

FORM 37

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court Reference: 275/09

Inquest into the Death of Gary WITCOMBE

Delivered on::	13 April 2011
Delivered at	Geelong
Hearing Dates:	27/10/2010 and 4/4/2011
Findings of:	Ronald Saines
Assisting the Coroner:	Sgt G. Balchin (Victoria Police Prosecutions)
Counsel for Family	Mr T. Bourke

FORM 37

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court Reference: 275/09

In the Coroners Court of Victoria at Geelong

I Ronald Saines, Coroner having investigated the death of:

Details of deceased:

Surname: WITCOMBE
First Name: Gary
*Address: 179 Wilsons Road, Whittington

AND having held an inquest in relation to this death on 27/10/2010 and 4/4/2011

at Geelong

find that the identity of the deceased was Gary WITCOMBE

and the death occurred on or about 18 January 2009

at Sparrow Park, Geelong West

from NECK INJURY, specifically being fracture of the odontoid peg of the second cervical vertebrae and associated cervical spinal cord damage in the following circumstances:

Saturday January 17th 2009 was an evening that Ray Witcombe and his family arranged to celebrate his 60th birthday. About 50 guests, wider family and friends, were invited. The venue for the celebration was at the Geelong Brass Band Hall at Hope Street, Geelong West. The hall is upon Sparrow Park, where there is some open parkland and car parking adjacent to the hall.

The social function commenced at about 7.00pm. Guests were provided with some food but were invited to bring their own drinks. It is apparent that a number of family and other guests consumed significant quantities of alcohol.

Just before midnight, Ray's son, Gary Witcombe had been involved in a verbal dispute with some other family members. He subsequently went outside the hall and was drinking alcohol from a stubby, alone.

He was approached there by Christine Ryan and it appears they both exchanged abusive and insulting remarks. As a result of that, Christine Ryan's husband, Leigh Ryan, challenged Gary Witcombe regarding his demeanour towards his wife. This resulted in both males voluntarily engaging in a physical confrontation. Witcombe threw his stubby, or at least its contents, at Ryan, whereupon they both wrestled and fought each other.

It appears both Ryan and Witcombe, at different times, held the other in a headlock and administered punches to the head of the other as well.

Others, Darren Turley and Darryl Witcombe, intervened to break up the fight. Darryl Witcombe punched Ryan to the head several times in doing so. Ryan suffered a number of significant bruises, abrasions and lacerations to his head face and scalp, as a result of all the fighting he engaged in.

Although there is no doubt that Leigh Ryan and Gary Witcombe both fell to the ground at some stage, there are numerous aspects of their altercation which remain uncertain on the evidence. In particular, it is unclear whether their falling to the ground was caused by one, the other, or both of them, or by the intervention of Darren Turley or Darryl Witcombe. Each of these, alone or in combination, are possible. It is also unclear, when they fell to the ground, whether Ryan then retained Gary Witcombe in a headlock or not.

It is probable that in the falling to the ground, they came into contact with a small tree, a sapling, in the parkland area. This was broken as a result. Any fall was likely to have been a heavy, off balance, fall.

Both Leigh Ryan and Gary Witcombe were large men. Both were about 125 kg weight and were within 175-180 cm in height. Neither appeared to have any obvious size or strength advantage over the other.

A number of the guests at the party made observations of this altercation. Many of these had consumed significant quantities of alcohol. Additionally, there were four strangers who happened to be in the park nearby at the time of the altercation. They were at the end of a night's sporting or recreational activity and had consumed no alcohol. Nevertheless, on the testimony of all relevant witnesses, I was unable to obtain a consistent or reliable account of the details of this altercation.

It appears that in the altercation, both Leigh Ryan and Gary Witcombe both lost consciousness. Leigh Ryan regained consciousness after a short time, but observers promptly noted that Gary Witcombe not only did not regain consciousness, but also appeared to be not breathing. Ambulance services were telephoned almost immediately and arrived, although two bystanders administered CPR whilst waiting for the ambulance to arrive. Ambulance staff arrived about 9 minutes after they were called. Paramedics administered oxygen, CPR and adrenaline. They were unable to produce pulse or respiratory activity. They arranged transport to Geelong Hospital but upon arrival there, further resuscitation attempts were unsuccessful and he was pronounced deceased approximately 25 minutes after his arrival.

The deceased was conveyed to the Victorian Institute of Forensic Medicine where Forensic Pathologist Dr Paul Bedford, undertook full post mortem examination. His findings included the following.

1. Blood alcohol content of 0.12%, consistent with significant alcohol intake and intoxication.
2. Mild bruising, lacerations and abrasions to the face and head, mild general bodily bruising, consistent with my findings regarding pushing, wrestling and some punches, but not so consistent with severe highly forceful punches or blows of a direct and serious nature.
3. The odontoid peg of the second cervical vertebra was fractured, with adjacent spinal cord injury with interspinal cord haemorrhage. Acute haemorrhage into the neck muscle was observed, as was evidence of subarachnoid haemorrhage as well.

I accept the opinion provided by Dr Bedford regarding the following matters.


1. The fracture of the odontoid peg, and injury to the spinal cord in the neck would have caused loss of consciousness and respiratory impairment or arrest, promptly, and this is the cause of death here.
2. The fracture of the odontoid peg will only arise, generally, in the event of hyperflexion or hyperextension of the neck, or both. It is not a common injury but is seen most commonly in road accident cases.
3. The anterior displacement of bone that was found is more consistent with this being a hyperflexion injury – that is with the head being forced forward, chin to the chest, with considerable force.

I conclude that although this is an injury which was likely to have been caused by considerable force, there is insufficient evidence upon which it can be concluded what act or event was the probable cause of such force.

As discussed above, there are several possible causes of hyperextension and/or hyperflexion injury, which include, but are not confined to, a punch to the face or head by Leigh Ryan or another person, a fall to the ground or against a tree and any fall while being held in a headlock. But I am unable, on the evidence here, to find any of these to be a probable cause of such force, and they remain only possibilities.

Victoria Police Homicide Squad investigated this death and determined that charges should not proceed against Leigh Ryan or anyone else. This determination was the subject of internal review and a second opinion from the Office of Public Prosecutions. In this inquest, counsel representing the family identified some aspects of the police investigation which were incomplete, or subject to question regarding reliability. These being in particular, the error in accepting Leigh Ryan's assertion that the deceased was bigger and heavier than he, and also failure to undertake DNA or other forensic testing on a drink can found at the scene. However, I am not satisfied these issues were material in respect of investigation of the cause or circumstances of death.

This inquest is required to make findings regarding cause of death, and other relevant facts, upon the standard of probabilities. Victoria Police are required, in the event of any criminal prosecution, to prove beyond reasonable doubt, what act or acts were the cause of death and that such act or acts were unlawful and were not in self defence. In circumstances where I am unable to make findings regarding these matters, as a matter of probability, I agree with the determination of police, that proof of criminal allegations beyond reasonable doubt was unlikely. I thus determine that notification of the Director of Public Prosecutions under s.49(1) of the Coroner's Act 2008, should not be made.


R. SAINES
Coroner



Date: 13th April 2011