



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2001 2158

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Findings of:	JUDGE SARA HINCHEY, STATE CORONER
Deceased:	JULIE ANN GARCIACELAY , born 10 July 1955
Delivered on:	11 April 2018
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Hearing date:	11 April 2018
Counsel assisting the Coroner:	Ms Rebecca Johnston-Ryan, State Coroner's Legal Officer
Catchwords:	Suspected homicide, no person charged with an indictable offence in respect of a reportable death, mandatory inquest

TABLE OF CONTENTS

Background	1
The purpose of a coronial investigation	1
Victoria Police Investigation	3
Matters in relation to which a finding must, if possible, be made	5
Identity of the deceased pursuant to section 67(1)(a) of the Act	5
Medical cause of death pursuant to section 67(1)(b) of the Act	5
Circumstances in which the death occurred pursuant to section 67(1)(c) of the Act	5
Findings and conclusion	7

HER HONOUR:

BACKGROUND

1. Ms Julie Ann Garciacelay (**Ms Garciacelay**) was a 19-year old woman who resided in North Melbourne at the time of her disappearance on or about 1 July 1975.
2. Ms Garciacelay was born and raised in Stockton, California, United States of America. She was the second of three daughters to Ruth and Fermin Garciacelay. Ms Garciacelay had resided with her family until she was 18 years of age, at which time she moved out into a flat on her own for approximately 9 to 10 months.
3. On 10 October 1974 Ms Garciacelay was granted an Australian Entry Visa valid until 27 September 1975. Ms Garciacelay was granted permanent residency in Australia.¹ On 4 November 1974, Ms Garciacelay entered Australia.
4. On her arrival in Melbourne, Ms Garciacelay lived with her sister, Ms Gayle Garciacelay (**Gayle**), in her apartment located at 9/26 Canning Street, North Melbourne.² Ms Garciacelay worked in several short-term hospitality jobs before commencing work as a library reference clerk at Southdown Press on Latrobe Street, Melbourne.
5. Ms Garciacelay had commenced a relationship with Mr Bruce Rodan during her time in Melbourne, but at the time of her disappearance it appears their relationship had ended and the pair were friends.

THE PURPOSE OF A CORONIAL INVESTIGATION

6. On 17 July 2001 Victoria Police reported the suspected death of Ms Garciacelay. Ms Garciacelay was reported to Victoria Police as a missing person on 2 July 1975. At the time of Ms Garciacelay's disappearance and suspected death, the *Coroners Act 1985 (Vic)* applied. Both the *Coroners Act 1985 (Vic)* and the *Coroners Act 2008 (the Act)* provide a definition of 'death' to include a "*suspected death*".

¹ Coronial brief, statement of Gayle Garciacelay, dated 7 July 1975, 33

² *ibid*

7. From 1 November 2009, the Act has applied to the finalisation of investigations into deaths, including suspected death, which occurred prior to the commencement of the Act.³
8. Ms Garciacelay's death constituted a '*reportable death*' under the *Coroners Act 1985* (Vic), as she ordinarily resided in Victoria at the time of her suspected death and it appears to have been unexpected.⁴
9. The jurisdiction of the Coroners Court of Victoria is inquisitorial.⁵ The Act provides for a system whereby reportable deaths are independently investigated to ascertain the identity of the deceased person, the cause of death and the circumstances in which death occurred.
10. It is not the role of the coroner to lay or apportion blame, but to establish the facts.⁶ It is not the coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.
11. The expression "*cause of death*" refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
12. For coronial purposes, the phrase "*circumstances in which death occurred,*" refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.
13. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the Court's "*prevention*" role.
14. Coroners are also empowered:
 - (a) to report to the Attorney-General on a death;
 - (b) 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

³ Section 119 and Schedule 1 *Coroners Act 2008*. All references which follow are to the provisions of this Act unless otherwise stipulated

⁴ Section 3 *Coroners Act 1985* (Vic)

⁵ Section 89(4) *Coroners Act 2008*

⁶ *Keown v Khan* (1999) 1 VR 69

- (c) 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. These powers are the vehicles by which the prevention role may be advanced.
15. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁷ The effect of this and similar 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.
16. Section 52(2) of the Act provides that it is mandatory for a coroner to hold an inquest into a death if the death (or suspected death) or cause of death occurred in Victoria and a coroner suspects the death was as a result of homicide (and no person or persons have been charged with an indictable offence in respect of the death), or the deceased was immediately before the death, a person placed in custody or care, or the identity of the deceased is unknown.
17. While Ms Garciacelay's body has not been located, there is sufficient evidence to satisfy me that her disappearance is due to her being deceased and that the death is a suspected homicide. The Act provides that an inquest must be conducted into the circumstances of all deaths suspected to be a homicide, if no person has been charged with an indictable offence in respect of the death.

VICTORIA POLICE INVESTIGATION

18. Immediately after Ms Garciacelay was reported to Victoria Police as being a missing person, Victoria Police members commenced an investigation. In the course of this investigation, Victoria Police members formed a suspicion that Ms Garciacelay was deceased, and the death was considered to be a homicide.
19. Ms Garciacelay's disappearance and suspected death was investigated by the Victoria Police Homicide Squad. Despite this investigation, no person or persons have been charged with indictable offences in connection with Ms Garciacelay's death.
20. I note the observations of the Victorian Court of Appeal in *Priest v West*,⁸ where it was stated:

“If, in the course of the investigation of a death it appears that a person may have caused the death, then the Coroner must undertake such investigations as may lead to

⁷ (1938) 60 CLR 336

⁸ (2012) VSCA 327

the identification of that person. Otherwise the required investigation into the cause of the death and the circumstances in which it occurred will be incomplete; and the obligation to find, if possible, that cause and those circumstances will not have been discharged.”

21. Consistent with this judgment and mindful that the Act mandates that I must conduct an inquest, one of the purposes of the inquest is to investigate any evidence that may lead to the identification of the person (or persons) who may have caused the death, bearing in mind that I am required to make findings of fact and not express any judgement or evaluation of the legal effect of those findings.⁹
22. Section 7 of the Act specifically states that a coroner should avoid unnecessary duplication of inquiries and investigations, by liaising with other investigative authorities, official bodies or statutory officers. The rationale behind this provision is to allow for consideration of public interest principles that weigh against the potential benefits of any further investigation, such as further cost to the community. It also acknowledges that although a number of authorities or organisations may have the mandate to investigate, some are more appropriately placed than others to do so in any given circumstance.
23. In the case of the disappearance of Ms Garciacelay, I acknowledge that the Victoria Police Homicide Squad has conducted an extremely thorough investigation.
24. The Coroner’s Investigator, Detective Sergeant Steven Trewavas, has provided to the Court a statement in relation to this matter. Detective Sergeant Trewavas’ statement establishes the following:
 - (a) that forensic examination of Ms Garciacelay’s apartment and forensic testing at the scene provided no evidence that could assist with determining the circumstances of her disappearance or suspected death;
 - (b) that extensive proof of life checks have been conducted including telephone, bank, Medicare and Centrelink enquiries. However, none of these enquiries revealed the location or whereabouts of Ms Garciacelay; and
 - (c) that despite the extensive missing person and homicide investigations undertaken, the person or persons responsible for Ms Garciacelay’s disappearance and suspected death have, to date, not been identified.

⁹ *Perre v Chivell* (2000) 77 SASR 282

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

Identity of the Deceased pursuant to section 67(1)(a) of the Act

25. While Ms Garciacelay's body has not been located, I am satisfied, on the balance of probabilities, that she is deceased. Therefore, I find that the identity of the deceased is Julie Ann Garciacelay, born 10 July 1955.

Medical cause of death pursuant to section 67(1)(b) of the Act

26. As Ms Garciacelay's body has not been located, her body has not been examined to identify a cause of death. Therefore it is not possible to make a finding with respect to the cause of Ms Garciacelay's death.

Circumstances in which the death occurred pursuant to section 67(1)(c) of the Act

27. Ms Garciacelay was last seen by her sister Gayle in their apartment on the evening of 1 July 1975 at approximately 8.00pm. After arriving home from work, Ms Garciacelay told Gayle that Mr Rhys "Tom" Collins (**Mr Collins**) had attended her workplace during the day and had asked to come around to the apartment some time that evening. Ms Garciacelay did not like Mr Collins, but was attracted to the idea of meeting more people and she had previously met a number of new acquaintances via Mr Collins.¹⁰
28. A staff member at Southdown Press recalled that Mr John Grant (**Mr Grant**), an employee of Southdown Press, came to the library in the workplace with two men, one with the surname "Collins", seeking information or articles on soul food. Mr Grant and Mr Collins talked to Ms Garciacelay about their idea to open a soul food restaurant and the group made arrangements to meet at Ms Garciacelay's apartment that evening to discuss the business venture.¹¹
29. Gayle had made plans to visit her friend Ms Barbara Somerton (**Ms Somerton**) at her apartment in Kew to watch her colour television. Gayle was not feeling well, and asked Ms Garciacelay to call her work before 11.00pm to advise that Gayle would not be attending work. Gayle left the apartment at approximately 8.00pm after talking to two door-to-door kitchenware salesmen for approximately 45 minutes. At the time she left the apartment, Ms Garciacelay was alone and waiting for Mr Collins to attend.

¹⁰ Above n 1, 36-37

¹¹ Coronial brief, statement of Jools Alexandra Thatcher, dated 15 October 2003, 59-60

30. Ms Garciacelay's movements are largely unknown or unable to be confirmed after this time.
31. On 2 July 1975 at approximately 1.00pm, Gayle returned home in the company of Ms Somerton and her husband Mr Francis Somerton (**Mr. Somerton**). Ms Garciacelay was not home and the apartment looked untidy. Mr and Ms Somerton left the flat with Gayle to go to lunch at the Toorak Hotel.¹²
32. In the afternoon sometime between 3.40pm and 4.00pm, Gayle returned to the apartment with Mr and Ms Somerton. Ms Garciacelay was still not home, and Gayle became concerned for her welfare. Ms Somerton went to call the Southdown Press to confirm whether Ms Garciacelay had attended work. An employee of Southdown Press confirmed Ms Garciacelay had not attended work.
33. On 11 July 1975 Mr Collins provided an unsigned statement in relation to the disappearance of Ms Garciacelay. Mr Collins stated that he, Mr Grant and Mr Power had attended Ms Garciacelay's apartment on the evening of 1 July 1975, bringing a dozen bottles of beer with them. Mr Collins stated that the group stayed at Ms Garciacelay's apartment talking, drinking and playing records. At an unknown time Mr Grant and Mr Power went out to get food, and returned a short time later with pizza. At approximately 10.30pm Ms Garciacelay left the apartment to make a telephone call for her sister, and Mr Collins stated he stayed at the apartment with Mr Grant and Mr Power. Ms Garciacelay did not return, and the three men left the apartment, with Mr Collins being dropped home at approximately 11.00pm.
34. Mr Grant provided an unsigned and undated statement regarding Ms Garciacelay's disappearance. Mr Grant's statement confirmed that he attended Ms Garciacelay's apartment with Mr Collins and Mr Power, and that the three men had left after Ms Garciacelay did not return from going to make a telephone call.¹³
35. On 30 October 2003, Mr Grant attended the Victoria Police Homicide Squad office on St Kilda Road, Melbourne to be interviewed regarding the disappearance and suspected murder of Ms Garciacelay. Mr Grant gave a "no comment" interview, and did not consent to provide a blood sample upon request by interviewer Detective Sergeant Steve Trewavas.¹⁴
36. On 31 October 2003, Mr Power was interviewed at Port Phillip Prison regarding Ms Garciacelay's disappearance. Mr Power confirmed that on 1 July 1975 he had been drinking

¹² Coronial brief, statement of Francis John Somerton, dated 9 July 1975, 55

¹³ Coronial brief, statement of John Grant, undated, 171-173

¹⁴ Coronial brief, transcript of record of interview between John Grant and Detective Senior Constable Steve Trewavas, dated 30 October 2003, 176-183

in a Melbourne hotel in the company of Mr Jack Darmody and other persons.¹⁵ Mr Power also confirmed that he had attended Ms Garciacelay's apartment on the night of 1 July 1975 in the company of two other men he refused to name. Mr Power confirmed that left the apartment to get pizza and returned afterward. Mr Power stated that the three men had left the apartment when Ms Garciacelay had gone out to make a telephone call and subsequently did not return.¹⁶ Mr Power agreed to provide a blood sample upon request.

FINDINGS AND CONCLUSION

37. Having investigated the death of Ms Garciacelay and having held an Inquest in relation to her suspected death on 11 April 2018, at Melbourne, I am satisfied of the following matters to the required standard:

- (a) that, despite no body being located, Ms Garciacelay, born 10 July 1955 is deceased;
- (b) that, despite there being no evidence as to the exact circumstances and cause of Ms Garciacelay's death, her death was the result of homicide; and
- (c) that, despite extensive criminal investigation conducted by Victoria Police, no person or persons have been conclusively identified, to date, as being responsible for causing Ms Garciacelay's death. On that basis, I am also satisfied that no investigation which I am empowered by the Act to undertake, would result in the identification of the person or persons who caused Ms Garciacelay's death.

38. I make the findings set out above pursuant to section 67(1) of the Act.

39. I note that in the future, if new facts and circumstances become available, section 77 of the Act allows any person to apply to the Court for a determination that some or all of these findings be set aside. Any such application would be assessed on its merits at the time of application.

40. I convey my sincerest sympathy to Ms Garciacelay's family and friends.

41. Pursuant to section 73(1) of the Act, I order that this Finding be published on the internet.

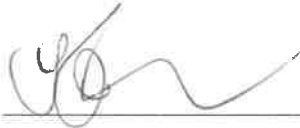
¹⁵ Coronial brief, transcript of record of interview between John Power and Detective Senior Constable Newman, dated 31 October 2003, 193

¹⁶ *ibid*, 195-212

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

- (a) Ruth and Fermin Garciacelay; Senior Next of Kin; and
- (b) Detective Sergeant Steve Trewavas, Coroner's Investigator, Victoria Police.

Signature:



JUDGE SARA HINCHEY
STATE CORONER

Date: 11 April 2018

