



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2015 2665

FINDINGS INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of:

MOUSTAFA ELAKKOUMI

Delivered On:

14 December 2016

Delivered At:

Coroners Court of Victoria
65 Kavanagh Street, Southbank

Hearing Dates:

14 December 2016

Findings of:

CORONER JOHN OLLE

Counsel Assisting the Coroner

**Ms Sarah Gebert, Coroners Court In-House Solicitors
Service**

I, JOHN OLLE, Coroner having investigated the death of MOUSTAFA ELAKKOUMI

AND having held an inquest in relation to his death on 14 December 2016

at the Coroners Court at MELBOURNE

find that the identity of the deceased was MOUSTAFA ELAKKOUMI

born on 22 January 1996

and the death occurred on 30 May 2015

at Thomas Brunton Parade, Roxburgh Park, Victoria

from:

1(a) Injuries Sustained in Motor Vehicle Collision (Driver)

in the following circumstances:

1. Moustafa Elakkoumi, aged 19 years, resided in Broadmeadows with his family at the time of his death. He was the son of Khouldia and Khaled Elakkoumi and had sisters Hajjar and Tasneem and a brother Mohamad.
2. Moustafa was a much loved and popular young man, who was known by friends as *Mousty*.
3. Moustafa attended Hume Central and completed his schooling at TAFE. He was employed as a cabinet maker at his father's factory and had been so since year 7.
4. Moustafa held a Victorian learner's permit and had no criminal history.
5. At approximately 11.23pm on Saturday, 30 May 2015 Moustafa was driving a 1993 Toyota Seca hatchback carrying five other young passengers, when he was involved in a collision impacting a tree on Thomas Brunton Parade, Roxburgh Park. The accident was preceded by an attempt by the police to intercept his vehicle.
6. Moustafa was unable to be assisted by ambulance paramedics and died at the scene. All his passengers were injured and only one was wearing a seat belt.
7. I attended and viewed the scene after being contacted by police.

Purposes of the Coronial Investigation

8. The primary purpose of a coronial investigation of a reportable death¹ is to ascertain, if possible, the identity of the deceased person, the cause of death (interpreted as the medical cause of death) and the circumstances in which the death occurred.² An investigation is conducted pursuant to the *Coroners Act 2008* (the Act). The practice is to refer to the

¹ Section 4 of the Act requires certain deaths to be reported to the coroner for investigation.

² Section 67 of the Act.

medical cause of death incorporating, where appropriate, the mode or mechanism of death, and to limit the investigation to circumstances sufficiently proximate and causally relevant to the death.³

Standard of proof

9. Coronial findings must be made on the basis of proof of relevant facts on the balance of probabilities and subject to the principles enunciated in *Briginshaw v Briginshaw*⁴.

THE EVIDENCE

10. Detective Sergeant David Yeoman, Major Collision Investigations Unit was the Coroner's Investigator (CI) and compiled a comprehensive coronial brief. His investigation was oversighted by Professional Standards Command in accordance with the Victoria Police Oversight Principles.
11. My finding is based on the evidence contained in the Coronial Brief as well as the evidence presented at the summary inquest and any documents tendered at that time.

SUMMARY INQUEST

12. Prior to the commencement of the summary inquest, it was apparent that the facts about Moustafa's death were known and not in dispute. This included his identity, the medical cause of his death and the circumstances surrounding his death.
13. However, given that there was an attempt by police to intercept Moustafa's vehicle shortly prior to his death, I determined that I would convene a public hearing by way of summary inquest and hear evidence from the CI.

MEDICAL EXAMINATION

14. A preliminary examination was conducted by Dr Victoria Francis, forensic pathologist of the Victorian Institute of Forensic Medicine. She determined that a reasonable cause of death based on the circumstances and the presence of injuries identified by Dr O'Donnell in the CT scan was 'Injuries sustained in a motor vehicle collision (Driver)'. There was strong family opposition to an autopsy and I note that an autopsy was not conducted on the body of the Deceased.
15. I further note that no drugs or alcohol were found in Moustafa's blood.

CIRCUMSTANCES IN WHICH THE DEATH OCCURRED

³ Coroners are also empowered to report to the Attorney-General on a death they have investigated; the power to comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice; and the power to make recommendations to any Minister, public statutory or entity on any matter connected with the death, including recommendations relating to public health and safety or the administration of justice. Sections 72(1), 72(2) and 67(3) of the Act regarding reports, recommendations and comments respectively.

⁴ *Briginshaw v Briginshaw* (1938) 60 C.L.R. 336.

16. Moustafa was driving his uncle's vehicle with registration NPF 246. As already noted, he only held a learner's permit and was therefore not licenced to drive without a full licence holder being present. Moustafa was not wanted by police.
17. There were five young passengers (all students) in the vehicle at the time of the collision. Each sustained injuries ranging from moderate to serious (including severe head lacerations, broken eye socket, forehead fracture, fractured femur, fractured spine, a brain injury, one passenger was in a coma for some time).
18. The passengers included two boys aged 16 and 17 years old who were cousins as well as three 16 year old girls. The 17 old boy was the front seat passenger and the only passenger wearing a seatbelt.
19. Each passenger gave a statement by way of Video and Audio Recording of Evidence (VARE).
20. Prior to the accident Moustafa and the two cousins were driving around the area (they stopped to eat a meal and shisha) and later got a call (via Facebook) to pick up the girls at the Good Samaritan Primary School in Roxburgh Park. The girls were celebrating one of their birthdays. The evidence suggests that at least one of girls was smoking cannabis (the boys said that they refrained) and a quantity of the drug was found at in the vehicle in a female's hand bag. Moustafa parked his vehicle next to a nearby kindergarten where they said they were '*kicking back*', '*chilling*' and '*having a laugh all together*' for somewhere between 30 minutes to an hour.
21. Moustafa needed to get petrol and was going to drop at least one of the girls off near the Roxburgh Park Railway Station.
22. It appears that whilst they were headed towards the station, travelling along Donald Cameron Drive, Moustafa's vehicle came to the attention of police due to the speed he was travelling.
23. The police unit involved used call sign Fawkner 684 with driver, Senior Constable Alix Watson (gold licence holder⁵) and observer, Senior Constable Julia Williams (also a gold licence holder). They were driving a marked sedan which was not fitted with an In Car Video.

⁵ In accordance with the *Victoria Police Manual* Victoria Police personnel are required to hold an Approved Driving Authority in order to drive police vehicles. This is an internal licensing system which has a colour coded system. The Victoria police fleet also have classifications that are colour coded. The licence codes and vehicle codes are linked together. The highest is a Gold Class licence which enables the driver to drive a Gold Class vehicle at unrestricted speeds.

24. The police vehicle was moving in the opposite direction when they spotted Moustafa's vehicle travelling east along Donald Cameron Drive at a speed of between 90-100 kmh in a 60 kmh zone. They performed a U-turn around Kirwan Avenue, where they stopped their vehicle for a short time.
25. Moustafa's vehicle stopped at the red traffic light in the right turn lane of the intersection of Donald Cameron Drive and Thomas Brunton Parade where he was using his indicator.
26. The police vehicle travelled towards Moustafa's vehicle, approximately 100 metres behind, when they observed the traffic lights turn green and the vehicle turn right into Thomas Brunton Parade.
27. The police followed the vehicle around that corner, maintaining a distance of approximately 100 metres, attempting to establish the speed and get the registration number. S/C Watson said that it appeared that the vehicle was slowly accelerating as the police travelled between speeds of 90 and 114 kmh.
28. Both vehicles were travelling towards the Roxburgh Park Shopping Centre, approximately 70 metres apart. At this time the police activated their emergency lights to perform a routine intercept of the vehicle.
29. Moustafa immediately accelerated heavily up to an estimated speed of 120-130 kmh.
30. S/C Watson said that as they were coming to a busy area which included a roundabout and a shopping centre car park, their emergency lights were activated for approximately 3-4 seconds and then turned off. She said that this occurred when Moustafa's vehicle was about 100 metres from the roundabout at David Munroe Drive.
31. S/C Williams said that they would not pursue the vehicle as it *'was going too quickly, the manner of the driving was too dangerous, it appeared obvious that the driver wasn't going to pull over and to me the only way it would stop would be if it crashed. It was too dangerous. Alex verbalised the same thoughts out loud....The lights had only been on for about one second.'*
32. At the point of the attempted interception S/C Watson did not believe that Moustafa had been aware that the police were present before this time.
33. The evidence suggests that Moustafa's vehicle proceeded to travel straight through the roundabout at David Munroe Drive without utilising the brake lights.
34. The following include some of the observations made from the passengers inside Moustafa's vehicle:

- Moustafa is reported to have said: *'Where'd the – like, where'd the police come from?'*;
- *'And, yeah, I seen, like, bright lights and, yeah, so he's – starts speeding, goes around the roundabout and then – yeah, what happened – what happened from there was the car smashing the tree'*;
- Moustafa panicked when he saw the police, and
- Moustafa travelled through the roundabout without slowing down, he started to brake and turn but the steering wheel or brakes locked and he couldn't go anywhere but straight into the tree.

35. The first radio communication by police regarding this matter was as follows:

'Fawkner 684, we've had a car take off from us – No pursuit.....last seen south east on Thomas Brunton Avenue, no wait...and he's just had a code 12.'

36. The initial police communications are chilling and become more so when the officers discover how many people are in the car and the bloodied condition they are in.
37. Following the accident, ambulance attend the scene but Moustafa was declared deceased by a MICA paramedic.
38. The CCTV footage from the Aldi car park shows Moustafa's vehicle travelling fast but the collision is unseen as it is obscured by a tree. I note that the police are initially nowhere to be seen and when they do come into view they do not have their lights activated, consistent with their evidence.
39. The distance between the location of the first police sighting and the collision is approximately 1.6 km.
40. An accident reconstructionist, Detective Senior Constable Robert Hay, MCIU noted that at approximately 134 metres from the roundabout at the intersection of Thomas Brunton Parade and David Munro Drive, there is a speed hump and from this point there were two tyre marks that lead straight to a tree on the footpath. It was estimated that at the point of the skid marks the speed of the vehicle was 86 to 97kmh, at a minimum.
41. Also at about this point, the road commenced a curve to the right. The vehicle appears to have skidded 32.3 metres into the tree with the speed at impact being approximately 38 to 58 kmh. The vehicle rotated clockwise around the tree after impact and moved approximately 2.8 metres from the tree.

42. The mechanical inspection carried out by Leading Senior Constable Ian Ellis revealed that on the passenger front tyre, there was a spot consistent with '*a recent application that resulted in lock up.*' There was however no mechanical faults that would have caused or contributed to the collision.
43. There is conflicting evidence concerning whether Moustafa was wearing a seat belt at the time of the accident and I am unable to reconcile this evidence with any certainty.⁶ I therefore make no finding on this matter.
44. The police members involved in this incident both returned negative drug test results after tests were conducted.⁷
45. The evidence suggests that the police followed Moustafa's vehicle over a short distance before attempting an interception prior to which Moustafa drove appropriately and gave no indication that he was aware of their presence. The observations of the passengers also suggest that Moustafa only became aware of police presence at the point that the interception occurred.
46. The police did not engage in a pursuit of Moustafa's vehicle and indicated as much on the police radio prior to the accident. This is consistent with the CCTV footage from the Aldi car park which shows that the police were not in view when the accident occurred, and when they came into view, their lights were not activated.
47. In view of the above matters, I do not consider that Moustafa was a person in custody within the meaning of the Act, at the time of his death.

Findings

48. Pursuant to section 67(1) of the *Coroners Act 2008*, I make the following findings connected with Moustafa's death:
- I find that Moustafa Elakkoumi, born on 22 January 1996, died following a motor vehicle accident on 30 May 2015 on Thomas Brunton Parade, Roxburgh Park in the circumstances outlined above.
 - I find that the cause of his death is:
 - 1(a) Injuries Sustained in Motor Vehicle Collision (Driver).

⁶ Leading Senior Constable Ian Ellis who carried out a mechanical inspection said with respect to the driver that '*webbing indicating belt worn at impact*' whereas Detective Senior Constable Robert Hay, the accident reconstructionist said that '*the driver's belt was free, indicating that none of these seatbelts was being worn at the time of the collision.*'

⁷ Tests are required to be conducted in accordance with the *Victoria Police Manual – Procedures and Guidelines, Workplace testing for alcohol and drugs of dependence.*

49. I convey my sincerest condolences to Moustafa's family and friends.
50. Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.
51. I direct that a copy of this finding be provided to the following:
- Mr Khaled Elakkoumi, father of the deceased and Senior Next of Kin
 - Sergeant Susan Nolan, Civil Litigation Division on behalf of the Chief Commissioner of Police
 - Detective Sergeant David Yeoman, Coroner's Investigator

Signature:



JOHN OLLE
CORONER

Date: 14 December 2016