



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2006 0505

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Deceased:	MARIO ROCCO CONDELLO
Findings of:	JUDGE SARA HINCHEY, STATE CORONER
Hearing date:	8 December 2016
Delivered on:	8 December 2016
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Counsel assisting the Coroner:	Ms Jodie Burns, Senior Legal Counsel
Representation	Nil
Catchwords	Homicide, no person charged with indictable offence in respect of a reportable death, mandatory inquest

TABLE OF CONTENTS

Background	1
The purpose of a coronial investigation	2
Victoria Police homicide investigation	3
Matters in relation to which a finding must, if possible, be made	
- Identity of the deceased	5
- Medical cause of death	5
- Circumstances in which the death occurred	6
Findings and conclusion	8

HER HONOUR:

BACKGROUND

- 1 Mario Rocco Condello (**Mr Condello**) was born on 12 April 1952 at the Royal Women's Hospital, Carlton to [REDACTED]. Mr Condello had an older sister, [REDACTED], and a younger brother, [REDACTED]. Mr Condello's parents, who were originally from Italy, taught him to speak Calabrese, the primary language of the Southern Italian region of Calabria.
- 2 After leaving High School, Mr Condello commenced a law degree at Monash University, from which he graduated in 1976. In his final year of university Mr Condello met and commenced a relationship with [REDACTED] and they married in 1978.
- 3 Also in 1978, Mr Condello commenced his own legal practice, 'Mario Condello Solicitors', in Best Street, North Fitzroy. During this period of time, North Fitzroy had a prominent Italian community and as a result, Mr Condello gained a number of Italian clients.
- 4 In 1982, Mr Condello and his wife [REDACTED] had a daughter, [REDACTED]. Also in 1982, Mr Condello was de-registered due to a criminal conviction.
- 5 In September 1988, Mr Condello and [REDACTED] had twin boys, [REDACTED] and [REDACTED]. In 1989, the family moved to 292 North Road, Brighton East.
- 6 Mr Condello had an extensive criminal history, including convictions for criminal damage by fire (arson) and multiple convictions for conspiracy to defraud and possession of weapons.
- 7 Mr Condello was a close friend and associate of Dominic Gatto (**Mr Gatto**). Mr Condello and Mr Gatto and their associates were commonly known as the 'Carlton Crew'. In 2003 and 2004 there were a series of underworld killings linked to the rivalry between members of the Carlton Crew and Carl Williams and his associates.
- 8 Victoria Police alleges that in April 2004, Mr Condello initiated a contract to kill Carl Williams, George Williams (Carl's father) and a third male said to be the Williams' body guard. Mr Condello was arrested and charged in June 2004 in relation to the contract. He was initially remanded in custody and later bailed to appear in the Supreme Court, on 6 February 2006, the same day he was killed, in relation to an indictment containing conspiracy to murder, incitement to murder and possessing a general category handgun. The trial was abandoned following Mr Condello's death.

THE PURPOSE OF A CORONIAL INVESTIGATION

- 9 At the time of Mr Condello's death, the *Coroners Act 1985* (Vic) applied. From 1 November 2009, the *Coroners Act 2008* (**the Act**) has applied to the finalisation of investigations into deaths that occurred prior to the commencement of the Act.¹ Mr Condello's death constituted a 'reportable death' under the *Coroners Act 1985* (Vic), as his death occurred in Victoria, and was both unnatural and violent.²
- 10 The jurisdiction of the Coroners Court of Victoria is inquisitorial.³ The purpose of a coronial investigation is independently to 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.
- 11 It is not the role of the coroner to lay or apportion blame, but to establish the facts.⁴ It is not a coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.
- 12 The "cause of death" refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
- 13 For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all of the 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.
- 14 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 'prevention' role.
- 15 Coroners are also empowered:
- (a) to report to the Attorney-General on a death;

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

² Section 3, definition of 'Reportable death', *Coroners Act 1985*.

³ Section 89(4) *Coroners Act 2008*.

⁴ *Keown v Khan* (1999) 1 VR 69.

- (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
- (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.

- 16 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*.⁵ 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.
- 17 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 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 death, a person placed in custody or care, or the identity of the deceased is unknown.
- 18 While Mr Condello's identity was not in dispute and he was not a person placed in "*custody or care*" as defined by section 3 of the Act, his death is considered to be a homicide. Therefore, it is mandatory to conduct an inquest into the circumstances of his death.

VICTORIA POLICE HOMICIDE INVESTIGATION

- 19 Immediately after Mr Condello's death, Victoria Police commenced a criminal investigation because the death was considered to be a homicide.
- 20 Mr Condello's death was initially investigated by the Homicide Squad and then the Purana Task Force. Despite this investigation, no person or persons have been charged with indictable offences in connection with Mr Condello's death.
- 21 I note the observations of the Victorian Court of Appeal in *Priest v West*,⁶ 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 the identification of that person. Otherwise the required investigation into the cause of the

⁵ (1938) 60 CLR 336.

⁶ (2012) VSCA 327.

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.”

- 22 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 judgment or evaluation of the legal effect of those findings.⁷
- 23 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.
- 24 In this case, I acknowledge that the Victoria Police through the Purana Task Force, has conducted an extremely thorough investigation in this matter.
- 25 In making this Finding, I have been careful not to compromise any potential criminal prosecution in the course of my investigation, mindful that Mr Condello’s death is an unsolved homicide case which Victoria Police continues to investigate.
- 26 The Coroner’s Investigator, Detective Senior Constable Paul Thomas, has provided to the Court a statement in relation to this matter.
- 27 The confidential nature of the Victoria Police’s ongoing investigation prevents me from reciting each and every matter which has been established by the Purana Task Force. However, Detective Senior Constable Paul Thomas’ statement indicates that the following important matters have been established and are able to be disclosed:
- (a) an examination of the scene reveals that it is highly likely a single firearm was used, with all fired bullet fragments able to be matched to the same type of ammunition; and
 - (b) that the movements of the offender(s) are not known; and

⁷ *Perre v Chivell* (2000) 77 SASR 282.

- (c) that despite the extensive homicide investigation conducted by the Purana Task Force, the person or persons responsible for Mr Condello's death have to date, not been identified and
- (d) that the homicide investigation into Mr Condello's death is ongoing and the Purana Task Force file remains open.

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

Identity of the Deceased pursuant to section 67(1)(a) of the *Coroners Act 2008*

- 28 The Deceased was visually identified by [REDACTED] on 7 February 2006 to be Mario Condello, born 12 April 1952.
- 29 Identity was not disputed and therefore required no investigation.

Medical cause of death pursuant to section 67(1)(b) of the *Coroners Act 2008*

- 30 On 7 February 2006, Professor Stephen Cordner (**Professor Cordner**), Forensic Pathologist with the Victorian Institute of Forensic Medicine, conducted an autopsy upon Mr Condello's body and provided a written report, dated 15 June 2006, which concluded that a reasonable cause of death was "*multiple gunshot wounds.*"
- 31 Professor Cordner commented in his report that Mr Condello sustained the following gunshot wounds:

*"(a) an entry and exit to the right to the right forearm (wounds 1 and 2);
(b) a superficial grazing type wound to the right mid abdomen (wound 3);
(c) an entry wound to the right buttock adjacent to the perineum (wounds 4 and 5);
(d) an entry wound to the right shoulder with a corresponding exit to the front of the mid left chest (wounds 6 and 7);
(e) an entry to the left postero temporal region (wound 9) and an exit in the right temporal region (wound 10);
(f) an entry in the right postero temporal region (wound 11) and with an exit through the left ear (wound 8)."*

- 32 Professor Cordner found that no projectiles were left inside Mr Condello's body. Professor Cordner also commented:

"Wounds 1,2,3,4, and 5 could have, purely from a pathological point of view, represent the passage of between one projectile, two or even three projectiles. From a functional point of view, looking for the more efficient explanation involving the smallest number of shots, it is relatively easy to imagine the right arm being in a position close to the right mid abdomen, with the abdomen itself slightly folded upon itself, during the course of

emerging from the driver's side of the car. A single shot occurring at that time might have caused all five wounds. There is nothing to indicate that this shot/these shots is/are contact, near contact or close range. The best conclusion from my examination is that the range is beyond close range, but this assessment is dependent upon examination of the clothing.

The shot to the right shoulder has pursued a course across the right side of the upper chest internally to emerge at the top of the breast bone and then coursed in a subcutaneous plane (that is, just beneath the skin) to emerge finally at the left nipple. There is nothing to indicate that this shot is contact, near contact or close range. The best conclusion from my examination is that the range is beyond close range, but this conclusion is dependent upon examination of the clothing.

Of the two shots to the head, wound 9 shows stippling. That is, there are the products accompanying the projectile out of the muzzle of the firearm (burnt and unburnt particles of powder, minute fragments of metal generated from the projectile or even the inner barrel of the firearm) impregnated in the skin. This indicates a close range shot. The actual distance depends upon the firearm and ammunition used, but the narrow diameter of the stippling indicates that the range may have been a matter of very small number of inches. The assessment is a little complicated because of the presence of hair.

In relation to entry wound number 11, there were none of the indicia of contact or close range shot. This would appear to have been fired from a range beyond close range.

Thus the conclusion is that the injuries to Mario Condello have been the result of a minimum of 4 or a maximum of 6 shots... Death would have followed more or less instantaneously following one or the other shot to the head.”

Circumstances in which the death occurred pursuant to section 67(1)(c) of the Coroners Act 2008

- 33 On Monday 6 February 2006, Mr Condello left his home at 292 North Road, Brighton East to travel to the city for the first day of the Supreme Court trial.
- 34 At approximately 9.30am, Mr Condello met with an associate Anthony Dieni (**Mr Dieni**)⁸ and one of his legal team at a café in Lonsdale Street, Melbourne.
- 35 Due to the trial being adjourned for the day, Mr Condello and Mr Dieni drove together in Mr Condello's car to visit a number of people.
- 36 Just prior to midday Mr Condello and Mr Dieni visited Prestige Motors in North Melbourne and they were provided a \$1,000.00 cheque as a donation to St Paul's Drug Rehabilitation Centre (**St Paul's**). Mr Condello also made some initial enquiries regarding the purchase of a car he was interested in.

⁸ Mr Condello had been assisting Mr Dieni since December 2005 by volunteering as a Drug and Alcohol Counsellor and sourcing donations for the St Paul's Drug Rehabilitation Centre, located at 231 Napier Street, Strathmore.

- 37 At approximately 12.30pm, Mr Condello and Mr Dieni attended Nick Theodossi Motors in West Melbourne. The owner promised to donate \$1000.00 to St Paul's, but indicated that it would not be available until that afternoon.
- 38 At approximately 1.30pm, Mr Condello and Mr Dieni attended St Kilda Cellars for the purpose of speaking with [REDACTED], however, she was not there. They then had lunch at Leo's Spaghetti Bar just down the road and at approximately 2.00pm they re-attended at the St Kilda Cellars and spoke to [REDACTED]. [REDACTED] gave Mr Condello a cheque for \$500.00 as a donation to St Paul's.
- 39 At approximately 4.00pm, Mr Condello and Mr Dieni re-attended Nick Theodossi Motors and were provided with a cheque for \$1000.00, being a donation to St Paul's.
- 40 Mr Condello then returned Mr Dieni to his vehicle on the city. They met for coffee at the Society Restaurant in Bourke Street, Melbourne with a number of people including Mr Gatto and Mr Michael Di Pietro. Mr Condello left just before 7.00pm.
- 41 Between 7.00 – 7.30pm, Mr Condello met one of his solicitors at a restaurant named Vons Restaurant in Hardware Lane, Melbourne where he had a meal and it is understood they discussed the trial. Both men left the restaurant at the same time; being 9.00 – 9.30pm, in part due to Mr Condello's bail conditions containing a curfew of 10.00pm each night.
- 42 Telephone records reveal that Mr Condello called a friend at 9.36pm and the call lasted 10 minutes and 8 seconds. This friend later told police officers that they believed that while speaking with Mr Condello he arrived at his home. The friend told police officers:
- “the next thing I heard was a bang and then three more bangs, then a period of silence and the phone got cut off.”*
- 43 The Condello family home is located on the south eastern corner of the intersection of North Road and Elizabeth Street, Brighton, with the double garage entrance on Elizabeth Street.
- 44 According to his family, Mr Condello's usual routine was to drive west along North Road, turn left into Elizabeth Street where he would activate the remote control for the garage roller door. Mr Condello's practice was to park inside and activate the roller door again, waiting in his car until the roller door went down, before getting out and going inside the house.

- 45 It appears a person or persons were waiting nearby in Elizabeth Street as Mr Condello had parked his car in the garage. It is a Victoria Police theory that a person or persons entered the garage and confronted Mr Condello getting out of his car while he was on the telephone.
- 46 Mr Condello was shot, in total, between four to six times, through the right forearm, the bullet continuing into the abdomen region, likely when he was crouched over as he got out of the car. He was also shot through the chest and was shot through the right and left sides of his head.
- 47 While Mr Condello's death was not witnessed by any independent witnesses, a number of local residents reported that they heard multiple gun shots at the same time of his death.
- 48 On this evening Mr Condello's wife, [REDACTED] and their sons, [REDACTED] and [REDACTED] attended a school commitment relating to the boys' education. Upon returning home at approximately 9.00pm, [REDACTED] realised that he left his school bag, containing his laptop at the school. [REDACTED] drove into the garage, deactivated the house alarm and opened the house to allow [REDACTED] to enter. She then returned to the school with [REDACTED] to collect his school bag.
- 49 [REDACTED] states he believed the garage roller door had gone down as the light had gone off soon thereafter. He did some homework in his room and later went downstairs to watch TV. While watching TV he heard the garage roller door activate and soon after he heard a number of gun shots. He panicked, thinking someone had shot his mother and brother who he believed had returned from collecting [REDACTED]'s school bag. [REDACTED] ran upstairs to his room, climbed out a window and made his way onto North Road where he flagged down a passing taxi and was taken to the Caulfield Police Station.
- 50 [REDACTED] returned home just after Ambulance Victoria officers arrived and declared Mr Condello to be deceased.

FINDINGS AND CONCLUSION

- 51 Having investigated the death of Mario Condello and having held an Inquest in relation to his death on 8 December 2016, at Melbourne, make the following findings, pursuant to section 67(1) of the Act:
- (a) that the identity of the deceased was Mario Rocco Condello, born 12 April 1952;
 - (b) that Mr Condello died on 6 February 2006, at 292 North Road, Brighton East from multiple gunshot wounds;

- (c) that the death occurred in the circumstances set out above; and
- (d) that despite an extensive criminal investigation conducted by Victoria Police, no person or persons have been identified, to date, as being responsible for causing Mr Condello's death. On that basis, I am satisfied that no investigation which I am empowered to undertake, would be likely to result in the identification of the person or persons who caused Mr Condello's death.

52 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 an order that some or all of these findings be set aside. Any such application would be assessed on its merits at that time.

53 I convey my sincerest sympathy to Mr Condello's family and friends.

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

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

- (a) [REDACTED], senior next of kin.
- (b) Detective Senior Constable Paul Thomas, Coroner's Investigator.
- (c) Detective Senior Sergeant Michael J Dwyer, Officer in Charge of the Purana Task Force, Victoria Police.
- (d) Detective Inspector Michael Hughes, Homicide Squad, Victoria Police.

Signature:



JUDGE SARA HINCHEY
STATE CORONER
Date: 8 December 2016