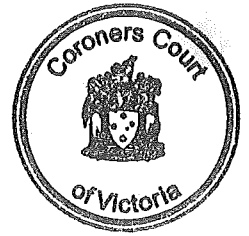


IN THE CORONERS COURT
OF VICTORIA
AT BALLARAT



Court Reference: 2668/2010

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

I, Michelle Hodgson, Coroner having investigated the death of David Macumber without holding an inquest:

find that the identity of the deceased was David William Macumber born on 18 March 1975

and the death occurred on 11 July 2010

at Neill Street, Beaufort

from

1a) Mixed drug toxicity (alcohol and diazepam)

Pursuant to section 67(2) of the **Coroners Act 2008**, I make findings with respect to the following circumstances:

CHAMBERS FINDING

1. The Coroners Court is different from other courts. It is an inquisitorial rather than an adversarial system. In other words, there is no trial, with a prosecutor and a defendant. Instead, there is an inquiry that seeks to find the truth about a person's death – to establish what happened, rather than who is to blame. The Coroner is more flexible in the evidence that they will accept, but they cannot punish.
2. When making a finding, coroners carefully consider all the submissions that come before them. Not every issue makes it way into the final report but everything has been weighed up and analysed.

BACKGROUND

3. Mr Macumber was 35 years of age at the time of his death.
4. Mr Macumber had two children, Jessica and Peita.
5. Ms Priscilla Macumber, David Macumber's mother gave a statement to police in regards to her son's background.
6. She stated, *inter alia*, that her son had travelled from South Australia to visit her and his daughter Peita in Eaglehawk.
7. On Sunday 11 July, she said goodbye to her son and grand daughter at the Bendigo Railway station as he was to arrange to meet Peita's mother at the Preston railway station later that day.
8. Ms Macumber states that she had a telephone call from her son at approximately 1.00 pm that day.
9. Ms Macumber understood her son's arrangements were that he would catch the train back to Southern Cross from Preston, catch a bus to Ballarat and then a bus to Adelaide.
10. Mr Macumber was to text his mother before he left Melbourne to advise he was on the bus. This did not occur.
11. Mr Macumber had a history of drug and alcohol addiction, however, had recently sought a placement at a rehabilitation centre.
12. Ms Macumber described her son as loving and devoted to his children.

The finding of Mr Macumber's body

13. Ms Shelley Bimrose completed her shift at the Mobil Roadhouse in Neill Street Beaufort at approximately 10.55 pm on 11 July 2010.
14. On her way to the car she heard moaning and groaning. She says she noticed what she thought was someone lying in the area of the driveway. She states that he was not in the gutter at this stage. She did not contact police or ambulance, nor did she check on his welfare assuming it was a drunk making his way home. She also had concerns for her own safety being on her own.
15. At approximately 11.26 pm on 11 July 2010, Anthony Hanna and his wife located David Macumber lying in the gutter with his face down and lower part of his body on the nature strip in Neill Street Beaufort. He appeared lifeless and Mr Hanna was unable to get a response from him.
16. Mr Hanna telephoned the ambulance which arrived at approximately 11.50 pm. Mr Hanna also contacted the Ararat Police Station with police arriving approximately 45 minutes after Mr Hanna.
17. Senior Constable Taylor of Beaufort Police Station arrived at the scene at approximately 12.55 am on 12 July 2010.
18. At the time of his arrival, Mr Macumber was deceased.

The afternoon of 11 July 2010

19. Mr Jiten Vashisth, a worker with Travellers Aid at Southern Cross station states that he spoke to Mr Macumber at around 11.00 to 11.30 am that day who sought assistance with his luggage as he said the lockers were too expensive for him.
20. Mr Vashisth states that at the time he spoke to Mr Macumber he did not appear to be drug or alcohol affected.

21. Mr Macumber placed two bags and a guitar with Travellers Aid. Mr Macumber told Mr Vishtash that he intended to visit a few places in the city and be back before his bus departed to pick up his bags. Mr Vashtish states that he did not see Mr Macumber again after he left the Travellers Aid office.
22. Mr Macumber did not collect his property from the Traveller's Aid and there is no further information as to how he spent his final hours before boarding the Firefly Coach at 9.50 pm at Ballarat station.

The Firefly Coach Trip

23. Mr Fabsiak is employed by Firefly Coaches in Maidstone as an interstate express Coach driver.
24. On Saturday 11 July 2010 he was rostered to operate the night service between Melbourne and Adelaide.
25. He states that at 22:04 pm he stopped at the Ballarat Railway Station and picked up Mr Macumber together with two other passengers.
26. He observed that Mr Macumber appeared substance affected but recalled that he had previously transported Mr Macumber on 6 July 2010 to Melbourne and he had also appeared to be substance affected. However, he had not caused trouble on that occasion sleeping the whole way so Mr Fabsiak determined to allow him on the coach.
27. Mr Fabsiak states:

"As I was coming into Beaufort I was alerted by aggravated yelling by a male passenger on the coach. I made a decision to stop the Coach at the first available safe place so as not to cause any damage to other road users. I did this and stopped facing west bound opposite the Mobil service station on the western Highway, Beaufort.

I switched all the lights on, stood up to see what had caused the disturbance. As I stepped up into the aisle I

saw a male passenger half way along the coach in the aisle seat leaning into the aisle and threw what I later found to be a large empty bottle of Jim Beam at me. I walked down towards the male passenger pushing the bottle under the seats with my foot so that I didn't have to take my eyes off him and so that no one would trip over it. Once I approached the male passenger I calmly and quietly asked him to come with me for a minute, he stood up and walked down the aisle in a stumbling manner nearly falling on to other passengers. As he got to the front of the coach he tripped down the steps and fell onto the dashboard, he got off the dashboard, turned towards the already open front door, stumbled out the door and fell onto the grass. When the male was off the Coach who I know as David Macumber I noticed he was lying on the grass. I considered that under the circumstances it was reasonably safe. My duty is to all passengers and to ensure those on the Coach are provided with a safe environment. I immediately shut the door as I considered Mr David Macumber a threat to me and my passengers.

The decision to remove him from the service, was based on the aggressive manner of Mr David Maccumber and the fact he had thrown a large empty glass bottle, which could have caused someone a serious injury.

On leaving at 22:45 I immediately contacted the Police and advised them of what had happened and the fact that I had removed a passenger from the Coach.

Issues relating to Public Health and Safety

28. Section 67 (3) of the Coroners act 2008 states that:

“A coroner may comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice.”

29. Issues that relate to public health and safety have been raised by the death of Ms Macumber.

The safety of bus passengers removed from a public bus service by a driver.

30. At the time of Mr Macumbers death the relevant legislation included The *Transport (Passenger Vehicles) Regulations 2005*, the *Public Transport Competition Act 1995* and *Public Transport Competition regulations 1999*.
31. Regulation 57 of the *Transport (Passenger Vehicles) Regulations 2005* makes it an offence for a passenger to drink alcohol on a bus unless the passenger has the permission of the accredited operator of the bus.
32. Regulation 71(2) of the *Transport (Passenger Vehicles) Regulations 2005* allowed for the driver of a vehicle to request that a passenger leave the vehicle if the passenger is behaving in a violent, noisy or offensive manner or is so intoxicated that they are likely to behave in an offensive manner.
33. The Firefly Company Driver's Manual current at the date of Mr Macumber's death states that removal of passengers from buses "must be done at the nearest police station or have the police meet you to remove the pax. At no time are you to attempt to handle the situation of removing the pax from the coach physically or is a pax to be removed at a stop on our timetable or some other remote location."
34. The Firefly Passenger Ticket conditions state:

"Persons behaving in a disruptive manner may be removed from the coach at the sole discretion of the Coach Captain."
35. On 1 July 2010, the *Transport Integration Act 2010* established the independent statutory office of Director , Transport Safety at Transport Safety Victoria. Transport Safety Victoria was at the relevant time responsible for regulating bus safety in Victoria.
36. On 31 December 2010, new bus safety legislation was introduced in Victoria following recognition that the existing framework for regulating the safety of bus operations was limited.

37. The *Bus Safety Act* imposes a duty on the operator of a bus service to ensure the safety of that bus service, so far as reasonably practicable (s.15). It also poses a duty on a bus safety worker (including a driver) to take reasonable measures to ensure the safety of person who may be affected by their act or omissions (s.17)
38. People subject to safety duties have a responsibility to eliminate risks to health and safety where reasonably practicable, or work to reduce those risks so far as is reasonably practicable (s.14) in determining what is reasonably practicable, regard must be had to:
- The likelihood of the hazard or risk concerned eventuating;
 - The degree of harm that would result if the risk eventuated;
 - What the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
 - The availability and suitability of ways to eliminate or reduce the hazard or risk; and
 - The cost of eliminating or reducing the hazard of risk.
39. Section 10 of the *Bus Safety Act* notes that managing risk associated with the provision of bus services is the responsibility of the person best able to control the risk.

Post-Mortem Examination

40. A medical examination of Mr Macumber by Dr Melissa Baker, a qualified medical practitioner and forensic pathologist comprising an autopsy was conducted on 14 July 2010.

41. Dr Baker stated that:

The cause of death in this thirty five year old man is mixed drug toxicity due to alcohol and diazepam. Toxicological analysis revealed a markedly elevated alcohol level of 0.37 g/100mL in blood and 0.44 g/100mL in vitreous humour. For comparative purposes, the level detected in blood is seven to eight times the legal limit for driving in the state of Victoria in excess of 0.15 g/100mL can cause considerable depression of the central nervous system and levels in excess of 0.35 g/100mL may cause death, particularly in the presence of other drugs with central nervous system depressant properties. In this case, diazepam and its metabolite nordiazepam, were also detected. 9-tetrahydrocannabinol, a metabolite of marijuana, was also detected.

Prevention

42. Although Mr Macumber's death may not have been foreseeable and the drivers act in removing him from the bus did not directly cause his death, bus operators should have appropriate policies and procedures in place to meet their safety duties toward passengers.
43. From a prevention perspective, his death highlights an issue that does not appear to have been dealt with previously by the industry as a whole.

Formal recommendations

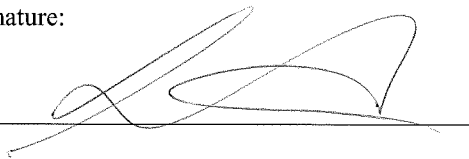
44. I recommend that Transport Safety Victoria give consideration to the provision of specific guidance to the bus industry that explains how bus operators can meet their safety duties when managing difficult passengers, including the removal of passengers by drivers due to their poor behaviour or intoxicated state.
45. I recommend that the Bus Industry Confederation of Australia incorporate in the revised version of the "Bus and Coach Operators Incident management Guidelines", more specific advice around the issue of managing difficult bus passengers, including the removal of passengers by drivers due to their poor behaviour or intoxicated state.

CONCLUSION

46. I find that Mr Fabsiak's removal of Mr Macumber from the coach did not directly cause his death.

47. I find that Mr Macumber died of mixed drug toxicity (Alcohol and Diazepam)

Signature:

A handwritten signature in black ink, appearing to be 'MH', written over a horizontal line.

Michelle Hodgson

Date: 13 12 2012