

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: 2009 / 000021

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: MR KHUONG AN HUYNH

Delivered On: 19 October 2012

Delivered At: Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne

Hearing Dates: 22 and 23 May 2012

Findings of: K.M.W. PARKINSON, CORONER

Place of death/Suspected
death: French Island Victoria

Counsel Assisting: Leading Senior Constable Kennedy

Appearances: Mr A Murphy for Director of Transport Safety;
Mr A M Cahill for Mr F Denvir,

I, K. M. W. PARKINSON, Coroner having investigated the death of KHUONG AN HUYNH

AND having held an inquest in relation to this death on 22 and 23 May 2012

at MELBOURNE

find that the identity of the deceased was KHUONG AN HUYNH

born on 3 June 1975

and the death occurred on 1 January 2009

at French Island, Victoria

from:

1a. DROWNING

1. An inquest was conducted into the death of Mr Huynh on 22 and 23 May 2012. The following witnesses gave evidence in the proceedings: Mr Rodney Johnston, Mr Mark Cunningham, Ms Melinda Cunningham, Mr Peter Jewel, Mr John Dickie, Mr Frank Denvir and Leading Senior Constable David Ness of Victoria Police at Hastings.
2. Mr Huynh was born on 3 June 1975 and he was 33 years of age at the time of his death.
3. Mr Huynh had a history of illicit substance use and had contact with police and the criminal justice system relating to his addiction.
4. In late December 2008, his family, comprising mother, father and siblings went to holiday at Phillip Island. Mr Huynh arrived with the family. On the second day of their holiday at Cowes, he went for a walk by himself and did not return until the following morning. He advised his family that he had been out all night and that he had become lost and waited until the morning to find his way back to the house. He was observed to be dishevelled and to have some scratches on his legs.
5. On 31 December 2008, he told his family that he was going to French Island for the day as he wanted to explore. Family drove him to the Cowes Pier and arranged to collect him that afternoon. He did not return on the ferry.

6. He had borrowed a mobile phone belonging to his sister-in-law and when contacted by his family he advised that he had missed the ferry and was still on French Island.
7. Mr Huynh had joined a tour operated by French Island Echo Tours of Tankerton Road, French Island on the morning of 31 December 2008 and did not catch a public ferry to French Island. A receipt for a half day tour package dated 31 December 2008, and issued in his name records that he joined the tour, departing Cowes Phillip Island at 9.30am, which included travel, lunch and a tour of the Eco Farm and old gaol tourist venue on French Island.
8. There were 23 adult passengers on the tour, which travelled by a charter boat service, Wildlife Coast Cruises, to French Island. From the pier they travelled on the tour charter bus to the old gaol premises for lunch and sightseeing. The tour remained at the island for some hours after lunch and arrangements were that at 12.40pm, the group would reunite and return to the pier and boat for the trip back to Cowes. The tourism operator at the McLeod Eco Farm had no recollection of his joining the group at lunch.
9. The evidence is that the arrangements for the return journey were clearly stated to all tour participants. His absence on the return journey was not noticed by those counting onto the bus or on the return boat charter trip. The tour operator records indicate that the group were counted back onto the bus and the charter boat for the return trip and that the passenger total equalled the manifest numbers. A head count was undertaken which was reported as being correct against the passenger manifest, however it is appears likely that Mr Huynh was not aboard the bus at the time of the head count and it is clear he did not return to the mainland that evening. It is also clear that he intentionally remained on the island that evening.
10. Mr Mark Cunningham and Mrs Melinda Cunningham operate the accommodation and tourist facility at the old gaol premises, known as Eco Farm. Mr Cunningham's evidence was that at approximately 11.30pm on Wednesday 31 December 2008, he was at home with his wife when a man, subsequently identified as Mr Huynh, arrived at his door.

11. He said that he had missed the ferry back home and was therefore on the island until the next morning. He advised Mr Cunningham that he had been on a day tour of the island and had stayed behind after the tour left. Mr Cunningham asked what he had been doing whilst on the island and he said he had just been walking and admiring the scenery.
12. Mr and Mrs Cunningham gave him food and accommodation for the night. The next morning he had breakfast and was driven to the Tankerton Jetty by Mrs Cunningham, in company with another guest, known as Peter, who subsequently came to be identified shortly before the inquest as Mr Peter Jewell.
13. Mrs Cunningham stated that she dropped the pair at the jetty car park and last saw Mr Huynh walking with Mr Jewell towards the jetty.
14. At approximately 10.00am on 2 January 2009, Mr Huynh's body was located on the beach tidal zone north of the Fairhaven Camping Ground approximately 5 kilometres north of the Tankerton Jetty. He was located by nearby holidaymakers. The body was unclothed save for a pair of socks. Police searched the immediate foreshore area and did not locate any clothing or personal belongings. Police believed that the clothing was likely to have been displaced in the water. There were no immediate signs of injury or violence.
15. A post mortem examination was performed by Dr Paul Bedford, Forensic Pathologist. Dr Bedford reported that the internal examination showed congested and oedematous lungs. He reported that histological examination of lung tissue showed marked congestion and focal rupture of alveolar membranes, which whilst non-specific is frequently noted in drowning. He stated that a reasonable medical cause of death was 'circumstances suggestive of drowning'.
16. The pathologist reported that there was no evidence of either offensive or defensive type injury. There is no evidence to suggest interference or involvement by any other person in the death. Toxicological analysis was negative for common drugs and poisons.
17. In April 2011, information was provided to police which suggested that Mr Huynh may not have entered the water off the beach at French Island and had in fact boarded the ferry to Stony Point. This information was said to have been provided by a man who was not identified other

than by his first name in the accommodation provider's records as 'Peter'. He was subsequently identified as Mr Peter Jewel.

18. Further inquiries were made of the tourism operators and contact was able to be made by police with Mr Jewell in May 2012. At the request of the Coroner he provided a statement dated 8 May 2012, as to his recollection of the events of 1 January 2009 involving Mr Huynh.
19. Mr Jewel's statements raised the possibility that Mr Huynh boarded the ferry to leave the island on 1 January 2009 and that he may have entered the water from the ferry during the course of its journey to Stony Point.
20. These issues were sought to be investigated with the government contractor and operator of the ferry in question, Mr Frank Denvir, however police had some difficulty in obtaining a statement from the witness. Ultimately he was called to give evidence in the inquest.
21. Evidence was given that some months after Mr Huynh's death, Mr Johnston located a pair of running shoes on the beach at Tankerton near the camping ground. These shoes were not located in the search of the beach undertaken when Mr Huynh was found. The find was not reported to the police at the time and they have long since been destroyed. There had been a large number of tourists at the island in the preceding period. There is no evidence to suggest that the shoes belonged to Mr Huynh.

MR HUYNH'S ACTIVITIES ON 1 JANUARY 2009.

22. Mrs Cunningham drove Mr Huynh and Mr Jewell to the pier at Tankerton to catch the public ferry back to the mainland. She stated that Mr Huynh appeared calm and asked her to stop at the shop for some cigarettes. She dropped the two men at the car park to the pier and returned to her premises. Neither Mr nor Mrs Cunningham, report anything about Mr Huynh's behaviour or demeanour which may have suggested he was intending to take his own life.
23. Mr Jewell stated that Mr Huynh confided in him when he was standing on the Jetty at Tankerton that he was unhappy about going back to Melbourne and that he was 'involved in some heavy shit'. He did not expand upon what he meant by this comment, but Mr Jewell concluded that he was anxious about returning to the mainland.

24. Whilst his police LEAP data report identifies that he was sentenced for possession of heroin in February 2008 and had been sentenced for trafficking in heroin, police have not identified any evidence to suggest that he had been threatened. Nor have they identified any activity in which he was engaged at that time which might have caused him concern for his own safety at the hands of others.
25. Whilst Mr Huynh had a history of substance use and an associated criminal record he had not apparently come to the attention of police since the offending which resulted in the February 2008 sentencing.
26. The ferry schedule for the 10.30am journey was Tankerton Pier to Stony Point and then an additional service from Stony Point to Philip Island. The daily manifest records the number of persons boarding the ferry at Tankerton as 22 and records that 22 passengers disembarked at Stony Point.
27. Mr Jewell gave evidence that they queued for the ferry at Tankerton and that when the ferry arrived, Mr Huynh was immediately behind him in the queue. They had been talking as they moved along the pier towards the boat. Mr Jewell reporting that Mr Huynh had offered to carry his bag.
28. Mr Jewell said that he was aware of Mr Huynh's presence immediately behind him as he commenced to board the boat, however became distracted due to a verbal altercation taking place between a crew member, whom he now knows as Mr Frank Denvir, the public ferry service operator, and a woman passenger about her hand luggage. He stated that he was so surprised by the manner in which Mr Denvir was speaking to the customer, that he did not notice whether Mr Huynh stepped onto the ferry after him.
29. Mr Jewell states that as soon as he boarded, he went into the passenger cabin and remained there for the entire journey. He was surprised that Mr Huynh did not come into the cabin as he was expecting to continue their conversation on the boat, however he assumed he had gone to sit upstairs.

30. He did not see Mr Huynh after that time, even though upon arrival at Stony Point he looked back to the disembarking passengers to find him as they had discussed travelling by train to Melbourne. He states that he had an uneasy feeling, however when he could not see Mr Huynh on the deck of the boat as it departed, he assumed he must have been inside the cabin.
31. The boat is a twin hull passenger ferry known as the George Bass. It is configured to carry up to 95 passengers in two areas comprising, an inside cabin on the lower or main deck and upstairs an outdoor seating area.
32. Mr Denvir stated that on 1 January 2009, 22 passengers boarded his vessel at the Tankerton Jetty for the 10.30am crossing and that 22 passengers disembarked at Stony Point.
33. Whilst there was no specific record kept of the names of passengers on the boat at any one time, Mr Denvir states that it would not have been possible for Mr Huynh to fall off or even to deliberately jump off the boat whilst underway.
34. Mr Denvir stated that he would have noticed if a person had jumped or fallen off the boat whilst it was underway either from the upstairs passenger area or from the aft luggage area. He also says that he would have been seen by a member of the crew or by a passenger.
35. The boat was crewed by a skipper, and two deckhands Mr John Ducker and Mr Denvir. As police were unaware at the time of the death of the events connecting Mr Huynh to the Denvir boat, no statement was initially taken from Mr Ducker and he cannot now be located to assist in relation to any recollection he may have.
36. Mr Denvir states that the day was very busy as it was New Years Day. He said he did not notice Mr Huynh in the queue to board the boat and nor did he notice him boarding or on board the boat.
37. His evidence was that when the boat arrived at Stony Point all 22 passengers disembarked and the boat was empty of passengers. Mr Denvir's evidence was that the ferry left Stony Point for Phillip Island without passengers.

38. Tickets, if not pre-purchased, are sold as people enter the boat or on the boat. Passenger numbers are recorded as they board by mechanical recording system and a passenger log of numbers and ticket sales is made. Passengers are not identified and the service operates as a public transport service rather than as a tourist venture.
39. The waterway is a tidal waterway subject to strong current activity. The journey from French Island at Tankerton to Stony Point takes between 6 to 15 minutes depending upon conditions. The conditions on the day of the journey were regarded by Mr Denvir as being reasonable and not subject to severe wind or rough water.

CONCLUSIONS

40. Mr Huynh had been acting erratically in the days before his death, disappearing from the holiday home and returning a day later. He acted similarly at French Island where he apparently deliberately separated from the group and only reappeared after the tour had left the island.
41. The inquiry has been somewhat constrained by the lack of evidence as to tidal patterns and possible charting which may have been undertaken to assist in ascertaining the point at which Mr Huynh entered the water. This is largely because until the evidence from Mr Jewell was obtained, it had been assumed by police that Mr Huynh entered the water from the beach and had somehow come into difficulty in the water. As earlier indicated the information as to the possible involvement of Mr Denvir's boat was not information the police received until some time after the event.
42. Mr Huynh was described by his family as not being a competent swimmer and not likely to have entered the water for recreational purposes. I am satisfied that it is unlikely that he entered the water for recreational purposes.
43. Having regard to the weather and water conditions on the day and the type of boat and its fit out it is unlikely that he accidentally fell from the ferry. Either he intentionally went overboard from the boat, without being observed by members of the crew or any of the other passengers, or he deliberately entered the water from the beach or jetty side. There is also the possibility that he changed his mind at the last minute and did not board the ferry boat at all. His conduct

in disappearing from home, absconding from the tour deliberately is also consistent with him making a last minute decision not to board the boat and to remain on the island.

44. Whilst the toxicological analysis does not identify the presence of any substance which may have affected his cognition or mental state, reports of his erratic conduct in the days prior to his death by both family members and from those in contact with him on French Island, suggest that he was disturbed or distracted by personal difficulties, the specific details of which are unclear.

FINDINGS AS TO CAUSE AND CONTRIBUTION

43. I find that Mr Khuong Huynh died on 1 January 2009 and that the cause of his death was drowning.
44. I find that is unlikely that he entered the water for recreational purposes.
45. Whilst it is not possible on the available evidence to exclude his having entered the water from:
- (a) the beach at French Island;
 - (b) the public ferry service operated by Mr Frank Denvir at some point between Tankerton and Stony Point; or
 - (c) from the Jetty at Tankerton, French Island,

I am unable to conclude with any certainty as to where and how he entered the water.

46. I find that it is likely that Mr Khuong Huynh took his own life.
47. There is no evidence to suggest that any other person caused or contributed to his death.

COMMENTS

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

1. I make no comment in relation to public health and safety matters in this case.

RECOMMENDATIONS

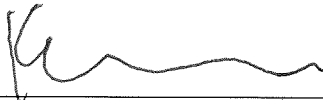
Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendation(s) connected with the death:

1. I make no recommendations in this matter.

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

- The family of Mr Huynh;
- The Interested Parties;
- The Investigating Police Officer.

Signature:



K. M. W. PARKINSON
CORONER
Date: 19 October 2012

