

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2008 2868

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: DARA COOKE**

Hearing Dates:	5, 6 and 7 March 2012
Representation:	Mr B. Galbally of Counsel on behalf of Mr Christopher Bott
Police Coronial Support Unit	Leading Senior Constable G. McFarlane, Assisting the Coroner
Findings of:	AUDREY JAMIESON, CORONER
Delivered On:	17 November 2012
Delivered At:	Level 11, 222 Exhibition Street Melbourne, 3000

I, AUDREY JAMIESON, Coroner having investigated the death of DARA COOKE

AND having held an inquest in relation to this death on 5, 6 and 7 March 2012  
at Melbourne

find that the identity of the deceased was DARA FRANCIS MICHAEL COOKE  
and the death occurred on 3 July 2008  
at Princess Street, Kew 3101

**from:**

1 (a) MULTIPLE INJURIES (MOTOR VEHICLE IMPACT - PEDESTRIAN)

**in the following circumstances:**

### **BACKGROUND CIRCUMSTANCES**

1. Dara Francis Michael Cooke<sup>1</sup> was born on 2 September 1981. He was 26 years of age at the time of his death. He was the youngest son of Eamonn and Trin Cooke. He had two siblings, Sheena and Shane. Dara's employment history included working in hairdressing, retail and as a chef however, he was unemployed at the time of his death.
2. Dara had a medical history that included alcohol dependency. He had recently spent a number of months in Quinn House, the Detoxification Unit of St. Vincent's Hospital but at the time of his death, he was residing at 'Ivy Grange' Accommodation House in Kew ("Ivy Grange").

### **SURROUNDING CIRCUMSTANCES**

3. On Thursday 3 July 2008 at approximately 10.00am, Dara started drinking alcohol. Later that day Dara met up with Mr Bradley Edwards, another resident of Ivy Grange, and the two were drinking alcohol as they walked around the streets. At sometime prior to 10.00pm, Dara and Mr Edwards attended the liquor department at Safeway in Kew but were refused service because an employee, Mr Ravindu Goonawardene, believed them to be intoxicated.
4. At approximately 11.00pm, Dara and Mr Edwards were on their way back to Ivy Grange. When they were crossing Princess Street near Malmsbury Street, Dara told Mr Edwards that

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<sup>1</sup> It was requested by Mr Eamonn Cooke, Dara's father, that his son be referred to as "Dara" rather than "Mr Cooke" during the course of the Inquest. For consistency, I have in most part, also used only his first name in the written Finding.

he was going to sit down in front of an oncoming car. According to Mr Edwards, Dara sat down on the road.

5. Justin Rodda with passenger Toby Hastings, was driving in a northerly direction on Princess Street. Approximately 200-300 metres from a roundabout<sup>2</sup> Mr Rodda came upon Mr Edwards staggering across the road in front of their vehicle. As Mr Rodda slowed down, Mr Rodda could see Dara sitting in the middle of the right of the two south bound lanes of the road facing the oncoming traffic. Mr Rodda pulled up next to him and told Dara to get off the road or he would get himself killed. Mr Rodda emphasised the risk to Dara at around the same time he and Mr Hastings heard a car driving towards them.<sup>3</sup>
6. A car driven by Mr Christopher Bott, a 20 year old, holder of a probationary licence who was driving his 1989 Holden Commodore sedan (“vehicle”), registration number UDV 227, hit Dara. At the time, Mr Bott was travelling south on Princess Street on his way to pick up his girlfriend at her workplace in High Street, Kew. Mr Bott collided with Dara near Malmsbury Street resulting in Dara penetrating into the windscreen of Mr Bott’s vehicle. With Dara still on the bonnet, Mr Bott’s vehicle continued south for approximately 200 metres before colliding with a parked car on the eastern kerb of Princess Street resulting in Dara becoming dislodged and thrown onto the road’s surface.
7. A number of people stopped to render assistance. Ambulance paramedics and police were soon on the scene however, Dara sustained fatal injuries and died at the scene.

## JURISDICTION

8. At the time of Dara’s death, the *Coroners Act* 1985 (the Old Act) applied. From 1 November 2009, the *Coroners Act 2008* (the new Act) has applied to the finalisation of investigations into deaths that occurred prior to the new Act commencement.<sup>4</sup>
9. In the preamble to the new Act, the role of the coronial system in Victoria is stated to involve the independent investigation of deaths for the purpose of finding the causes of those deaths and to contribute to the reduction of the number of preventable deaths and the promotion of public health and safety and the administration of justice. Reference to

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<sup>2</sup> Statement of Toby Hastings dated 13 July 2008 – pp 88-90 Inquest Brief

<sup>3</sup> Statement of Justin Rodda dated 6 July 2008 – pp 84-87 Inquest Brief

<sup>4</sup> Section 119 and Schedule 1 – *Coroners Act 2008*

preventable deaths and public health and safety are referred to in other sections of the new Act.<sup>5</sup>

10. Section 67 of the new Act describes the ambit of the coroners' findings in relation to a death investigation. A Coroner is required to find, if possible, the identity of the deceased, the cause of death and, in some cases, the circumstances in which the death occurred.<sup>6</sup> The 'cause of death' generally relates to the *medical cause of death* and the 'circumstances' relates to the *context* in which the death occurred.
11. A Coroner may also comment on any matter connected with the death, including matters relating to public health and safety and the administration of justice.<sup>7</sup> A Coroner may also report to the Attorney-General and may make recommendations to any Minister, public statutory authority or entity, on any matter connected with a death which the Coroner has investigated including recommendations relating to public health and safety or the administration of justice.<sup>8</sup>

## INVESTIGATION

### Identification

12. The identity of Dara Francis Michael Cooke was confirmed by way of fingerprint comparison. No additional investigation into his identity was required.

### Medical Investigation

13. Dr Malcolm Dodd, Forensic Pathologist at the Victorian Institute of Forensic Medicine (VIFM) performed an autopsy on the body of Dara. The examination disclosed extensive internal trauma that, according to Dr Dodd, would have led to a rapid demise. An incidental finding included histological evidence of asthma. Toxicological analysis disclosed alcohol in blood and vitreous at a concentration of 0.35 and 0.36 gram/100 mL<sup>9</sup> respectively

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<sup>5</sup> See for example, sections 67(3) & 72 (1) & (2)

<sup>6</sup> Section 67(1)

<sup>7</sup> Section 67(3)

<sup>8</sup> Section 72(1) & (2)

<sup>9</sup> According to the Toxicological Report, Blood Alcohol Concentrations (BAC) in excess of 0.15% (gram/100 mL) can cause considerable depression of the Central Nervous System (CNS) and BAC's of ~ 0.40% can cause death in the absence of other contributing factors.

prompting Dr Dodd to comment on the known circumstances at the time, stating that *this markedly elevated level of alcohol in blood may well explain the behaviour of the individual prior to the vehicle impact*.<sup>10</sup>

14. Dr Dodd attributed the cause of Dara's death to *multiple injuries (motor vehicle impact - pedestrian)*.<sup>11</sup>

### **Police Investigation**

15. Leading Senior Constable (LSC) Carsten Schultz of the Major Collision Investigation Unit (MCIU) of Victoria Police conducted the police investigation and prepared the Inquest brief for the Coroner.
16. At the time of the collision, the road surface was dry and the weather clear. Princess Street runs in a north/south direction and consists of four lanes that is, two lanes running in each direction. It is a signed 60km/h zone.
17. Detective LSC Jenelle Mehegan, Collision Reconstructionist with MCIU, concluded that at impact with Dara, the Commodore sedan driven by Mr Bott was travelling between 90 to 100 km/h.
18. LSC David Ackland from the Mechanical Investigation Unit of Victoria Police carried out a mechanical inspection of Mr Bott's Commodore sedan and concluded that prior to and at the time of the collision, the vehicle would have been classed as being in a roadworthy condition.
19. Witnesses gave varying accounts of Dara's behaviour and his position on the road just prior to being struck by Mr Bott's vehicle. Eyewitness accounts of the speed Mr Bott was travelling was at variance to the speed calculated by the MCIU reconstruction.

### **Further Medical Opinion**

20. At the request of LSC Schultz from MCIU, Dr Dodd provided a supplementary report dated 27 January 2009. LSC Carsten had informed Dr Dodd that there was damage to the windscreen of Mr Bott's vehicle. The question for Dr Dodd was whether Dara's injuries

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<sup>10</sup> Exhibit 1- Initial medical examination report of Dr Malcolm Dodd dated 11 August 2008.

<sup>11</sup> Exhibit 1- Initial medical examination report of Dr Malcolm Dodd dated 11 August 2008.

were consistent with having been sitting on the road at the time of impact as originally reported, or whether he had in fact been standing on the road at the time of impact with Mr Bott's vehicle. Dr Dodd reported that *the likelihood of the person impacting the windscreen from a sitting position on the road would appear in retrospect highly unlikely*. Dr Dodd did however raise the possibility that Dara may have been in *a slightly raised position at the instant of impact*.<sup>12</sup>

### **Criminal Charges**

21. Mr Christopher Bott was charged with the indictable offence of driving at a dangerous speed causing death<sup>13</sup> and the summary offence of exceeding the speed limit.<sup>14</sup> On 27 October 2009, the charges were withdrawn after a nolle prosequi application was granted by the Office of Public Prosecutions.<sup>15</sup>

### **INQUEST**

22. A Directions Hearing was held on 10 August 2011.
23. Issues identified as requiring further exploration in a public hearing included pedestrian safety in the context of the circumstances, Dara's mental state at the time, the contribution of alcohol to Dara's behaviour as a pedestrian and whether he was standing or sitting on the road at the time of impact. The speed of Mr Bott's vehicle at the time of the collision also remained an issue.
24. At the outset of the Inquest, I was informed that Mr Bradley Edwards had been admitted to a psychiatric facility in Sydney and was not medically fit to attend court. He was excused on medical grounds.
25. In addition, witnesses Toby Hastings and Justin Rodda had not been served with summons to appear as police had been unable to locate the two men.

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<sup>12</sup> Exhibit 1 – Supplementary report of Dr Malcolm Dodd dated 29 January 2009

<sup>13</sup> Section 319(1) *Crimes Act 1958* (Vic) A person who, by driving a motor vehicle at a speed or in a manner that is dangerous to the public having regard to all the circumstances of the case, causes the death of another person is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

<sup>14</sup> Rule 20 – Victorian Road Rules

<sup>15</sup> See memo at beginning of Inquest Brief and T @ p 129

26. *Viva voce* evidence was obtained from the following witnesses:

- Dr Malcolm Dodd - Forensic Pathologist, Victorian Institute of Forensic Medicine
- Dr Paul Robertson
- Mr Roland Wong
- Mr Russell Yeo
- Leading Senior Constable Schultz, MCIU, Victoria Police
- Detective Leading Senior Constable Jenelle Mehegan, MCIU, Victoria Police

#### **The evidence of the witnesses at the scene**

27. Dr Paul Robertson was driving in a southerly direction on Princess Street towards Kew Junction just prior to the fatal collision. Dr Robertson had travelled approximately 100 metres after the roundabout at Eglinton Street and Willis Street when he noticed two males on the road. One ran towards his vehicle leading Dr Robertson to swerve to the right onto the opposite side of the road to avoid hitting this male. Dr Robertson returned to the correct side of Princess Street and as he did so he checked in his rear vision mirror and saw the male in the middle of the road where he then either sat or lay down. Approximately 200 metres down Princess Street, Dr Robertson pulled over and telephoned "000" to report the incident and his concern for the welfare of the males. As he was on the telephone to police, Dr Robertson heard a collision approximately 30-40 metres in front of him. Initially, he made no connection between two incidents but when he resumed driving down Princess Street, he saw the extent of the collision between a parked car and another vehicle that was dark in colour and he also saw a body lying on the road next to the parked car and to the front of the other vehicle. Dr Robertson performed a U-turn, parking opposite the incident and ran across the road to attend on Dara in an attempt to render assistance.

28. Mr Ronald Wong was also travelling along Princess Street in a southerly direction at the time of the incident. Initially, as he entered the roundabout at Wills Street, Mr Wong took up a position in the right hand lane and Mr Bott's vehicle was in the left hand lane. Soon after, a car in the right hand lane, in front of Mr Wong, indicated it was to turn right - most probably into Fellows Street. Mr Wong slowed behind the turning vehicle and Mr Bott's vehicle

overtook his, moving from the left hand lane into the right hand lane in front of Mr Wong's vehicle. As they approached Malmsbury Street, Mr Wong estimates he was approximately two car lengths behind Mr Bott's vehicle and it was here that Mr Wong saw a man dash out in front of Mr Bott's vehicle from the right hand side of the road. He did not see a second man, Mr Edwards. He did not see a collision between this person, Dara, and Mr Bott's vehicle, and did not see any brake lights or evasive action taken by Mr Bott but did see some glass flying from the driver's side of the vehicle. Mr Wong estimated that at the time, he was driving at the speed limit that is, 60km/hour and that Mr Bott's vehicle would have been travelling at no more than 70kms/hour. Mr Wong made no association with the flying glass and an impact with Dara, the man he saw dashing onto the road.

29. Mr Wong saw Mr Bott's vehicle continue for approximately 150 metres down Princess Street towards Kew Junction where he then witnessed Mr Bott's vehicle swerve to the left and strike a parked car on the left hand side of the road. Mr Wong did not stop to check on the welfare of Mr Bott. He did not see Dara on the roadside. Mr Wong later returned to the scene of the collision and ascertained from another bystander that the driver, Mr Bott was not injured. It was not until the following day that Mr Wong realised that he had in fact witnessed, to some degree, a collision between Mr Bott's vehicle and Dara.
30. Mr Russell Yeo was also in the vicinity at the time of the collision. He had been travelling south on Princess Street and had turned right into Wills Street. He was returning to Princess Street after performing a U-turn in Wills Street and was approximately 30 metres from the roundabout when he saw Mr Bott's vehicle on his left, the north side, heading south through the roundabout. He recalled hearing the vehicle *accelerating fairly hard*<sup>16</sup> as it came out of the roundabout. He stated he could *hear the loud exhaust over my stereo*.<sup>17</sup> Mr Yeo turned right, re-entering Princess Street. At the intersection immediately to the south of pedestrian lights,<sup>18</sup> Mr Yeo noticed a male standing on the left hand side of the road on the footpath who *looked intoxicated*.<sup>19</sup> Soon after, Mr Yeo heard the sound of glass under his tyres and a thud, initially believing that he had *popped a tyre*. He soon realised that the vehicle he had

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<sup>16</sup> T @ p43 (Russell Yeo)

<sup>17</sup> T @ p 46 (Russell Yeo)

<sup>18</sup> A push button operated signalised pedestrian crossing is located approximately 40 metres north of Malmsbury Street – Exhibit 5 – Statement (amended) of Leading Senior Constable Carsten Schultz dated 27 April 2009

<sup>19</sup> Exhibit 4 – Statement of Russell Yeo dated 9 July 2008



previously seen had hit a parked car and as he drove past it, he saw Dara on the ground approximately one metre *in front of the Commodore at the driver's side wheel of the parked car.*<sup>20</sup> Mr Yeo pulled over and as he got out of his vehicle, he telephoned for an ambulance. He checked Dara and located a carotid pulse and respirations before moving to the vehicle to check on Mr Bott's welfare. By this stage, another male and a female were attending to Dara. Mr Yeo remained at the scene and performed traffic control until the arrival of ambulance paramedics and police.

31. Mr Christopher Bott denied speeding as he drove along Princess Street stating that he had his cruise control set at 60kms/hour. His cruise control would have disengaged as he braked to go around the roundabout at Wills Street but that he flicked the button to reset the cruise control speed to 60kms/hour as he drove out of the roundabout, which would have effectively accelerated his car. When the two cars in the right hand lane braked when the front vehicle was turning right, Mr Bott believed that he used his brakes again which would have disengaged the cruise control once more. He did not believe that he reset the cruise control thereafter for reasons he stated related to the remainder of his journey to Kew Junction was downhill and because he had been knocked unconscious.<sup>21</sup>
32. Mr Bott recalled something moving across from the right hand side of the road into the path of his vehicle so quickly that he had no time to brake or react in anyway but he had no actual recollection of hitting Dara. He believes that he was knocked unconscious and only regained consciousness after his vehicle had stopped upon colliding with the parked car.

### **The position of Dara on impact**

33. Dr Dodd could not definitively say whether Dara was standing at the point of impact however, because Dara had obviously impacted with the windscreen, Dr Dodd stated:

*... it appears it is unlikely he would have been sitting at the instant of impact purely from the height of the body in the sitting position versus the leading edge of a vehicle.*<sup>22</sup>

34. He further stated that he thought, from a biomechanical point of view, Dara's position was semi-squat or standing rather than sitting as first reported.

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<sup>20</sup> *Op cit*

<sup>21</sup> T @ pp 63-65 (Christopher Bott)

<sup>22</sup> Transcript (T) @ p 8

35. I accept the account of the eyewitnesses that immediately before the time of the collision Dara was sitting on the road surface. However, I find the evidence of the investigators and the opinion of Dr Dodd compelling in that, at the time of the collision, Dara was either standing or rising up from the sitting position that is, in the semi-squat position.
36. I accept that having just risen to the standing position or still in the process of rising to a standing position, coupled with wearing dark clothing, Dara would have been difficult to see.
37. Detective LSC Mehegan attended the scene of the fatal collision at 1.50 am on 4 July 2008 and departed at 2.50 am.
38. The conclusions of Detective LSC Mehegan about Mr Bott's speed at the time of impact with Dara were based on calculations relevant to the position of Dara's head strike to the windscreen, an analysis of the debris field, the extent of Dara's injuries and the extent of vehicle damage. In attempting to determine the likely speed of Mr Bott's vehicle, the point of impact is taken into account and consideration of the debris travel distance is referable to the point of impact. In relation to the extent of Dara's injuries, Detective LSC Mehegan had relied upon her own assessment of Dara's injuries which she observed at the scene and had concluded that his leg injury was so severe that it was near severance. This particular observation was however at odds to the evidence of Dr Dodd.
39. The evidence of Mr Bott's speed at the time of colliding with Dara is equivocal. Eyewitness accounts are at variance to the calculations of the reconstructionist, Detective LSC Mehegan. Eyewitness accounts of the speed of vehicles tend to be unreliable however, it is noteworthy that none of the eyewitnesses to the death of Dara estimated the speed of Mr Bott's vehicle to be anywhere near the calculated speeds of Detective LSC Mehegan. Unfortunately, not all of the witnesses who made statements about the speed of Mr Bott's vehicle were available and/or contactable to give evidence at the Inquest. In the circumstances, I am not able to reconcile the eyewitness accounts with the evidence of Detective LSC Mehegan in this instance.
40. An inability to determine the speed of Mr Bott's vehicle does not deflect from, nor denigrate my statutory responsibilities to make findings pursuant to section 67(1) of the Act. The significance of Mr Bott's speed is not germane to this jurisdiction.

## CONCLUDING COMMENTS & FINDINGS

I find that Dara Francis Michael Cooke died on 3 July 2008 from multiple injuries sustained when he was hit by a motor vehicle driven by Christopher Bott in Princess Street, Kew.

I am unable to make a finding in relation to the speed Mr Bott was driving his vehicle at the time of the collision but I do accept and find that Mr Bott had little time to react and/or take evasive action to avoid colliding with Dara Francis Michael Cooke.

AND I find that Dara Francis Michael Cooke was participating in high risk taking behaviour as a pedestrian and that his high risk taking behaviour was influenced by his abuse of alcohol.

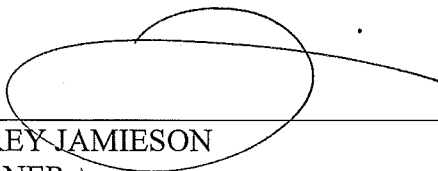
AND having regard to the significantly elevated levels of alcohol identified by toxicological analysis, I further find that there is insufficient evidence on which to conclude that this high risk taking behaviour reflects that Dara Cooke intended to take his own life. I find that his death was as a consequence of his abuse of alcohol and his associated high risk taking behaviour.

Pursuant to section 73(1) of the **Coroners Act 2008**, this Finding will be published on the internet.

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

- Mr Eamonn Cooke
- LSC Carsten Schultz, Major Collision Investigation Unit of Victoria Police
- Galbally Rolfe Lawyers

Signature:



AUDREY JAMIESON  
CORONER  
Date: 3 December 2012

