

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2012 1243

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: Joshua Peter JENSEN

Delivered On:	31 May 2016
Delivered At:	Coroners Court of Victoria 65 Kavanagh Street Southbank 3006 Victoria
Hearing Date:	5 & 6 May 2014, 27 November 2014, 9 June 2015
Findings of:	IAIN TRELOAR WEST, DEPUTY STATE CORONER
Representation:	Mr Dermott Dann on behalf of the Jensen Family Mr Dean Cole on behalf of Mr Daniel Lovett
Coroner's Assistant	Leading Senior Constable King Taylor

I, IAIN TRELOAR WEST, Deputy State Coroner having investigated the death of Joshua Peter JENSEN

AND having held an inquest in relation to this death on 5 & 6 May 2014, 27 November 2014 and 9 June 2015

at MELBOURNE

find that the identity of the deceased was Joshua Peter JENSEN

born on 14 October 1984

and the death occurred on 5 April 2012

at 35 Casey Drive Berwick, 3806 Victoria

from:

1 (a) EFFECTS OF FIRE AND EXPLOSION

in the following circumstances:

1. On the 5 April 2012, Joshua Jensen (**Mr Jensen**), aged 27 years, died at his father's Berwick premises as a result of an explosion and fire. Mr Jensen was known to police and was suspected of being involved at a low level with amphetamine manufacturers.

Background:

2. Mr Jensen was the son of Mr Peter Jensen and Ms Christine Jensen and spent most of his time between his mother's residence in Pakenham and his father's residence in Berwick.
3. Mr Jensen used amphetamines and was involved in pseudo-ephedrine extraction in the garage at his father's residence and according to his friend Mr Rodney Hawker, owed approximately \$10,000 to an unknown person. At inquest however, Mr and Mrs Jensen both stated that their son owed Mr Nathan Lawson \$20,000.
4. Mr Peter Jensen also stated that his son had informed him prior to his death that he was involved in '*some things and couldn't get out of it. He thought that somebody was going to kill him and that nobody could help him.*' In the two weeks leading up the fire and his death, Mr Jensen had stated to his father that he was '*scared of some people that were chasing him and that he felt he was in danger.*'

Jurisdiction:

5. Mr Jensen's death was a reportable death pursuant to the *Coroners Act 2008* because it occurred in Victoria and it was unexpected.¹

The Purpose of the Coronial Investigation:

6. The Coroners Court of Victoria is an inquisitorial jurisdiction.² The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.³ The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances to the death, but is confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death.⁴
7. The broader purpose of coronial investigations is to contribute to the reduction of the number of preventable deaths through the investigation findings and the making of recommendations by coroners, generally referred to as the 'prevention' role. Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.⁵ These are effectively the vehicles by which the prevention role may be advanced.⁶
8. It is not the role of the coroner to lay or apportion blame, but to establish the facts.⁷ It is not the coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.

¹ Section 4 of the *Coroners Act 2008*

² Section 89(4) of the *Coroners Act 2008*.

³ Section 67(1) of the Act.

⁴ *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).

⁵ See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.

⁶ See also sections 73(1) and 72(5) of the Act which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

⁷ *Keown v Kahn* (1999) 1 VR 69.

9. Detective Senior Constable Glen Hatton of the Arson and Explosives Squad was the coroner's investigator and he prepared the coronial brief.
10. This finding draws on the totality of the material produced for the coronial investigation into Mr Jensen's death. That is, the investigation and coronial brief in this matter, the statements, reports and testimony of those witnesses who testified at the inquest and any exhibits tendered through them. All this material, together with the inquest transcript, will remain on the coronial file. In writing this finding, I do not purport to summarise all of the evidence, but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity.

Standard of Proof:

11. All coronial findings must be made based on proof of relevant facts on the balance of probabilities and, in determining this; I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁸ These principles state that in deciding whether a matter is proven on the balance of probabilities, in considering the weight of the evidence, I should bear in mind:
 - a. the nature and consequence of the facts to be proved;
 - b. the seriousness of an allegation made;
 - c. the inherent unlikelihood of the occurrence alleged;
 - d. the gravity of the consequences flowing from an adverse finding; and
 - e. if the allegation involves conduct of a criminal nature, weight must be given to the presumption of innocence, and the court should not be satisfied by inexact proofs, indefinite testimony or indirect inferences.

The effect of this case, and other relevant authorities, is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

Identification of the Deceased:

12. On 11 April 2012, the body of Mr Jensen was identified by ante mortem and post mortem odontology comparison.⁹ Mr Jensen's identity was not in dispute and required no further

⁸ (1938) 60 CLR 336.

⁹ Report of Dr Richard Bassed dated 11/04/2012

investigation. I formally find the deceased to be Joshua Peter Jensen born on the 14 October 1984.

Medical Cause of Death:

13. On the 5 April 2012, Senior Forensic Pathologist Dr David Ranson from the Victorian Institute of Forensic Medicine performed an autopsy on Mr Jensen and provided a written report of his findings. The extradural haemorrhage noted within the skull on the left side is a common finding where there has been external heat applied to the head and the extradural haemorrhage had occurred in the area of the greatest heat damage to the head. Multiple skin splits were present over the body and these appeared to be divided into two types. The first of these were skin splits that occurred in areas of considerable heat damage where there had been shrinkage and stretching of the skin, resulting in skin splits over bony prominences. This was seen in association with some muscle contractures particularly in relation to the left arm at the elbow. At this elbow some bony damage had also occurred in association with heat damage to the head (the radial head had become detached). The other skin splits and effects had occurred in areas of relatively unburnt and non-heat affected skin and may represent kinetic blast/stretch trauma. These skin splits and defects were not associated with any significant haemorrhage in the surrounding deep adipose tissue. The majority of the non-heat affected skin splits had occurred over surfaces that face towards the right side of the body.
14. The pattern of heat related skin loss and subcutaneous tissue loss over the body together with the pattern of skin preservation would suggest that Mr Jensen had been lying face down in a fire with his right arm folded across the front of his chest beneath his body.
15. The presence of extensive airway soot disposition suggests that Mr Jensen may well have breathed for a short while during the course of the fire which had considerable smoke production. However, the relative absence of haemorrhage in association with the multiple skin splits over the 'right facing' side of body structures suggests that he did not survive with a circulation for long, following the infliction of these multiple lacerated injuries.
16. Toxicology results showed the presence of amphetamines and cannabis but no alcohol or gas products of combustion.

Events leading to the death:

17. On 4 April 2012, Mr Jensen and Mr Hawker attended Dandenong together. Whilst there, Mr Jensen went to a hotel and collected a drum of liquid filled with toluene from an

unidentified person. Mr Hawker did not see who this person was. Mr Hawker then drove Mr Jensen back to the Berwick residence before leaving. Later that day, they met up again and were joined by Mr Hawker's girlfriend, Ms Donna Dowsey. They smoked amphetamines together and Ms Dowsey and Mr Hawker noted that Mr Jensen was using an electric wok and kettle in the garage to prepare the pseudoephedrine extraction from the liquid he had obtained earlier.

18. According to Mr Hawker, the fumes were very strong during the extraction process, with vapours flowing out onto the bench. Mr Hawker told Mr Jensen that he was being careless, but Mr Jensen simply laughed and stated that this was going to make him a millionaire. Mr Jensen informed Ms Dowsey and Mr Hawker that two people were meant to be coming over for the liquid that he had. Ms Dowsey and Mr Hawker departed the premises around 1.30am.
19. On the 5 April 2012 at approximately 3.40am, Mr Peter Jensen was woken up by two thuds. He stated that the thuds sounded like someone hitting concrete with a hammer. After he got out of bed he heard three loud screams coming from a male which sounded like his son. He ran down the passage and came out onto the patio at the rear of the house. He could see a flame coming from underneath the garage door which was spreading towards the door and attempted to open the door, but it was locked. He ran to the front of the garage where the middle roller door was open and started calling out for his son. He could see however that the fire had also involved the back room of the garage. Mr Peter Jensen backed out of the garage and obtained a hose in an attempt to deal with the fire but it was too intense. Emergency services were then contacted.
20. Neighbours, Mr Michael Elvin and Mrs Ann Elvin told investigators they were woken by what sounded like a male yelling '*oh no, oh no.*' Mrs Elvin went to the side door at the rear of her property and heard a different male voice say '*quick, clean up this mess before someone sees it.*' She could also hear crackling or little popping noises. Mr Elvin heard a car door slam, a car engine start and drive off towards Harkaway Road. The same male he had heard earlier started yelling out for help. They both noticed and smelled smoke and contacted emergency services. They both heard a big explosion coming from the garage followed by a series of smaller explosions.
21. Police and the fire officers arrived on the scene. Detective Leading Senior Constable Glen Hatton from the Arson and Explosives Squad subsequently attended the premises. He noted

that the garage had extensive fire and explosive related damage. The roof of the premises had fallen in and the front wall where the three roller doors were located had been pushed outwards. An examination of the premises was conducted by Forensic Scientists from the Victorian Forensic Services Centre who were unable to detect any chemical residues of clandestine laboratory materials but identified that there were a number of containers which appeared to have contained solvent or similar materials. Following the assessment, Detective Hatton was able to enter the premises and located Mr Jensen's body underneath the rubble from the roof and partially under a filing cabinet. He was deceased. A digital thermometer was located under him.

22. Other police arson investigators attended and examined the premises, as did a senior Country Fire Authority investigator. In addition, scientist Mr John Kelleher from the Victoria Police Forensic Services Centre conducted an examination of the Berwick premises and provided a written report.

Inquest:

23. An inquest was held into this matter 5 & 6 May 2014, 27 November 2014 and 9 June 2015 with the following witnesses called;
- a. Mr Peter Jensen; father of Joshua
 - b. Ms Christine Jensen; mother of Joshua
 - c. Ms Kellie Growcott; friend/acquaintance of Joshua
 - d. Mr Rodney Hawker; friend/acquaintance of Joshua
 - e. Senior Constable Adam Meagher; first police responder
 - f. Mr John Kelleher; scientist Forensic Services Centre
 - g. Ms Donna Dowsey friend/acquaintance of Joshua
 - h. Mr Daniel Lovett; friend/acquaintance of Joshua
 - i. Ms Sarah Tuckwell; friend/acquaintance of Joshua
 - j. Mr Anthony Mete; friend/acquaintance of Joshua
 - k. Mr Christopher Ververis; friend/acquaintance of Joshua
 - l. Detective Leading Senior Constable Glen Hatton; Arson and Explosive Squad
 - m. Mr Nathan Lawson; friend/acquaintance of Joshua

n. Mr Jamie Ficarra; friend/acquaintance of Joshua

Issues at Inquest:

a) Fuel and Ignition Source.

24. Mr Kelleher told the inquest that the damage to the garage was not consistent with a concentrated explosion or with the presence of any explosive substance such as a high or low explosive. The fire appeared to have been the result of a fuel-air explosion.

25. At the time of his examination, Mr Kelleher identified two possible sources of fuel, they being a drum of toluene thinners and a 9kg liquid petroleum gas cylinder. Subsequent enquiries eliminated the gas cylinder. He reported¹⁰ that the fuel produced from the drum would be toluene vapour with a flammable range of 1.2% -7.1% and a flash point of 4^o Celcius.

26. Mr Kelleher calculated that on assuming the drum of toluene was half full and the entire contents leaked, this would produce about 2 cubic metres of vapour, sufficient to bring about half of the garage into the flammable range. As the explosion was much smaller, this suggested to Mr Kelleher that the initial supply of fuel was smaller, perhaps pointing to a limited escape of toluene. In addition, he concluded that the presence of significant amounts of toluene beneath Mr Jensen, indicated an escape of the chemical prior to or at an early stage of the fire.¹¹

27. Initial sources of ignition identified in the garage or immediate vicinity were considered by him to be;

- a. The portable gas heater (subsequently eliminated as it had not been used for some time);
- b. The gas hot water service (close to the drum fuel source);
- c. Any electrical appliances such as a light or switch;
- d. A cigarette lighter (a lighter was noted near the front veranda);
- e. An electric motor, such as that on the refrigerator.

28. Mr Kelleher reported that the presence of a digital thermometer was unusual. He stated that whilst they are readily available, they are generally used in trade or industrial applications,

¹⁰ Report of Mr John Kelleher dated 20 July 2012

¹¹ Report of Mr John Kelleher p 8

rather than in the home. It raised in his mind the possibility of some temperature related issue or checking being undertaken in the garage. He further stated that use of the digital thermometer may have provided a spark sufficient to ignite a fuel-air mixture. However, given that the hot water service was bigger and a better source of ignition, together with it being closer to the ground where the gases could accumulate, the thermometer was considered unlikely to be implicated.

29. Detective Hatton stated that he and other arson investigators undertook an examination of the premises. It was determined that the fire commenced towards the rear of the garage although they were unable to establish an exact location. It was apparent to him that there had been some form of fuel vapour explosion.¹²
30. Detective Hatton further stated that when heating a highly inflammable chemical like toluene, if it is heated beyond a temperature of approximately 140^o, it bursts into flames.¹³ The investigation pointed to an escape of toluene as the initial fuel source, ignited by an ignition source which was probably the hot water service. The presence of significant amounts of toluene beneath Mr Jensen, pointed to an escape of toluene prior to or at an early stage of the fire, rather than at a later stage.
31. In his evidence, Detective Hatton¹⁴ postulated an initial small explosion or fire that disrupted the large drum of toluene allowing the chemical to spread through the garage area. Once spilt vapours would have quickly built up to a flammable point which ultimately led to ignition. He stated that his view was consistent with what Mr Hawker had observed of Mr Jensen being 'really careless' when carrying out the reduction process in his presence and describing his conduct as 'stupid.'¹⁵ Despite finding some aspects of Mr Hawkers' evidence unsatisfactory, I nevertheless accept that this evidence accurately describes what occurred.
32. Detective Hatton's explanation is dependent on the reduction process having continued after Mr Hawker and his girlfriend left the premises. Mr Hawker stated in evidence that he told Mr Jensen to turn the heat down with this being done before he left.¹⁶

¹² Transcript p 400

¹³ Transcript p 403

¹⁴ Transcript p 401

¹⁵ Transcript p 98

¹⁶ Transcript p 107

33. I accept Detective Hatton's opinion as to the most probable circumstances giving rise to the incident. Despite the evidence of the heat being turned down, and even if it had been turned off at some point, there is no evidence of anything that would have prevented it being recommenced at a higher heating level. It is significant that a digital thermometer was located by investigators under the body, which is indicative of it being in Mr Jensen's possession at the time. This supports a finding, on the balance of probability, that the reduction process was ongoing at the time Mr Jensen was overcome by the effects of the fire. In addition, it is more likely to be needed to test the temperature after the heat source was turned up, than had it remained turned down.

b) Whether Mr Jensen was alone when the fire started.

34. Statements were tendered at the inquest detailing accounts by neighbours of hearing yelling involving more than one male voice.¹⁷ As previously indicated, a voice was heard to say 'quick clean up this mess before someone sees it.'¹⁸ In addition, a vehicle was heard to leave the vicinity shortly thereafter.

35. The evidence satisfies me that at least one other person was present immediately before the fire commenced, however, the identity of that person or persons cannot be established.

36. The evidence fails to satisfy me that yelling heard by Mr Michael Elvin was from an argument between unknown parties. It appears Mr Elvin only initially thought it was an argument with the reference in his statement being "...woken by a male yelling, which I thought **at first** was relating to an argument.' (my highlight) As he was not called to give evidence at the inquest the matter cannot be clarified. I note, however, there is no reference to hearing another voice at that time and his wife's statement refers to initially hearing one voice only and makes no reference to an argument. The yelling that was heard could be consistent with the need to instil urgency in trying to prevent a catastrophic situation developing.

c) Whether the toluene spill was deliberate or accidental.

37. Despite evidence of money being owed, threats to life and at least one other person being present at the time, I do not accept that the toluene spill was the result of a deliberate act, or that the fuel vapour mixture was deliberately lit by a third party. The overheard request to 'clean up this mess before someone sees it' is indicative of the spill being accidental.

¹⁷ Statements of Ann and Michael Elvin

¹⁸ Statement of Ann Elvin

Further, given the near simultaneous ignition (flashover) of fuel vapour, had someone deliberately lit it within the garage area, they would also have been killed.¹⁹

38. The evidence satisfies me that the disruption of the large drum of toluene resulting in the spill of the chemical, was accidental and not deliberate.

d) Family concerns regarding the role of Mr Lawson, Mr Hawker and Ms Dowsey.

39. Mr Lawson denied any knowledge of Mr Jensen's involvement in drugs.²⁰ He admitted in evidence that there was still an outstanding debt owed to him by Mr Jensen at the time of his death, but it was not \$20,000. Whilst he could not remember the amount he believed it was around \$1,500 and \$2,000.²¹

40. It appears that Mr Jensen borrowed money from a number of people in order 'prop-up' his life style and remained in debt to them. However, there is no basis for me to make a finding that Mr Lawson either threatened Mr Jensen in the lead up to his death, or that he was implicated in his death.

41. Although the family submit that aspects of Mr Hawker's and Ms Dowsey's evidence are unreliable, nevertheless there is no evidence implicating them in Mr Jensen's death.

42. I formally find that Joshua Jensen died from the effects of fire and explosion, whilst undertaking in a chemical reduction process that resulted in an escape of toluene which was subsequently ignited.

Comments:

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

1. I accept that the concerns expressed by the family regarding aspects of the investigation into Mr Jensen's death have some validity. The concerns include a lack of urgency in obtaining statements from a number of relevant witness and a lack of investigation into the movements of relevant witnesses at the time of the fire.
2. Nevertheless, I do not believe that the concerns raised adversely impacted on my determining the relevant circumstances surrounding Mr Jensen's death.

¹⁹ Detective Hatton; Transcript p 424

²⁰ Transcript p 339

²¹ Transcript pp 342 and 346

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

Mr Peter Jensen

Ms Christine Jensen

Mrs Kellie Growcott

Mr Dermott Dann

Mr Rob Melasecca, Melasecca Kelly & Zayler

Mr Dean Cole, Dean Cole & Associates

Detective Senior Constable Glen Hatton, Arson and Explosives Squad

Leading Senior Constable King Taylor

Signature:



IAIN WEST

DEPUTY STATE CORONER

Date: 31 May 2016