters a coroner must find if possible as distinct from the discretion a coroner has to make any comment or recommendations on any matter connected with the death including matters related to public health and safety or the administration of justice.
20. Section 67 provides that a coroner investigating a death must find if possible-
 - (a) the identity of the deceased;

⁹ Inquest Brief, Appendix V

¹⁰ Inquest Brief, Appendix X, Statement of Lynette Phillips, dated 6 July 2006

¹¹ Inquest Brief, Appendix X, Statement of Lynette Phillips, dated 6 July 2006

¹² Inquest Brief, Appendix X, Statement of Lynette Phillips, dated 6 July 2006

¹³ Inquest Brief, Appendix Z, Intervention Order, dated 11 July 2006

(b) the cause of death ; and

(c) the circumstances in which the death occurred

Identity of the deceased

21. The Victoria Police Forensic Services Department undertook a fingerprint match which established the identity of Ben.

Cause of death (S.67 (1) (b))

22. Ben underwent an autopsy performed by Dr Malcolm Dodd, Forensic Pathologist.¹⁴ As is common in circumstances where a person has drowned, Dr Dodd was unable to reach a firm conclusion about the medical cause of death being drowning. However, on post mortem examination of Ben, he found no evidence of any other cause or evidence of any other possible contributory factor. Dr Dodd stated that: *“The autopsy findings were in keeping with drowning however there are no absolute diagnostic signs identifiable at autopsy that would reliably lead to this conclusion.”*¹⁵

The circumstances in which Ben’s death occurred (s. 67 (1)(c))

Circumstances preceding Lynette’s death

23. On 24 February 2007, Lynette was contacted by a friend and invited to a nightclub. Lynette sought to include Ben in those arrangements. This was a period in which Lynette was struggling with her substance abuse issues.

24. At around 7.40pm that evening, Lynette spoke to an associate who requested she assist him to obtain amphetamines. He arranged to pick her up. Along the way, Lynette requested they collect Ben. A fourth associate was also collected and the parties drove to a location in Burwood to purchase amphetamines.

25. After the purchase, Lynette and Ben were driven back to Lynette’s flat at Balston Street, Balaclava. They arrived there between 10.30 and 11.00pm on the evening of 24 February

¹⁴ Autopsy report undated and unsigned by Dr Dodd was contained in the Inquest Brief p.49 - 58

¹⁵ Forensic medical report of Dr Malcolm Dodd, p.57 Inquest Brief. Dr Dodd’s opinion was consistent with the expert opinion of Dr Burke, forensic pathologist who gave evidence that there is no definitive test at autopsy for drowning. See transcript of evidence in Inquest of Lynette May Phillips, p.15

2007. Once home, Lynette contacted a needle exchange program run by the Inner South Community Health Service. Workers from the service met Lynette on the footpath outside her flat at about 10.30pm and provided her with clean syringes.¹⁶ This is the last known sighting of Lynette alive.

26. During the hours of 11.36pm on 24 February and 2.39am on 25 February 2007, thirteen calls were made from Lynette's mobile phone to Bevan Davison, a friend of Ben's.¹⁷ None of these calls were answered. Between 11.40 on 24 February and 2.16am on 25 February 4 calls were made from Lynette's phone to the phone of her friend Frances Blake, with whom she had been earlier in the evening. None of these calls were answered.¹⁸ No calls were made from Lynette's mobile from 2.39am until 5.01am when a call was made to Ben's brother, Coco Nkrumah. This call lasted about 70 seconds.¹⁹ No further calls were made from Lynette's phone after this time. Numerous calls were made to Lynette's phone after 2.39am but none of these were answered.
27. There is no evidence of any person either having seen or spoken to Lynette after 24 February 2007. Attempts to contact her by friends and family from 25 February 2007 onward were unsuccessful.

Discovery of Lynette's body and subsequent events

28. On the afternoon of Friday 2 March 2007 at about 2.45pm, Lynette's body was discovered immersed in water at Dight's Falls, Abbotsford, by a passerby. Police and emergency services attended the scene to carry out the retrieval.
29. Once removed from the water, it was evident that Lynette's body had been wrapped in a blue doona cover and weighted down with a backpack which contained two 4 kilogram dumbbells in it.²⁰ These items had previously been seen in Ben's possession.²¹

¹⁶ Inquest Brief, p.5

¹⁷ Inquest Brief, p.5; Statement of Bevan Davison, Inquest Brief, p.122

¹⁸ Inquest Brief, p.5

¹⁹ Coco Nkrumah states that he did not speak to Ben at this time, Transcript, p.116

²⁰ The doona cover that Lynette was found wrapped in was identified by Dominic Kekich as one that he had given Ben Pappas some months earlier. Kekich was able to produce the matching pillow cases that he still had at his apartment.

²¹ Inquest Brief, p.9

30. Numerous media units arrived while the retrieval was in process, and later reported the story on television, radio and on-line media sites.

Ben's movements in the days leading up to his death

31. Some evidence of Ben's movements from the time he was last seen with Lynette are contained in the Inquest Brief. On 27 February 2007, Ben went to the Town Hall Hotel in South Melbourne where he worked and collected his pay. He told his employer he could no longer work there due to personal problems.²²
32. The following day, on February 28, Ben went to stay with a friend he had known for some years, Dominic Kekich.²³ Dominic Kekich described himself as one of Ben's closest friends, having known him since he was 13 years old. He stated that he had not had much contact with Ben in the months leading up to Lynette's death, but when he saw Ben around February 2007, he thought he looked down and like "*he needed some sleep.*"²⁴
33. Dominic stated he received a call from Ben's mother Kerry Bardot about 10pm on the evening of 27 February 2007, indicating that she was worried about Ben and that he had been acting strangely for the last couple of weeks. The following day, 28 February 2007, Dominic phoned Ben and they arranged to meet at a skate ramp. Ben stayed at Dominic's premises that evening, and Dominic agreed to him spending a few nights as his house. According to Dominic, Ben was not very talkative during this period.²⁵
34. On the morning of 2 March 2007 Ben told Dominic that he was going to look for work. He was gone all day and returned about 10.30pm that night.
35. The following day Ben spent time both in and out of Dominic's flat. At 5.20pm that afternoon, Saturday 3 March 2007, Ben attended the emergency department at the Alfred Hospital. He expressed "*suspicious thoughts and memory loss*" and after examination, it was thought this was consistent with illicit substance use.²⁶ Ben disclosed a history of drug use, expanded on his current prescription medication regime, and stated he had seen psychiatrists

²² Statement of David Bradley, Inquest Brief, p.208

²³ Statement of Dominic Kekich, Inquest Brief, p.90

²⁴ Statement of Dominic Kekich, Inquest Brief p.89

²⁵ Statement of Dominic Kekich, Inquest Brief p.90

²⁶ Statement of Dorothy Kesarios, Inquest Brief, p.214-218

for anxiety and depression. With respect to his relationship status, he stated he had previously been married but did not have a current relationship. Ben made no mention of Lynette.

36. In connection to thoughts of self-harm, Ben stated that he had some "*fleeting ideas*" of this kind, but having had the opportunity to receive assistance, these had passed.²⁷ The attending medical officer assessed Ben as not having any perceptual abnormalities, and he was described as cognitively "*intact*" and oriented to time, person and place. He was described as displaying good insight into his symptoms and the possible aetiology of these, and was agreeable to discussing options for management. Ben was not thought to be a risk to himself or others as he was not displaying psychotic symptoms. He was released with follow up to occur via the Crisis Assessment Treatment Team ("C.A.T.team").²⁸
37. He remained at the hospital until 10.30pm at which time he was stating that he no longer had suicidal thoughts and wanted to return to Dominic's house. At the time Ben was released, a decision was made that follow up could occur with the C.A.T. team.²⁹
38. On the morning of Sunday 4 March 2007, shortly after waking at 11.30am, Ben went to the shops. Ben was still staying with Dominic, and on his return to his residence, Ben informed Dominic that Lynette had been found deceased. Ben stated that this information had been relayed to him by a friend. Dominic recalled Ben as distressed and crying and Ben had asked "*Have I been myself lately?*"³⁰ Ben informed Dominic he had been feeling down and had been taking a lot of Xanax³¹ recently. According to Dominic, Ben then rang his half brother and asked him the same question.
39. Dominic stated that at about 2pm that day, Ben rang the Alfred Hospital C.A.T. team and requested a home visit. At about 4pm, Ben asked Dominic to ring the C.A.T team again as they still had not arrived. After Dominic made this call, he stated that Ben asked him to lie for him if the C.A.T team asked him where he had been staying. Ben wanted Dominic to say that he had been staying on friend's couches.

²⁷ Statement of Dorothy Kesarios, Inquest Brief, p.216

²⁸ Ibid

²⁹ Ibid

³⁰ Statement of Dominic Kekich, Inquest Brief p.92 - 93

³¹ Xanax is the generic name for Alprazolam, a short-acting anxiolytic of the benzodiazepine class of psychoactive drugs.

40. In conversation at some stage that day, Dominic stated that Ben said *"What if I have done something stupid, because I can't remember anything before Tuesday...I can't remember anything from Tuesday night.... The only thing I can remember is waking up in a bench in the city."*³²
41. According to Dominic, Ben told him that when he woke up on the bench, *"he felt all shaky and started to throw down lots of Xanax"*.
42. At about 4.30pm, Registered Psychiatric Nurses Peter Crowe and Kylie Lamb from the Alfred Hospital C.A.T. team attended at Dominic's home. Ben was described as appearing drug affected and stated that he had used heroin and Xanax the previous day. He requested to be admitted to the psychiatric ward. Ben described his mood as low but denied having any suicidal or homicidal thoughts. Ben's presentation was assessed as consistent with an individual experiencing significant substance abuse issues. However, the team did not think Ben was experiencing any psychotic symptoms at this time.³³ As a result, Ben was advised he would not be admitted but would benefit from drug detoxification treatment.
43. Ben urged medical staff to contact his general practitioner, Dr Michael Kozminsky, in support of his view that he should be admitted. Several attempts were made to contact Dr Kozminsky, however the doctor's phone was switched off and Ben was informed that C.A.T. team staff would try again the following day.³⁴
44. Dominic stated that Ben went out for a while shortly after the C.A.T team visit and when he came back Dominic told him he had seen the report about Lynette on the news. He stated that Ben told him not to tell him any more. Dominic stated they were both quiet for a while after which time Ben stated he was going to catch a taxi but would not tell Dominic where he was going.
45. Ben called Dominic about 15 minutes after he left, saying he would be back shortly. He returned about 5 minutes later to tell Dominic that he had found somewhere to stay but would not say where or with whom it was that he was going to stay.

³² Statement of Dominic Kekich, Inquest Brief p.94; Tuesday was February 27, 2007.

³³ Statement of Peter Crowe, Inquest Brief, p.219

³⁴ Statement of Peter Crowe, Inquest Brief, p.219

46. Dominic stated that the two of them watched TV together for a while after this and then at about 10.30pm that evening, Ben left saying he was going out for 2 to 3 hours but if he did not come back that night, he would be back in the morning to get his bags. That was the last time that Dominic saw or had contact with Ben.
47. There is no evidence that Ben was seen or heard from again by friends or family. Police investigators were trying to locate Ben from 2 March 2007 in connection to the death of Lynette.
48. Ben's brother Coco Nkrumah made two statements to police dated 8 March 2007 and 10 April 2007. Mr Nkrumah initially informed police that the last time he saw Ben was on Monday 26 February 2007, at which time he seemed quiet and distant. Mr Nkrumah thought he may have been drug affected, as usually he was "*talkative and fine*."³⁵ In Mr Nkrumah's second statement he told police that he had spent some time with Ben around home on Sunday 25 February 2007, "*just hanging out*."³⁶
49. Mr Nkrumah stated that Ben called him on Sunday 4 March 2007, saying he could not remember what he had been doing as he had "*sort of blacked out*" and could only remember the last few days.³⁷ Mr Nkrumah had asked Ben if he was alright and Ben had stated he was fine. According to Mr Nkrumah, this was last time he spoke to Ben.

Discovery of Ben's body

50. On the morning of 10 March, 2007 Brian Ashton³⁸ attended at 20 Victoria Dock in Docklands, Melbourne to do restoration work in a shed situated at that location. Outside the back of that shed he discovered a wallet on the ground under an upturned chair. He found a Californian identity card in the name of Benjamin Pappas and a library card and Centrelink card and credit card. There was a \$20 note in the wallet and some coins.
51. Mr Ashton took the wallet to the police. Upon his return to the shed, Mr Ashton then found a baseball cap and a jacket with some blood smeared on the sleeve and decided he should take

³⁵ Statement of Coco Nkrumah, Inquest Brief p.229

³⁶ Statement of Coco Nkrumah, Inquest Brief p.232

³⁷ Statement of Coco Nkrumah, Inquest Brief, p.230

³⁸ Statement of Brian Ashton Inquest Brief, p.221

these items to the police. The police then returned to the dock area with Mr Ashton who then noticed that there was a small patch of dried blood in the vicinity of the chair.

52. A crime scene was established and Ben's body was subsequently located in the water under the pier.³⁹
53. The investigators noted that the small amount of Ben's blood was consistent with the small injuries on his wrists, a common sight of self harm. Scratched onto the dock in the vicinity where he was found were letters which looked like "Luv HI LL" and "MUM" and "NAN". Coco Nkurmah stated⁴⁰ that he thought Ben was trying to say Hi to Lynette because he had heard him call her "Little L" and that "MUM" and "NAN" were referring to Ben's mother and his grandmother.

Ben's history of drug use and mental health conditions

54. Ben commenced consultations with Dr Michael Kozminsky in early January 2000, after having lost his passport and being unable to return to the United States.⁴¹ According to Dr Kozminsky, Ben was opiate dependent at the time, and he commenced him on a methadone program. Further, he formed the opinion that Ben had a borderline personality disorder with narcissistic tendencies. He stated that in his view, there was some basis in reality for Ben to have a level of narcissism, given his sporting prowess, achievement and recognition. As a young boy, Ben had received status and money with apparent limited supervision which, according to Dr Kozminsky, impacted upon his drug use and mental health difficulties.⁴²
55. As Ben's primary care physician, Dr Kozminsky prescribed a range of medications to treat Ben's physical and mental health conditions, as well as his substance abuse issues. Ben had experienced a physical injury arising from a skateboarding accident, and this was also being addressed by Dr Kozminsky. At the time of his death, Ben was being medicated with Aurorix for his depression, Norspan patches, the anxiolytic Xanax, a joint pain reliever, Arthroaid, and the anti-psychotic Zyprexa.⁴³

³⁹ Statement of Detective Senior Constable David Barry, Inquest Brief, p. 287

⁴⁰ Statement of Coco Nkurmah, Inquest Brief 232

⁴¹ See Dr Michael Kozminsky's clinical notes in Appendix to Inquest Brief.

⁴² Statement of Dr Kozminsky, p183

⁴³ Statement of Dr Michael Kozminsky p.183

56. At various times throughout his involvement with Dr Kozminsky, Ben spoke about his thoughts of suicide. Medical records document Ben disclosed thoughts of suicide in January 2001; October 2003; April 2005; and on 28 and 29 September 2006. On 4 December 2006, medical records note that Ben had stated that if “*worst comes to the worst I will jump in front of a train.*”⁴⁴
57. As result of Ben’s mental health issues, he was referred to other practitioners for specialist mental health assistance.

Involvement of specialist mental health professionals

58. Dr Kozminsky had referred Ben to various professionals including a psychiatrist, Dr Lionel Chatz, who saw Ben five times in total. Dr Chatz was a consultant psychiatrist with a special interest in drug addiction and the detoxification of patients who abuse drugs. The first session occurred in November 2002, followed by two sessions in 2003, and a further two sessions occurred in 2006.
59. Dr Chatz described Ben as having a major drug addiction at the time of his first meeting with him on 15 November 2002. He was reportedly using intravenous ‘speed’⁴⁵ on a regular basis.⁴⁶ Dr Chatz stated that Ben had no interest in ceasing his drug use at this time, rather to the contrary, he was actively drug seeking and requested Dr Chatz prescribe him medication to elevate his mood. Dr Chatz assessed him as not psychotic, but with a major personality disorder.
60. When Dr Chatz saw him in November 2003, Ben presented as still having a major borderline personality disorder, but Dr Chatz also suspected he may have had a borderline psychotic illness from his multiple drug use. Dr Chatz stated that again, Ben was not interested in being treated but rather was “*pushy and demanding*” for more drugs.⁴⁷
61. Ben’s next session with Dr Chatz was in May 2006. Dr Chatz noted the presence of his personality disorder but considered he was also depressed. Ben was said to have refused to comply with Dr Chatz’s treatment requests. A similar situation occurred on 29 November

⁴⁴ Medical records for Ben Pappas, Appendix S

⁴⁵ ‘Speed’ typically refers to amphetamines

⁴⁶ Statement of Dr Lionel Chatz, Inquest Brief, p.184:3

⁴⁷ Ibid

2006. In summary, Dr Chatz considered that Ben was a man with a major personality disorder who was more interested in pursuing drugs than receiving treatment.

62. Dr Chatz stated that Ben made no mention of Lynette or his relationship with any other females during the sessions that occurred. Nor did he reveal any homicidal or suicidal intent during the sparse number of sessions that he had with him.⁴⁸
63. Ben was also referred to a psychologist, Anita Bonollo, by Dr Kozminksy. Ms Bonollo worked in the same medical practice as Dr Kozminsky. Ms Bonollo saw Ben on four occasions between 20 May 2006 to 28 September 2006. During these sessions, Ms Bonollo stated that she provided Ben with psychological counselling for anxiety and depression.
64. Ms Bonollo was aware of Ben's relationship with Lynette, and that there was an intervention order against him. During their first session together in 30 May 2006, Ben informed Ms Bonollo that he was no longer in a relationship with Lynette. Ms Bonollo had also seen Lynette on one occasion, in October 2005, in connection to her drug use. During this session, Lynette had described family violence perpetrated by Ben towards her, including property damage.⁴⁹
65. The last session Ms Bonollo had with Ben was on 28 September 2006. On this occasion, Ms Bonollo described Ben as being *"very depressed, psychotic, and his mood was very negative."*⁵⁰ Ms Bonollo's statement notes:
- "Ben was very depressed and down; and his mood was dark and negative. In my opinion, he showed signs of suicidal ideation, homicidal tendencies, and psychotic-related symptoms such as paranoia, anger and frustration."*⁵¹
66. Ms Bonollo referred Ben back to Dr Kozminsky after this session, apparently for a review of his medication for his drug use, depression and mental health conditions. Ben was seen by Dr Kozminsky later that day.

⁴⁸ Statement of Dr Lionel Chatz, Inquest Brief, p.184-6

⁴⁹ Statement of Anita Bonollo, Inquest Brief, p.184-17

⁵⁰ Statement of Anita Bonollo, Inquest Brief, p.184-7

⁵¹ Ibid.

67. Ms Bonollo stated that during her last session with Ben on 28 September 2006 she did hold some concerns for Lynette's safety, however these were balanced by the fact that Ben was not living with Lynette at the time; that he was receiving ongoing medical treatment from Dr Kozminsky; and there was a family violence intervention order in place.

Expert medical opinion regarding Ben's supervision and treatment

68. As part of this investigation, an expert opinion was requested regarding the medical treatment of Ben amongst other issues. A written report was provided to the Court by Associate Professor Morton Rawlin.⁵²
69. Associate Professor Rawlin noted "*a case of two individuals who had a mutual relationship and several substance abuse issues on the background of mental health difficulties.*"⁵³ According to Associate Professor Rawlin, patients of this kind have difficulty negotiating the medical system and are less reliable in terms of adherence to treatment regimes.
70. After reviewing the material, Associate Professor Rawlin was of the opinion that Ben was depressed at various stages during his involvement with Dr Kozminsky and that it appears there were episodes of psychosis related to drug use. He expressed his view that it was appropriate to medicate Ben for his depression and that Aurorix was an appropriate choice.
71. Associate Professor Rawlin noted that it was important when dealing with complex patients such as Ben to have a crisis management plan with adequate safeguards to ensure his and other people's safety.
72. At Inquest, Associate Professor Rawlin noted that it is his preference to provide patients with a written plan about what they are to do and telephone numbers to call in the event of a crisis. He explained that his crisis plan always includes times for the next appointment, as well as

⁵² Associate Professor Morton Rawlin holds a Bachelor of Medicine and Masters of Medical Science (Clinical epidemiology). He is a qualified and registered medical practitioner and specialist general practitioner. He states he has over 20 years experience as a general practitioner in rural and metropolitan practice and 10 years experience in academic general practice.

⁵³ Expert Medical Report for the Coroners Court of Victoria prepared by Associate Professor Morton Rawlin, dated 1 September 2011

appointments with psychiatrists and psychologists. Associate Professor Rawlin stated that he requests his patients sign this plan and he keeps a copy in the medical records.⁵⁴

73. At Inquest, Dr Kozminsky stated that the approach he had taken for providing a crisis management plan to Ben was to give him his mobile telephone number so that Ben could contact him at any time, and that if he could not be reached, Ben was to contact the hospital emergency department. He stated that:

*“in my experience when I spend just five or 10 minutes talking to somebody and knowing their background and what’s happening I can often calm people down and divert a crisis and direct them to appropriate care.”*⁵⁵

74. Dr Kozminsky did acknowledge that in connection to the circumstances following Lynette’s death, and Ben’s apparent deteriorating mental state and subsequent death, this had not been adequate.⁵⁶ Indeed, it was the evidence of Dominic that Ben had tried to contact Dr Kozminsky by telephone *“a couple of times”* on 4 March 2007, but the message had gone through to an answering machine.⁵⁷ Similarly, when Ben was visited by the C.A.T. team to assess his mental state, it was the evidence of Peter Crowe that *“multiple attempts to phone the mobile number provided were made but the phone was switched off.”*⁵⁸ Ben was subsequently advised that an attempt would be made to contact him Monday morning.

Conclusions

75. Victoria Police investigated the circumstances in which the deaths of both Lynette and Ben had occurred. Investigators believe that in the early hours of 25 February 2007, Ben caused Lynette’s death and then intentionally took his own life after the discovery of Lynette’s body to avoid the consequences of his involvement in her death. Police did not find evidence to indicate that any other party had been involved in her death or the disposal of her body.⁵⁹

⁵⁴ Oral evidence of A/Professor Morton Rawlin, Transcript p.281

⁵⁵ Oral evidence of Dr Michael Kozminsky, Transcript p.346

⁵⁶ Oral evidence of Dr Michael Kozminsky, Transcript p.347

⁵⁷ Statement of Dominic Kekich, Inquest Brief, p.94

⁵⁸ Statement of Peter Crowe, Inquest Brief, p.220

⁵⁹ Inquest Brief, p.11 - 12; Statement of Acting Sergeant David Barry, Inquest Brief, p. 287:4

76. Det. Senior Constable David Barry of the Homicide Squad, stated his reasons⁶⁰ for coming to the above conclusions were (a) Lynette was last seen in the company of Ben before her death was discovered; (b) the doona cover in which Lynette was wrapped and the weights used in an apparent attempt to hide her body in the river had previously been in Ben's possession; (c) the history of physical violence and dominating and controlling behaviour perpetrated by Ben against Lynette was a significant indicator for further violence; and (d) in the wake of Lynette's body being discovered, Ben attempted to put in place a story to explain his actions by telling people he could not remember what he had been doing over the last 10 days and then engaging with Alfred Hospital Psychiatry to create an exculpatory "*explanation*" for his actions.
77. Det. Senior Constable Barry also referred to the evidence found at the area of Victoria Dock where Ben was found to support his conclusion that Ben intentionally took his own life.
78. Whilst I accept the opinions of the investigating police with respect to Ben's involvement in Lynette's death, I do not conclude that the only reason that Ben took his own life was to avoid the consequences of his involvement in Lynette's death and the placing of her body in the river.
79. On an underlying long term history of depression and suicidal ideation, he may also have been experiencing some deep remorse, grief and trauma as a result of his actions which may explain the last notes he makes on the ground near where his body was found.

COMMENTS

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

The crisis plan for Ben

1. While it can not be concluded that a lack of contact with Dr Kozminsky was causally connected to Ben's death, given Ben's background, history and temperament and mental health issues, and based on the evidence of Associate Professor Rawlin and the concessions made by Dr Kozminsky, it was evident that Ben required a far more comprehensive crisis plan than he had in the event that Dr Kozminsky was not contactable.

⁶⁰ Statement of Acting Sergeant David Barry, Inquest Brief, p. 287:1-6

Treatment plan for Ben

2. The circumstances in which Ben's death occurred raise some deeply complex matters for health care professionals engaged in treating patients with substance abuse and mental health issues together with a background of controlling, threatening and violent behaviour towards others. In particular, the issue of what obligations or ethical issues are raised for a health care practitioner when concerns are raised for the safety of another in the course of treating a patient and how to respond to those obligations and issues, pose some intensely difficult issues for a health professional.⁶¹
3. Having found that Ben's death was inextricably linked to Lynette's death, it is necessary to consider what actions may have assisted to prevent this tragic outcome. During the course of this investigation, endeavours were made to find out what resources and supports were available to health professionals when faced with such complex and potentially dangerous dilemmas. It would appear that various manuals and guidelines are issued for the guidance of doctors on how to manage the treatment of a couple where family violence is apparent or suspected, albeit Dr Kozminsky did not appear to be aware of these guidelines at the time. No doubt general practitioners are inundated with masses of written material and little time to keep across it all. No doubt the situation is similar for psychiatrists and psychologists.
4. Given the state of knowledge in the literature about the potentially lethal danger posed by a violent person to their intimate partner, in circumstances where that intimate partner is being treated by the same health practitioner, the safety of the patient at risk of injury or death must come first.
5. This tragic set of circumstances should be used to highlight the need for the health care profession generally to ensure that (a) a false sense of being able to control the situation is not relied upon and (b) appropriate on-call assistance is provided to support, guide and advise health care professionals who find themselves in similar circumstances.
6. These issues have been further addressed in the Finding of Lynette Phillips to be delivered this day.

⁶¹ I refer to the comments and recommendation made in the Findings for Lynette Phillips 860/2007

Pursuant to rule 64(3) of the Coroners Court Rules 2009, I order that this Finding be published on the internet.

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

Ms Kerry Bardot: Ben's mother

Avant Law, solicitors for Dr Kozminsky

Investigating member: D/S/C Barry

Associate Professor Morton Rawlin

President, Royal Australian College of General Practitioners

Signature:



JUDGE JENNIFER COATE
CORONER

Date: 10 December 2012



