

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2009 0004

FINDING INTO DEATH WITH INQUEST¹

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: NORTON BEAL-GUILFOYLE

Hearing Dates:	10 June 2010, 4 April, 5 April and 6 April 2011
Appearances:	Mr R.J.C. Watters on behalf of Sue Ann Guilfoyle and Leigh Gordon Beal
Police Coronial Support Unit:	Leading Senior Constable King Taylor, Assisting the Coroner
Findings Of:	AUDREY JAMIESON, CORONER
Delivered At:	Coroners Court of Victoria Level 11, 222 Exhibition Street Melbourne 3000
Delivered On:	16 January 2013

¹ The finding does not purport to refer to all aspects of the evidence obtained in the course of my investigation. The material relied upon included statements and documents tendered in evidence together with the transcript of proceedings and submissions of legal representatives/counsel. Notes taken by myself and legal representatives on 5 April 2010 (including those witnesses identified by an *) were also utilised as there was a loss of transcription due to a technical error. The absence of reference to any particular aspect of the evidence, either obtained through a witness or tendered in evidence does not infer that it has not been considered.

I, AUDREY JAMIESON, Coroner having investigated the death of

NORTON MICHAEL BEAL-GUILFOYLE²

AND having held an inquest in relation to this death on 10 June 2010, 4 April, 5 April and 6 April 2011

at MELBOURNE

find that the identity of the deceased was NORTON MICHAEL BEAL-GUILFOYLE

born on 27 March 1975

and the death occurred 1 January 2009

at 16 Grand Valley Drive, Chirside Park, Victoria, 3116

from:

1 (a) EFFECTS OF FIRE

2 BLOOD ALCOHOL LEVEL OF 0.24 g/100mL

in the following summary of circumstances:

1. On 1 January 2009 Norton Michael Beal-Guilfoyle³ died in a residential house fire he had attended for a New Year's Eve celebration.

BACKGROUND CIRCUMSTANCES

2. Norton was 33 years of age at the time of his death. He lived at 8 Edgars Avenue, Wonga Park; a house he rented from his mother, Sue Ann Guilfoyle. Norton had been in a domestic relationship with Ms Marion Lewicki and the couple had two children, Jade age 4 years and Grace aged 3 years. The couple separated approximately 18 months prior to his death. Norton also had a daughter, Chloe aged 9 years, to a previous relationship with Ms Christie Matthews.
3. Norton was employed as a yardman for Icon-Septech Pty Ltd in Bayswater. He was a smoker of cigarettes and a drinker of alcohol.

² At the time of the reporting of the death of Mr Norton Beal-Guilfoyle, his surname was reported to be "Guilfoyle" only. A number of documents and correspondence were created at the outset of the investigation which refers only to "Guilfoyle". The details recorded on the Court file were subsequently rectified.

³ At the request of the family Mr Beal-Guilfoyle was referred to by his first name during the course of the inquest. For consistency I have, where possible, also referred to him by only his first name in this written finding.

SURROUNDING CIRCUMSTANCES

The premises

4. Mr Stephen Hazelhoff had been renting a property at 16 Grand Valley Drive, Chirnside Park from Mr Hank Odendyke for a period of two years. The house was a brick veneer premise consisting of four bedrooms and living areas on an upper level. On the lower/ground level there was a lock-up garage and an entertainment area which could be accessed from an internal stairwell from the upper part of the house in the laundry. There was also a door running between the entertainment room and the garage on the ground level and a door in the garage that enabled access to the exterior. The garage also had a roller door. There were no windows in this room. Part of the entertainment area had been blocked off by the owner for use as a storage space. The remainder of the entertainment area was used as a bedroom by Mr Hazelhoff's son, Zack, aged 16 years. Mr Hazelhoff's daughter, Molly, aged 13 years, who normally resided with her mother, would stay at the Chirnside Park home every second weekend and one night during the week.
5. Also residing at 16 Grand Valley Drive were Mr Hazelhoff's girlfriend of 9 months, Ms Rochelle Rolands and her two children, Zoey-Ann aged 3½ years and Liam aged 9½ months.

The party

6. On 31 December 2008 at approximately 8.30pm, Norton and his two children attended the home of his work colleague, Stephen Hazelhoff at 16 Grand Valley Drive Chirnside Park, for an impromptu New Year's Eve party.⁴ Present at the house were Mr Hazelhoff, Ms Rolands and her two children. Neither Zack nor Molly was at their father's home.
7. Shortly after arriving, Norton drank two beers and a can of bourbon (Wild Turkey). He then accompanied Mr Hazelhoff to the shops to purchase more alcohol. He bought a bottle of Wild Turkey Bourbon (700ml) and Mr Hazelhoff bought a litre of Baileys and a few nibbles. After they returned to 16 Grand Valley Drive, Norton began drinking bourbon and coke. At midnight the household went out on to the balcony to watch fireworks.⁵ Around the same

⁴ Exhibit 1 – Statement of Stephen Hazelhoff dated 1 January 2009, Transcript (T) @ p 13

⁵ T @ p 13

time, Norton received a telephone call on his mobile, from his mother, Sue Ann Guilfoyle. According to Ms Guilfoyle, Norton *sounded terribly drunk*⁶ during their conversation.

8. According to Ms Rolands, Norton appeared to get angry and agitated after speaking with his mother. He started swearing, punching the walls, turning the music up loud and drinking more alcohol⁷. Mr Hazelhoff also spoke to Ms Guilfoyle.⁸
9. After the phone call with his mother, Norton began drinking bourbon straight from the bottle. He was getting difficult to understand and according to Mr Hazelhoff, had become aggressive towards him⁹ Mr Hazelhoff and Ms Rolands agreed that Norton should not drive home and that he and the girls should stay overnight.¹⁰
10. On 1 January 2009 between 1.30am and 2.00am, Ms Rolands attempted to lead Norton down the hall to the stairs to Zack's bedroom but when he became aggressive towards her,¹¹ Mr Hazelhoff led Norton down the internal staircase to Zack's bedroom but found the door was locked. He took Norton back up the stairs and out the front door, down the front stairs, *through the garage and then into the downstairs from the other door.*¹² Mr Hazelhoff pushed Norton onto the bed and held him down by his arms because Norton was trying to hit him and wrestle free. After approximately 5 minutes of struggling, Norton fell asleep/*passed out.*¹³ Mr Hazelhoff noticed a packet of cigarettes fall from Norton's pocket on to the bed but left them there. Mr Hazelhoff returned to the upper level of the house by the way he had entered and went to bed. The children were already in bed. Grace had fallen asleep on the couch. Ms Rolands decided she would sleep with Jade as she had been upset.

⁶ T @ p 79

⁷ T @ p 32

⁸ T @ p14, 32

⁹ Exhibit 1 – Statement of Stephen Hazelhoff dated 1 January 2009, T @ p 14

¹⁰ T @ p 40

¹¹ T @ p 33

¹² T @ p 15

¹³ T @ p 24

11. At approximately 5.50am, Ms Rolands woke to the sound of Norton *yelling and screaming and banging*¹⁴ on the door at the bottom of the stairs. He was yelling to be let out.¹⁵ Mr Hazelhoff woke up to the sound of Ms Rolands yelling,¹⁶ the sound of a smoke detector and then became aware of the smell of smoke. He went down the hallway and could also hear Norton banging on the door at the bottom of the stairs. Mr Hazelhoff ran down the internal stairs and tried to open the door but could not. He tried to force it open by kicking it with his foot but to no avail.¹⁷ He ran out of the front of the house, down the stairs into the garage via the rear door and opened the internal door to Zack's bedroom but was met with thick smoke. He could not see Norton or any flames but yelled at Norton to *come this way*. He left via the rear garage.¹⁸ He could not open the roller door to the garage because the power had gone off.¹⁹
12. Mr Hazelhoff ran back upstairs to make sure everyone else was out of the house. Ms Rolands left by the front door with all the girls and yelled out to Mr Hazelhoff to get Liam from his cot. After he retrieved Liam, Mr Hazelhoff met up with Ms Rolands and the girls outside the house near the road. Ms Rolands telephoned "000".
13. Members of Lilydale Fire Brigade were on the scene before 6.00am. Ambulance Paramedics arrived at approximately 6.00am. At approximately 6.20am, after kicking in doors to gain access to the storage-come-bedroom²⁰ area underneath the house, fire fighters located Norton in the makeshift bedroom, close to the door of the room that led to the stairway up to the laundry. He was underneath a mattress. Norton was deceased.

¹⁴ T @ p 36

¹⁵ T @ p 35

¹⁶ T @ p 25

¹⁷ T @ p 18

¹⁸ T @ p 26

¹⁹ T @ p 18 & 20

²⁰ Herein after referred to as "the makeshift bedroom".

JURISDICTION

14. At the time of Norton's death, the *Coroners Act 1985* applied. From 1 November 2009, the *Coroners Act 2008* (the new Act) has applied to the finalisation of investigations into deaths that occurred prior to the commencement of the new Act.²¹
15. In the preamble to the new Act, the role of the coronial system in Victoria is stated to involve the independent investigation of deaths for the purpose of finding the causes of those deaths and to contribute to the reduction of the number of preventable deaths and the promotion of public health and safety and the administration of justice. Reference to preventable deaths and public health and safety are referred to in other sections of the new Act.²²
16. Section 67 of the new Act describes the ambit of the coroners' findings in relation to a death investigation. A Coroner is required to find, if possible, the identity of the deceased, the cause of death and, in some cases, the circumstances in which the death occurred.²³ The 'cause of death' generally relates to the *medical cause of death* and the 'circumstances' relates to the *context* in which the death occurred.
17. A Coroner may also comment on any matter connected with the death, including matters relating to public health and safety and the administration of justice.²⁴ A Coroner may also report to the Attorney-General and may make recommendations to any Minister, public statutory authority or entity, on any matter connected with a death which the Coroner has investigated including recommendations relating to public health and safety or the administration of justice.²⁵

²¹ Section 119 and Schedule 1 – *Coroners Act 2008*

²² See for example, sections 67(3) & 72 (1) & (2)

²³ Section 67(1)

²⁴ Section 67(3)

²⁵ Section 72(1) & (2)

INVESTIGATION

Identity

18. The identification of Norton Michael Beal-Guilfoyle was confirmed by way of a Circumstances Report (Form 47) prepared by investigating police and by DNA comparison with a bloodstain sample received from his father, Leigh Gordon Beal.

Medical Investigation

19. Dr Shelley Robertson, Forensic Pathologist at the Victorian Institute of Forensic Medicine performed an autopsy on the body of Norton. Dr Robertson reported that Norton died from the effects of fire with extensive burns, smoke inhalation, elevated carbon monoxide and hydrogen cyanide levels. She stated that *these indicate that the deceased was alive during the fire*²⁶. No significant natural disease was identified. No injuries other than those attributable to the effects of fire were identified.
20. Toxicological analysis also showed a blood alcohol level of 0.24 g/100mL²⁷ which Dr Robertson stated *would have caused considerable intoxication, possibly rendering the deceased unable to escape from the fire, thus contributing to death*²⁸.

Police Investigation

21. The police investigation and preparation of the inquest brief of evidence was undertaken by Detective Leading Senior Constable John Fooks (Det. LSC Fooks). No suspicious circumstances were identified.

Fire Investigators

22. Mr George Xydias, Forensic Officer from the Forensic Services Department, Victoria Police Forensic Services Centre attended the scene of the fire on 1 January 2009, at the request of

²⁶ Autopsy Reported dated 17 February 2009 prepared by Dr Shelley Robertson, page 7.

²⁷ Blood alcohol concentrations (BAC) in excess of 0.15% (gram/100mL) can cause considerable depression of the Central Nervous System (CNS). (VIFM Toxicology Report).

²⁸ Autopsy Reported dated 17 February 2009 prepared by Dr Shelley Robertson, page 7.

Detective LSC Fooks. Mr Xydias examined the fire-affected house and arranged for photographs to be taken. He subsequently prepared a report on his findings.²⁹

23. The Country Fire Authority (CFA) also undertook an investigation of the fire at 16 Grand Valley Drive, Chirnside Park and completed a report.³⁰
24. The totality of the investigation material identified issues of public health and safety that necessitated further exploration by way of a public hearing. Such issues included the apparent absence of a smoke detector in the makeshift bedroom and access and egress to the makeshift bedroom, particularly as the evidence indicated that the doors to the makeshift bedroom were locked. Norton's mother also raised concerns about the actual events at the Chirnside Park house on New Year's Eve in light of a telephone conversation she had with Norton around midnight. Ms Guilfoyle sought the assistance of legal counsel just prior to the commencement of the inquest on the scheduled date of 10 June 2010. There was a request for further statements and witnesses to be called and the matter was subsequently adjourned from that date for further investigation.

INQUEST

25. *Viva voce* evidence was obtained from the following witnesses:

- Stephen Hazelhoff
- Rochelle Rolands
- Dale Greenwood
- George Xydias* - Fire Investigator, Forensic Services Department, Victoria Police
- Trevor Dean* - Fire Officer, Pumper 1, Lilydale Fire Brigade
- Sean Bethel* - Fire Officer (3rd Lieutenant), Pumper 2, Lilydale Fire Brigade
- Sharon Merritt*

²⁹ Exhibit 4 – Statement/Report of George Xydias dated 22 April 2009

³⁰ Exhibit 8 – CFA Investigation Management System Structural Report FIRS (No. 290975) – including a diagram of the scene (tendered through Ms Sharon Merritt).

- George Doucas
- Sue Ann Guilfoyle
- Det. LSC Fooks

FINDINGS and COMMENTS

Smoke Detectors/Alarms

26. Mr Hazelhoff knew that there was a smoke alarm in the kitchen, near the pantry in the upper level of the house but he could not recall the total number of smoke alarms within the house.³¹ There were no smoke alarms in the makeshift bedroom.³² Ms Rolands believed there to be two in the upper part of the house.³³
27. Mr George Xydias, Fire Investigator, found no evidence of a smoke detector within the makeshift bedroom. Ms Sharon Merritt, Fire Investigator with the CFA confirmed the same.

The makeshift bedroom

28. Mr Xydias stated that the makeshift bedroom was an inappropriate space for a bedroom because it was too small, congested, next to the garage where fumes and gases could be emitted and had no ventilation. All of which created a fire hazard and increased the lethality of the fire. There were also a number of electrical appliances and leads running across the floor of the room.
29. Partitioned to the makeshift bedroom was the owner's storeroom which contained a lot of combustible material. Ms Merritt also gave evidence that the makeshift bedroom was not suitable accommodation for sleeping.

Access and egress to the makeshift bedroom:

30. When Mr Hazelhoff discovered that the door to the makeshift bedroom was locked, he took Norton back up the stairs and out the front of the house to access it via the garage. Mr Hazelhoff knew there was only one key to that door and assumed that Zack would have had it

³¹ T @ p 11

³² T @ p 23

³³ T @ p 35

with him. Beyond taking the alternative route to enter the makeshift bedroom, he could not recall whether he discussed this with Norton.

31. Mr Hazelhoff believed he had left the internal garage door open to allow some light to penetrate through into the makeshift bedroom³⁴ from two windows in the garage.³⁵ He could not recall closing the garage roller door but accepted that it was more likely to have been he rather than Norton who was heavily intoxicated at the time Mr Hazelhoff was putting him to bed.
32. In the early hours of the morning when he had awoken to the yelling and smoke, Mr Hazelhoff recalled entering the garage from the rear door to access the makeshift bedroom to get to where Norton was. He believed it was unlocked at that time. When he left he believed he had pulled it closed behind him but not locked it. He was not entirely clear about whether the internal door was open or closed but could recall that he saw *all this smoke billowing inside the room*³⁶ and that it was *heading to the back of the room*.³⁷ Mr Hazelhoff called out to Norton but got no response. He closed this door behind him and believed that he also pulled the external door closed behind him but that he did not lock either door. Mr Hazelhoff stated *I tried my best to get to him*.³⁸
33. Neither Mr Hazelhoff nor Ms Rolands could recall the exact mechanism on the doors to the garage and the makeshift bedroom. Neither could recall if there was a handle on the external door or whether it was only a Lockwood mechanism requiring a key to enter.
34. Fire Officer Trevor Dean arrived at 16 Grand Valley Drive in Pumper 1 from Lilydale Fire Station with a team of four fire fighters. Lieutenant (Lt.) Sean Bethell who was in charge of Lilydale Pumper 2 with a team of four fire fighters had arrived shortly before Pumper 1. They were aware that Norton was unaccounted for and that he was *a friend staying over and was in a room under the house next to the garage*.³⁹ The roller door was closed and no attempt was made to open it by fire officers. Officer Dean and Lt. Bethell proceeded to the rear of the

³⁴ T @ p 24

³⁵ T @ pp 26-27

³⁶ T @ p 27

³⁷ T @ p 28

³⁸ T @ p 28

³⁹ Exhibit 7 – Statement of Sean Bethel dated 2 April 2009

garage/house to find access points. They found two locked doors. The first door had no handle and was locked. Forcible entry through the first door identified it as the entry to the garage. There was very thick smoke within the space and very little vision. Two fire fighters wearing breathing apparatus (BA) entered the garage to commence extinguishing the fire. The second door had a security wire screen which was locked as was the door behind it. Forcible entry through the second locked door enabled a further two BA fire fighters to commence extinguishing the fire from this point. *Visibility within this room was zero, the smoke was thick black and extremely hot.*⁴⁰ The presence of household items such as beds, refrigerators and a washing machine prevented access by the fire fighters beyond the entrance point as this was the owner's storage space. After the smoke had cleared somewhat Officer Dean entered through the second door by climbing over the household items and observed an internal door where mattresses were lying across it. It was under one of these mattresses that Officer Dean located Norton.⁴¹

Source of the fire

35. Mr Xydias believed that the most likely source of the fire at the Chirnside Park home was a cigarette. He said that it was likely to have been smouldering for sometime and that would have caused a lot of smoke. From his notes he postulated that it was a smouldering type fire that may have taken many minutes to "take off". He identified that the point of ignition was quite close to the door, that is approximately two metres from it, and that it could be possible for the door to have been opened and flames not seen. He said that the smoke would have been quite toxic but it was not possible to know how long Norton had been breathing it before he became aware of it. The smoke would have been quite disorientating. A smoke detector would have detected smoke before a person could and if it sounds, it is likely to wake a person earlier than they would naturally. He reported:

Ignition by accidental means was considered the likely source. In the circumstances, the location of the fire suggested ignition of the combustible couch material (and/or other materials), by means such as a carelessly discarded,

⁴⁰ Exhibit 7 – Statement of Sean Bethel dated 2 April 2009

⁴¹ Exhibit 6 – Statement of Trevor Dean dated 7 April 2009

*improperly extinguished or dropped cigarette, match or similar smoking related item as likely.*⁴²

36. In relation to the mattress located on top of Norton, Mr Xydias said that Norton could have dragged it and placed in on top of himself as a cover. The mattress itself was not significantly burnt.
37. Mr Xydias reported that none of the electrical appliances appeared responsible for the ignition of the fire, stating that *electrical initiation was effectively excluded as a possibility*⁴³.
38. Mr Xydias stated that there was no evidence to substantiate any suggestion that the fire had been initiated deliberately.
39. I accept that Mr Hazelhoff did do his best in the circumstances to attempt to rescue Norton. Mr Hazelhoff also had other members of the household to consider, including Norton's children. There is no evidence that Mr Hazelhoff intentionally placed Norton in a situation where he was at risk to himself. He acknowledged that, with the benefit of hindsight, he should have taken Norton's cigarettes with him when he left Norton to sleep in his son's makeshift bedroom, however, having regard to the circumstances at the time, it would be unreasonable to find that Mr Hazelhoff should have foreseen the consequences. For all the reasons identified by Mr Xydias, the makeshift bedroom was of itself an inappropriate and unsafe room to be used as a bedroom but again, Mr Hazelhoff had reason to be complacent about any risk as his own son Zack had been using the room without incident for some time. On New Year's Eve and into the early hours of 2009, when his friend had consumed too much alcohol to drive home with his children, it was appropriate for Mr Hazelhoff to provide Norton with a place to sleep. In all of the circumstances including that Mr Hazelhoff had himself consumed some alcohol, I am unable to find that he should have reasonably foreseen the risk of fire and death. To make such a finding implies that Mr Hazelhoff was prepared to put his own family at such risk. The evidence supports the contrary.
40. Similarly, I reject the suggestion that Norton's changed behaviour around midnight and/or subsequent to his telephone conversation with his mother, warranted a call to the police. He

⁴² Exhibit 4 – Statement of George Xydias dated 22 April 2009

⁴³ Ibid, page 61

was at a friend's house, he had consumed a large amount of alcohol and, as his friend of many years, Dale Greenwood stated:

...Oh, it'd have to be extremely serious for the boys to call the police. It would just be, "Norton you've had enough, go to bed." You know and yeah, we're all guilty of it, or occasionally, I think...⁴⁴

41. Furthermore, I find that the telephone conversation with his mother, Ms Guilfoyle, played no causative factor in Norton's death.
42. I make no comment as requested by the family in respect of the involvement of the Department of Human Services with Norton's children as it is outside the scope of my investigation and not relevant to the discharge of my statutory responsibilities save to say that the evidence before me indicates that the police acted appropriately, in the interests of Norton's children, on 1 January 2009.
43. I make no adverse findings in relation to the Police investigation.

CONCLUDING FINDINGS

I find that there are no suspicious circumstances surrounding the death of Norton Michael Beal-Guilfoyle.

I accept and adopt the medical cause of death as identified by Dr Shelley Robertson and find that Norton Michael Beal-Guilfoyle died from the effects of fire, the cause of which was most likely a cigarette.

AND I accept the comments of Dr Robertson and find that the blood alcohol level of 0.24 g/100mL contributed to the death of Norton Michael Beal-Guilfoyle to the extent that he is unlikely to have been fully aware or capable of appreciating that he had dropped and/or inappropriately placed a lit cigarette and is likely to have been experiencing diminished cognitive capacity to respond to the fire in such a way that may have assisted him to exit from the makeshift bedroom.

⁴⁴ T @ p 52

AND I find that the design, construction and features of the makeshift bedroom contributed to the death of Norton Michael Beal-Guilfoyle.

AND furthermore, I find that the absence of a smoke detector/alarm in the makeshift bedroom reduced the likelihood of the fire being detected earlier which in combination with the above findings, contributed to the tragic death of Norton Michael Beal-Guilfoyle.

RECOMMENDATIONS

The circumstances of the death of Norton Michael Beal-Guilfoyle provide no opportunity for the making of recommendations pursuant to section 72(2) of the *Coroners Act 2008*. The installation of and the regular maintenance of smoke alarms/detectors in private dwellings has for a long time been the subject of public campaign which I endorse. The modification and use of private dwellings such as to render them hazardous to health and safety as demonstrated in this case, is outside the purview of regulatory authorities when owners perform their own modifications and then rent their premises directly to friends. People often bemoan restrictions imposed by regulatory authorities on their ability to use their own premises in a manner that they see fit – such as the creation of the entertainment come makeshift bedroom at 16 Grand Valley Drive however, the death of Norton Beal-Guilfoyle is a tragic example of the dire consequences.

Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

Ms Sue Ann Guilfoyle

Mr Leigh Beal

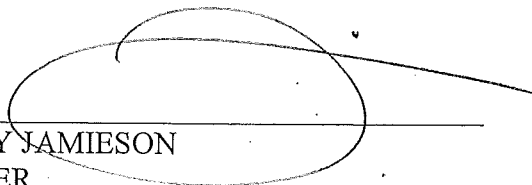
DLA Piper Lawyers

Victoria Police

Det. LSC Fooks

Country Fire Authority

Signature:

A handwritten signature in black ink, consisting of a large, loopy 'A' followed by 'UDREY JAMIESON'. The signature is written over a horizontal line.

AUDREY JAMIESON
CORONER
Date: 16 January 2013

