

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2006 4248

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of: RUSSELL McLARTY

Delivered On: 26 June 2013

Delivered At: Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne 3000

Hearing Dates: 16-20 January and 14-15 February 2012

Findings of: JANE HENDTLASS, CORONER

Representation: Mr Reid appeared to assist the Coroner
Mr Gipp appeared for the Chief Commissioner of Police
Ms McCrickard appeared for Mr Board

I, JANE HENDTLASS, Coroner having investigated the death of **RUSSELL McLARTY**

AND having held an inquest in relation to this death on 16 – 20 January 2012 and 14, 15 February 2012

at GEELONG and MELBOURNE

find that the identity of the deceased was **RUSSELL JOHN ROBERT McLARTY**

aged 38 years

and the death occurred on 7 November 2006

at The Alfred Hospital Melbourne

from:

1 (a) HEAD INJURY

in the following circumstances:

1. Russell John McLarty was 38 years old when he died. He lived with his fiancée, Kylie Mitchell, at Unit 1, 51 Donovans Road in Warrnambool. Mr McLarty worked as an auto electrician.
2. Mr McLarty and Ms Mitchell had lived together for about two years. Before that, Mr McLarty had lived upstairs at the Caledonian Hotel. He still regularly drank at the Caledonian Hotel and was well known to the bar staff.
3. Nick Board had also lived upstairs at the Caledonian Hotel for 10 years including the time when Mr McLarty lived there. On 5 November 2006, he still lived at the Caledonian Hotel.
4. On 5 November 2006, Mr McLarty and Mr Board were drinking with other patrons in the Sly Bar at the Caledonian Hotel in Fairy Street, Warrnambool.
5. At about 4:45pm on 5 November 2006, Mr McLarty and Mr Board began talking to each other in the Sly Bar. This discussion led to an altercation.
6. At 5:28pm, Mr Board invited Mr McLarty to accompany him out the back of the hotel. Mr McLarty followed Mr Board out of the Sly Bar together and into the car park.
7. Mr Board admits hitting Mr McLarty in the head at 5:29pm in the car park of the Caledonian Hotel.

8. Mr Board explained to police that he looked back and saw Mr McLarty's hand move. He said:

"I didn't know if he was going to hit me or what so I thought I would get in first, so I went wack."

9. As the result of this assault, Mr McLarty collapsed in the car park of the Caledonian Hotel. His fell heavily and hit his head hit the back of a car and then the car park surface.

10. Mr McLarty immediately became unconscious and unresponsive on the ground in the car park.

11. Brian Julian (Sly) Gleeson¹ and Brian Anthony (Pixie) Gleeson were in a taxi driven by Michael Finn that arrived in the car park at the same time that Mr Board and Mr McLarty left the hotel building. Sly Gleeson and Pixie Gleeson had known Mr Board for at least 30 years.

12. They have all provided statements and gave oral evidence about what they saw and what happened after Mr McLarty collapsed.

13. Further, Chris Moloney was an off-duty policeman drinking in the Sly Bar on 5 November 2006. He provided first aid to Mr McLarty and called the ambulance. Mr Moloney had known Mr Board for 40 years.

14. Mr Moloney also provided a statement and gave oral evidence about his involvement on 5 November 2006.

15. At 5:57pm, Mr McLarty presented in an ambulance at the Warrnambool & District Base Hospital. He was unconscious and unresponsive. He had a wound on the left back of his head and a cut above the eye. His treating medical officer was Dr Qalo Sukabula.

16. At 7:45pm, Mr McLarty was diagnosed with a subdural haemorrhage. Further, at about the same time, Ms Mitchell told medical staff he had been involved in a fight in the car park at the Caledonian Hotel.

¹ Francis Gleeson, Damien Gleeson, Brian Anthony (Pixie) Gleeson, Brian Julian (Sly) Gleeson were all potential witnesses in this investigation. Therefore, in order to distinguish them from each other, each will be referred to using their first or nick names throughout this finding.

17. At 9:10pm, Dr Sukabula made plans to transfer Mr McLarty to Melbourne and reported his condition to Warrnambool Police Station.
18. This telephone call from Dr Sukabula triggered the first formal Victoria Police response to the incident over three hours earlier in which Mr McLarty collapsed in the car park of the Caledonian Hotel.
19. At 11:25pm, Mr McLarty was transferred by air ambulance to The Alfred Hospital. His diagnosis was confirmed and his prognosis was poor.
20. At 2:45pm on 7 November 2006, Russell McLarty died.
21. The forensic pathologist who performed the autopsy formed the opinion that the cause of death was head injury.
22. The forensic pathologist also confirmed that:
 - Lacerations to Mr McLarty's upper right eye lid and associated bruising occurred in association with blunt force application to the front of the head in this region.
 - Mr McLarty's pattern of injury was consistent with that often seen when the back of a moving head strikes a stationary surface.
 - There was no evidence of subcutaneous bruising on Mr McLarty's knuckles, hands and forearms. This type of injury that would have indicated Mr McLarty had also hit Mr Board or another hard surface.
23. Accordingly, I find that Russell McLarty died of head injury sustained when he fell heavily and hit his head on a parked car and then the ground after Nick Board hit him on the right side of his head.
24. Toxicological analysis of blood samples taken from Mr McLarty at Warrnambool & District Base Hospital on 5 November 2006 detected a blood alcohol concentration of 0.15g/100mL.
25. The Homicide Squad reviewed the available evidence surrounding Mr McLarty's assault on 6 November 2006. In consultation with the on-call Warrnambool Criminal Investigation Unit investigating police member, Detective Senior Constable Colin Ryan, the Homicide Squad decided that the incident should continue to be investigated by Warrnambool police.

26. On 12 June 2009, Andrew Tinney, Crown Counsel, reviewed the brief prepared by Mr Ryan and advised the Director of Public Prosecutions that there was no likelihood of a successful prosecution because the evidence was consistent with self defence.
27. I subsequently asked Victoria Police to transfer the investigation of Mr McLarty's death to the Homicide Squad. On 20 October 2009, the known circumstances of Mr McLarty's death were further reviewed and assessed against Victoria Police Investigation protocols. It was determined to be a Category Two investigation because the death was assessed as not suspicious, murder or manslaughter.
28. Therefore, the police investigation remained the responsibility of the Warrnambool Police Service Area and my request for the investigation to be transferred to the Homicide Squad was refused.
29. Under the *Coroners Act* 2008, I am required to determine if possible the identity of the deceased, the time and place of death, the cause of death and the circumstances in which the death occurred.
30. The coronial investigation of Mr McLarty's death has been informed by the following information:
 - CCTV video records from the Caledonian Hotel seized by Warrnambool police on 5 November 2006,
 - Mr Board's two interviews with Mr Ryan on the night of 5/6 November 2006²,
 - Records from Mr McLarty's general practitioner, Ambulance Victoria, Warrnambool & District Base Hospital, The Alfred Hospital and Mr Moloney's mobile and home telephone for the night of 5/6 November 2006,
 - Warrnambool Police investigation of the incident in which Mr McLarty was injured, and
 - Oral evidence provided at the Inquest.
31. This Finding uses the following sources of information relevant to Mr McLarty's death:

² Mr Board was excused from giving oral evidence at the Inquest.

- Mr McLarty's previous medical history,
 - CCTV surveillance records seized from the Caledonian Hotel on 5 November 2006,
 - Witnesses' evidence of events in the Sly Bar of the Caledonian Hotel on 5 November 2006,
 - Witnesses' evidence of events in the car park of the Caledonian Hotel on 5 November 2006,
 - Medical response to Mr McLarty's collapse in the car park of the Caledonian Hotel on 5 November 2006, and
 - Victoria Police response to the incident in the car park of the Caledonian Hotel on 5 November 2006.
32. The primary evidence from the CCTV surveillance evidence and telephone records is not always consistent with the secondary evidence of witnesses. Further, the information in the medical records is not always consistent with subsequent analyses and other records.
33. Therefore, in the interests of completeness and transparency, I have included a lengthy review, critique and comparison of the information from each of these sources.
34. Then, as provided under sections 67(1) and 77(3) of the *Coroners Act 2008*, this Finding comments on the evidence and makes recommendations based on my review of the evidence. These recommendations are intended to prevent further deaths occurring for the reasons Mr McLarty died.

Mr McLarty's previous medical history

35. Mr McLarty's medical history included diet controlled diabetes, asthma, prolapsed disc and left arm pain following a workplace incident in which a truck fell on him, and intravenous and cannabis drug use.
36. Ms Mitchell told the Court that Mr McLarty still used cannabis up to four times a day to assist him with his arm and back pain.

37. Mr McLarty's general practitioners were Dr Selby King and Dr Phillip Hall from the Jamieson Street Medical Centre in Warrnambool.
38. At 12:02pm on 27 July 2005, Mr McLarty consulted Dr Hall with acute bronchitis. Dr Hall prescribed a Ventolin inhaler and oral antibiotics.
39. At 9:22am on 27 September 2005, he consulted Dr Hall again with bronchitis. Dr Hall prescribed another course of antibiotics.
40. A year later, at 2:14pm on 27 July 2006, Mr McLarty presented at the Warrnambool & District Base Hospital with a history of temperature and vomiting for three weeks. A chest x-ray indicated bronchial wall thickening probably due to inflammation. Mr McLarty was discharged home with referral to Dr Hall without being seen by a doctor.
41. At 5:27pm on 3 November 2006, Mr McLarty consulted Dr King. He had a sore neck and pain in his arm and neck. He was unable to lift his left arm because of the pain.
42. Dr King suspected a cervical disc prolapse. He referred Mr McLarty for a CT scan of the cervical spine on 6 November 2006 and prescribed Naprosyn 750mg daily. Mr McLarty was injured before he could attend this appointment.
43. However, a CT scan of Mr McLarty's cervical spine on 5 November 2006 confirmed degenerative change with neural exit foraminal narrowing and mild canal narrowing at C5-6. There was also narrowing of the neural exit foramina at C4-5 but the canal in this region was adequate. Further, no obvious disc lesion was detected. There was no evidence of significant vertebral displacement and no evidence of cervical fracture.
44. The CT cervical spine performed at The Alfred Hospital on 6 November 2006 also showed that Mr McLarty had multi-level degenerative spondylosis.
45. This degenerative spondylosis may explain Mr McLarty's history of severe neck pain requiring cannabis relief.
46. In evidence, Ms Mitchell said that Mr McLarty was booked to undergo spinal surgery on 6 November 2006. However, there is no evidence that any arrangements had been made for Mr McLarty to undergo spinal surgery. There is also no evidence that his back pain could be attributed to an incident in which a truck fell on him at work.

47. Ms Mitchell may have misinterpreted the possible outcome of the CT scan booked for the same date to assist in diagnosing possible cervical disc prolapse. Alternatively, Mr McLarty may have misunderstood or misinformed her as part of their continuing conversations about his severe back pain.

CCTV surveillance records from the Caledonian Hotel on 5 November 2006

48. CCTV surveillance records from the Caledonian Hotel on 5 November 2006 constitute the most objective and independent evidence of events within the hotel precinct during the period surrounding Mr McLarty's assault in the hotel car park.

49. Therefore, it is important to understand the technical limitations imposed on the evidence that was recorded by and retained from the CCTV cameras at the Caledonian Hotel.

50. There were 13 CCTV cameras operating at the Caledonian Hotel on 5 November 2006. These cameras were installed by Jacobyte Digital Security Systems. Their Managing Director is Allan McFarlane.

51. Mr McFarlane told the Court that the 13 CCTV cameras continually receive information within their field of view. Obviously, events that occur outside the cameras' field of view do not enter the system or influence its operation.

52. Further, not all information that occurs within the 13 cameras' field of view was retained by the recording system. The following issues influenced the information from the cameras that was retained by the recording system.

- The recording system was a digital recorder, so the images from each camera were recorded as a sequence to a hard drive.
- The recording system was activated by movement detected by each camera. This included a pre-recording time of about one second before the movement was detected and a post-recording time of about one second after the movement stopped. Therefore, there was no record of any view in which no movement occurred.
- The recording system saved the data from each camera at two frames per second so that there was no record of any movement that occurred in the split second between each frame recorded.

- The recording unit recorded a maximum of 25 frames per second across all cameras. Therefore, if all the cameras were activated at any one time, the recording unit would be operating at maximum capacity and one frame would not be saved.
- The times recorded on the images of all the 13 cameras were synchronised by the recording system.
- After 30 days, the images were overwritten by subsequent images. However, within that 30 days, images could be downloaded on to a USB stick or other data saving device without interfering with the data retained on the CCTV system.

53. On 5 November 2006, Adrian Krause was the manager of the Caledonian Hotel.

54. Mr Krause told the Court that he and another person he thinks was the publican, Damian Gleeson, reviewed the CCTV footage of the Sly Bar soon after the ambulance left. From this evidence, they formed the opinion that Mr Board and Mr McLarty had an argument in the Sly Bar before they went to the car park.

55. Mr Krause further confirmed that Acting Sergeant Stuart Poulton contacted him at about 9:20pm on 5 November 2006 to make arrangements to view the recorded data from the CCTV cameras at the hotel.

56. At 11:20pm on 5 November 2006, Detective Leading Senior Constable Martin Neagle and Mr Krause started to review the CCTV record together. Mr Neagle had instructions from Mr Ryan to look at all matters that may have suggested why Mr McLarty was assaulted in the car park.

57. Mr Neagle told the Court that they viewed the CCTV recording for all the cameras at the Caledonian Hotel.

58. Mr Neagle understood that Mr McLarty had arrived at the Caledonian Hotel at about 1:30pm so he looked at CCTV records from about that time. He also said:

"I can't accurately state what time we viewed it back to, but my understanding was that I was viewing all events or incidents which took place between McLarty and Board from the start to the end."

59. On the basis of this review, Mr Neagle advised Mr Ryan that there was no interaction between Mr McLarty and Mr Board recorded by any of the 13 CCTV cameras at the Caledonian Hotel until their conversation observed in the Sly Bar at 4:44pm on 5 November 2006.
60. Accordingly, Mr Ryan directed Mr Neagle to download the footage from the Sly Bar CCTV camera from 4:44 pm to 5:30 pm. Mr Ryan also directed Mr Neagle to download the records from the CCTV cameras at the back door and the south-east corner of the car park for an hour from the time that Mr McLarty and Mr Board entered the car park to allow for the ambulance to leave the site.
61. As directed by Mr Ryan, Mr Neagle copied this CCTV record from the CCTV surveillance system.
62. Mr Neagle returned to the Warrnambool Police Station with the CCTV evidence before Mr Ryan interviewed Mr Board commencing at 1:09am on 6 November 2006.
63. Mr Neagle went off duty at 1:30am on 6 November 2006. He had no further involvement in the investigation of Mr McLarty's death.
64. Accordingly, Mr Neagle took less than 90 minutes to review all the CCTV footage from 13 cameras at the Caledonian Hotel from 1:30pm to 6:00pm on 5 November 2006.
65. Even taking into account the technical limitations of the information retained by the recording system for the 13 CCTV cameras in the Caledonian Hotel, I do not accept that Mr Neagle could reliably review all the CCTV footage for the afternoon of 5 November 2006.
66. Mr Neagle said four other things that were relevant to the decision to limit the amount of footage he seized from the Sly Bar to the period from 4:44pm to 5:30pm on 5 November 2006:
 - He knew Mr McLarty was seriously injured and that the investigation could become a homicide investigation. Accordingly, he told the Court:

"...my focus, and I think Detective Ryan's focus, was on obtaining what we would consider primary evidence which is recorded via CCTV cameras."
 - He did not see any interaction between Mr McLarty and Mr Board between 1:30pm and 4:44pm. Mr Neagle explained:

"I certainly looked at footage of that other side of the bar and had I have seen any interaction between both those parties, I would have recorded it, that was my job and that's what I was concentrating on."

- He did not consider the events that occurred in the Sly Bar after 5:30pm were relevant to the potential homicide investigation. As he explained:

"I'd already interacted with Board... I'd been up to his room and interacted with him, taken him back to the police station and seated him in an interview room and returned to watch that and, no, I didn't consider that his reaction or response after the incident were worth sitting interviewing further."

67. Further, on 8 November 2006, Mr Ryan returned to the Caledonian Hotel. After talking to staff, he arranged to download evidence from the camera over the fire escape on the northern side of the car park at the Caledonian Hotel. This evidence includes the interaction between Mr Board and Mr McLarty of 5 November 2006. It met the criteria imposed for Mr Neagle to collect it on 5 November 2006 but Mr Neagle had not identified this source of evidence in his review of the CCTV records.
68. Therefore, I have formed the opinion that Mr Neagle did not independently or comprehensively review all the CCTV surveillance record from the 13 cameras at the Caledonian Hotel for the period 1:30pm to 6:00pm on 5 November 2006.
69. Rather, he seems to have been influenced by Mr Krause's earlier observations of the same record, by the opinions about the incident that he had formed when he participated in the discussion with Mr Board immediately before he began looking at the CCTV evidence and by the short time he had available before Mr Ryan commenced his tape recorded interview of Mr Board who was now in custody.
70. The CCTV surveillance record from the camera from the Caledonian Hotel for 5 November 2006 provided to the Court in the brief included footage from three cameras:
- The camera over the door of the Sly Bar leading to the men's toilets and the back door,
 - The camera over the back door to the car park,
 - The camera on the south-east corner of the car park.

71. In response to requests from the Court, Victoria Police later provided footage from the camera over the fire escape on the northern side of the car park at the Caledonian Hotel that had been downloaded on 8 November 2006.
72. I am unable to explain why this evidence was not included in the original brief. I am also unable to say whether Mr Tinney took this evidence into account in providing his advice to the Director of Public Prosecutions or whether the Homicide Squad took this evidence into account in their determination to leave the investigation in Warrnambool.
73. Despite several further requests, the Court was told that no other CCTV footage for 5 November 2006 was retained by the Caledonian Hotel staff or Victoria Police investigators.

CCTV footage of the Sly Bar on 5 November 2006

74. Plans of the Caledonian Hotel show that the Sly Bar has an island counter which separates it from the main bar as well as a door to the lounge area and a second door to the car park and the mens' toilets. The TAB is in the main bar area.
75. There is a television screen in the Sly Bar above the door to the car park and the mens' toilets. The CCTV camera is directly above the television screen so that it shows the end of the island counter but does not show the main bar or the door to the car park and the mens' toilets.
76. Therefore, a person who was seen on CCTV to be moving in the direction of the "main bar" includes the possibility that they were going past the end of the island counter to the main bar and the TAB or that they were going through the door to the car park and the mens' toilets.
77. The CCTV surveillance record from the camera in the Sly Bar produced to the Court covers the period from 4:44:01pm to 5:30:00pm on 5 November 2006.
78. An overview of this CCTV evidence showed that Mr McLarty purchased and drank at least four stubbies of full strength beer in the Sly Bar between 4:44pm and 5:30pm. Similarly, Mr Board seems to have purchased two stubbies of beer.
79. Detailed analysis indicates that at 4:44:01pm, Mr Board was sitting with Bruce Dixon at the table in the eastern corner in the Sly Bar. Mr McLarty was standing beside them.
80. At 4:44:13pm, Mr McLarty approached the bar and Mr Board then left the area in the direction of the main bar.

81. At 4:45:32pm, Mr Board left the main bar area and spoke to someone out of screen near the door to the men's toilets.
82. At 4:46:18pm, Mr Board drank from a stubby as he returned to stand near his seat at the table in the corner. Mr McLarty remained at the bar holding a stubby and talking to Dennis O'Malley.
83. At 4:47:09pm, Mr McLarty left the Sly Bar through the door to the lounge area without approaching Mr Board. Mr Board continued to stand near the corner table and talk to Mr Dixon.
84. At 4:54:39pm, Mr Board walked towards the main bar and spoke to Mr O'Malley. He gave Mr O'Malley a document to read and Mr O'Malley put his glasses on to read it on the bar. Mr Board then took the document and left the area.
85. At 4:54:59pm, Mr McLarty returned to the Sly Bar with Ms Mitchell. For the rest of the CCTV footage, Mr McLarty and Ms Mitchell appeared to behave affectionately towards one another. At the same time, Mr Board was entering from the main bar. Mr Board turned around and went back into the main bar.
86. At 4:55:09pm, Mr McLarty and Ms Mitchell spoke to Mr O'Malley at the bar in the Sly Bar.
87. At 4:55:34pm, Mr Board walked past Mr McLarty and Ms Mitchell into the Sly Bar but they did not seem to communicate with each other. He sat down at the corner table with Mr Dixon.
88. At 4:56:35pm, Mr Board left the Sly Bar through the door to the main bar without speaking to Mr McLarty or Ms Mitchell. Mr O'Malley also left in the direction of the main bar. Mr Dixon went to the bar and sat down on a stool there.
89. At 4:58:39pm, Mr McLarty and Ms Mitchell ordered more drinks and Mr Dixon returned to the Sly Bar.
90. At 5:03:08pm, Mr Board returned to the Sly Bar and spoke to Mr McLarty and Ms Mitchell as he passed them. He also spoke to Mr O'Malley and Mr Dixon.
91. At 5:03:58, Ms Mitchell left through the door to the lounge. Mr McLarty remained standing at the end of the bar.

92. At 5:04:17pm, Mr Board went to the corner table and drank from his stubby. At 5:04:47pm, he left the Sly Bar in the direction of the main bar without communicating with Mr McLarty.
93. At 5:05:09pm, Mr Board re-entered the Sly Bar. Again there is no obvious communication with Mr McLarty.
94. At 5:05:24pm, Ms Mitchell returned to the Sly Bar.
95. At 5:05:49pm, Mr Board spoke to Mr Dixon and Mr O'Malley. Mr McLarty and Ms Mitchell remained standing and talking to each other at the end of the bar.
96. At 5:06:34pm, Mr Board returned to the corner table and seemed to check the Form Guide. At 5:07:16pm, he left the Sly Bar to enter the main bar without communicating with Mr McLarty.
97. At 5:08:58pm, Francis Gleeson entered the Sly Bar from the direction of the main bar and sat in the corner near the bar.
98. At 5:10:57pm, Mr Board returned to the Sly Bar from the direction of the main bar. He took his seat in the corner of the Sly Bar. Mr McLarty appears to have spoken to him as he passed. Francis Gleeson was not in view.
99. At 5:11:16pm, Chris Moloney entered the Sly Bar and appeared to speak to Mr Board and then Mr O'Malley and Mr Dixon. Mr Board then returned to the main bar without communicating with Mr McLarty.
100. At 5:11:37pm, Francis Gleeson returned to his seat in the corner of the Sly Bar. At that time, Mr Board appeared to be buying a drink and talking to Mr McLarty and Ms Mitchell at the end of the bar.
101. At 5:12:08pm, Mr Board returned to his seat in the corner of the Sly Bar next to Francis Gleeson.
102. At 5:12:32pm, all the known witnesses were in the Sly Bar together:
 - Mr Board and Francis Gleeson entered into a short conversation and then they watched the television screen without speaking.
 - Mr O'Malley and Mr Moloney were also watching the race on the television.

- Mr Dixon was obscured from view but did not seem to watch the television.
- Mr McLarty and Ms Mitchell did not watch the television and remained pre-occupied with each other at the end of the bar.

103. At 5:14:47pm, Mr Board and Francis Gleeson had another conversation and Mr Board gave Mr Gleeson something to read. Mr Board then put the document into his pocket.

104. At 5:15:48pm, the television seemed to arouse Mr O'Malley, Mr Moloney, Francis Gleeson and even Mr Dixon. Mr O'Malley even left his seat and approached the screen. However, Mr Board did not respond in a similar way.

105. At 5:16:13pm, Mr Board and Francis Gleeson left the Sly Bar together in the direction of the main bar. Mr McLarty had his back to them as they passed. Ms Mitchell was moving to take a seat at the table under the television screen. This table is mostly obscured from the CCTV camera. At 5:16:26pm, Mr McLarty joined Ms Mitchell at the table under the television screen.

106. At 5:17:08pm, Francis Gleeson returned to the Sly Bar and spoke to Mr O'Malley and Mr Moloney before he sat down in his corner seat.

107. At 5:17:53pm, Mr McLarty approached the bar to buy another drink. At 5:18:00pm, Mr Board returned to Sly Bar. He walked behind Mr McLarty without communicating with him. Mr Board then stood beside his seat at the corner table and appeared to look for Mr McLarty or Ms Mitchell. He then left the Sly Bar in the direction of the main bar without communicating with Mr McLarty.

108. At 5:18:32pm, Mr Board returned to his seat at the corner table in the Sly Bar without communicating with Mr McLarty. At 5:18:41pm, Mr McLarty seemed to return to his seat with Ms Mitchell at the table under the television. In this position, he was out of view of the CCTV camera.

109. At 5:19:08pm, Mr Board stood up from his seat and stood in the middle of the Sly Bar looking for something in his wallet. He then left the Sly Bar in the direction of the main bar. At the same time, Mr McLarty returned to the bar and bought another stubby without communicating with Mr Board.

110. At 5:20:56pm, Mr McLarty stood up and went to the right of Ms Mitchell so that he was partly in view. He then moved out of view again. However, at 5.21.44pm, Ms Mitchell seems to be having a conversation with him and looking around.
111. At 5:22:15pm, Mr Board returned to the Sly Bar and sat down at his seat at the corner table. Ms Mitchell then stood up and looked across the room at Mr Board.
112. At 5:22:34pm, Ms Mitchell walked across the Sly Bar towards Mr Board. At the same time, Francis Gleeson left the Sly Bar still talking on his phone.
113. At 5:22:36pm, Ms Mitchell's jumper dropped on the ground and Mr Board stood up and walked towards the television screen watching the screen. Ms Mitchell appeared to speak to Mr Board as she was retrieving her jumper. Mr Moloney was standing close to Ms Mitchell and must have heard this conversation.
114. At 5:22:40pm, Mr Board left the Sly Bar in the direction of the main bar. Ms Mitchell returned to her seat and spoke to a person presumed to be Mr McLarty who was out of view.
115. At 5:22:54pm, Mr O'Malley left the Sly Bar in the direction of the main bar.
116. At 5:23:09pm, Francis Gleeson returned to the Sly Bar from the direction of the main bar and returned to his seat in the corner. He was still on the phone.
117. At 5:23:35pm, Mr Board returned to the Sly Bar from the direction of the main bar and stood beside his seat at the corner table.
118. At 5:23:47pm, Mr McLarty walked towards Mr Board. They had a conversation near the corner table. Francis Gleeson was still on the phone nearby. Mr Moloney and Mr Dixon were still at the bar further away than Mr Gleeson. Mr Board then left the Sly Bar in the direction of the main bar.
119. Mr McLarty watched Mr Board leave the room as he returned to stand beside his seat and speak to Ms Mitchell. At 5:24:50pm, he went to the bar and bought another drink.
120. At 5:25:33pm, Mr McLarty returned to his seat with Ms Mitchell.
121. At 5:27:28pm, Mr Board returned to the Sly Bar from the direction of the main bar and sat down at his seat at the corner table.

122. At 5:28:04pm, Mr Board stood up with his stubby and paper and walked towards the television. He put his paper down on the table where Mr McLarty and Ms Mitchell were sitting. At 5:28:14pm, Mr Board left the Sly Bar in the direction of the main bar.
123. At 5:28:22pm, Mr Board returned to the Sly Bar from the direction of the main bar and sat down at his seat at the corner table without communicating with Mr McLarty or Ms Mitchell.
124. At 5:28:33pm, Mr McLarty walked across the Sly Bar to Mr Board. Mr Board stood up and they appear to talk. Both Mr McLarty and Mr Board seem agitated during this conversation.
125. At 5:28:39pm, Mr McLarty pointed at Mr Board as he turned and walked back across the room towards Ms Mitchell. Francis Gleeson was still on the phone but he looked in their direction. Mr Moloney and Mr O'Malley also looked towards Mr McLarty and Mr Board.
126. At 5:28:43pm, Mr Board left the Sly Bar in the direction of the main bar. As he left, he seems to have spoken to Mr McLarty and pointed in the direction he was going. Mr McLarty changed direction and followed him. Ms Mitchell, Mr Moloney and Mr O'Malley watched them leave. Francis Gleeson was still on the phone in the corner.
127. At 5:29:45pm, Mr Board returned to the Sly Bar from the direction of the main bar:
- He spoke to Mr Moloney, Mr O'Malley and Mr Dixon.
 - He then turned to watch the television with his hands behind his back.
 - Mr Moloney said something further particularly directed at Mr Board. Mr Board responded with his hand near his mouth.
 - Francis Gleeson remained on the phone.
 - Ms Mitchell remained sitting at the table.
128. At 5:30:00pm, the CCTV surveillance record from the camera in the Sly Bar stopped.

CCTV footage from the back door camera

129. The CCTV surveillance record from the camera at the back door of the Caledonian Hotel produced to the Court covers the period from 5:27:14pm to 5:35:00pm on 5 November 2006.

130. The camera over the back door shows a covered area near the door and the southern end of the car park
131. At 5:28:42pm, a taxi entered the car park from the south. At 5:28:45pm, the front passenger door opened and Pixie Gleeson started to get out.
132. At 5:28:45pm, Mr Board walked out the back door of the Caledonian Hotel. He was closely followed by Mr McLarty.
133. At 5:28:52pm, Mr Board turned to face Mr McLarty under the roof over the back door. By this time, Pixie Gleeson had exited the front passenger door of the taxi. He was standing near the back of parked cars close to the back door so that he was a car length from Mr Board.
134. Mr Board and Mr McLarty had a short conversation outside the back door. During that conversation, the view from behind Mr McLarty shows his elbow raised and moving to the right in a motion suggesting he was running his hand across his own neck.
135. At 5:28:54pm, Pixie Gleeson had a drink from his stubby and turned towards Mr Board and Mr McLarty.
136. At 5:29:02pm, Mr Board turned and walked between two cars into the car park. Pixie Gleeson was still watching the two men. He was within three metres of Mr Board and Mr McLarty. Sly Gleeson was just opening the rear passenger side door of the taxi.
137. At 5:29:05pm, as Mr Board walked beyond the cars, he raised his left hand towards Mr McLarty who was still between two cars. Sly Gleeson had almost exited the taxi by this time and he was speaking to Pixie Gleeson.
138. At 5:29:10pm, Mr McLarty ran up behind Mr Board. Mr Board turned to face Mr McLarty and took a 'boxing-like' stance with clenched fist and bent right arm. Mr McLarty had his back to the camera with his arms at his sides. Pixie Gleeson followed them and was about 2.5 metres from them. Sly Gleeson was still close to the taxi.
139. At 5:29:11pm, Mr Board hit Mr McLarty in the head with his right arm. Mr McLarty fell out of site of the camera behind the parked cars.

140. At 5:29:16pm, Pixie Gleeson approached Mr Board and then walked to the right across the car park with a stubby bottle in his hand. Mr Board started walking back towards the back door of the hotel. Neither man assessed Mr McLarty.
141. At 5:29:22pm, Sly Gleeson walked towards Mr Board and appeared to speak to him.
142. At 5:29:36pm, Sly Gleeson then entered the back door behind Mr Board. The taxi was reversing back into the scene and Pixie Gleeson was walking back across the car park without the stubby in his hand.
143. At 5:29:10pm, Pixie Gleeson spoke to Mr Finn in the car park.
144. At 5:29:50pm, Pixie Gleeson approached the back door and Mr Finn got back into his taxi.
145. At 5:30:20pm, Sean Payne was talking on his phone at the back door. He seems to have entered the car park and seen Mr McLarty. He immediately went back in the back door.
146. At 5:30:36pm, Mr Moloney exited the back door. He met and spoke to Pixie Gleeson behind the cars parked near the back door. Mr Moloney then approached the back of the cars where Mr McLarty was lying out of sight of the camera.
147. At 5.30.38pm, Mr Moloney bent down and seems to have assessed Mr McLarty.
148. At 5.31.15pm, Pixie Gleeson was making a telephone call.
149. At 5:31:27pm, other people began to exit the back door and enter the car park. At 5.31.33pm, Ms Mitchell exited the back door.
150. At 5:31:45pm, Pixie Gleeson went into the Caledonian Hotel for the first time through the back door.
151. At 5:35:00pm, the CCTV recording stopped.

CCTV footage from the camera at the south east corner of the car park

152. The CCTV surveillance record from the camera at the south east corner of the car park produced to the Court covers the period from 5:25:11pm to 6.00:31pm on 5 November 2006.

153. It shows the southern entrance to the car park, the main parking area and the roof over the back door.
154. At 5:29:08pm, Mr Finn's taxi had entered the car park of the Caledonian Hotel through the direction of the southern entrance. The taxi was stopped close to the back door. Pixie Gleeson was standing next to the front passenger side of the taxi.
155. At the same time, Mr McLarty followed Mr Board into the car park from between parked cars outside the back door of the hotel and just in front of where Pixie Gleeson was standing.
156. When there was about 3.6 metres between them, Mr Board turned to face Mr McLarty. At 5:29:09pm, Mr McLarty seemed to raise his right arm with a closed fist and pushed Mr Board in the shoulder. By this time, Pixie Gleeson was about 3.6 metres from Mr McLarty and Mr Board. Sly Gleeson remained beside the taxi.
157. At 5:29:12pm, Mr Board swung his right arm towards Mr McLarty's head.
158. At 5:29:13pm, Mr McLarty fell backwards on to the ground behind Mr Moloney's car.
159. At 5:29:14pm, Pixie Gleeson approached Mr Board and appeared to speak to Mr Board. Mr Board then began to walk back towards the back door of the hotel.
160. At 5:29:16pm, Mr Board stopped and looked back at Mr McLarty before he entered the back door of the hotel. Sly Gleeson had exited the taxi and followed Mr Board inside. The taxi was beginning to move to the left to leave the car park
161. At 5:29:24pm, Pixie Gleeson crossed the car park with his in his right hand. He walked away from where Mr McLarty remained on the ground without having approached Mr McLarty.
162. At 5:29:29pm, Pixie Gleeson returned from the north-west corner of the car park after depositing his stubby. He walked directly to the back door of the hotel past Mr McLarty who remained lying unattended on the ground. Mr Finn had exited the taxi which was facing the south.
163. At 5:30:44pm, Pixie Gleeson met Mr Moloney who was coming out the back door. They approached Mr McLarty together. After talking to Mr Moloney while Mr Moloney assessed Mr McLarty, Pixie Gleeson walked back towards the back door of the Caledonian Hotel.

164. At 5:30:48pm, Mr Moloney seems to have assessed Mr McLarty. At 5:30:56pm, he is looking at his telephone when Pixie Gleeson walked back towards him with other bystanders coming out the back door.
165. At 5:31:04pm, Mr Moloney talked to Pixie Gleeson. At 5:31:05pm, Pixie Gleeson turned to walk towards the back door.
166. At 5:31:42pm, Ms Mitchell approached Mr McLarty. Mr Moloney appeared to be talking on his phone.
167. At 5:32:00pm, Mr Moloney rolled Mr McLarty on to his right side in a coma position.
168. At 5:32:53pm, Ms Mitchell returned to Mr McLarty with her jumper. Mr Moloney remained with Mr McLarty.
169. At 5:37:06pm, Ms Quinn left the car park on foot through the back entrance.
170. At 5:37:08pm, she returned with an ambulance paramedic. At 5:37:11pm, the ambulance also arrived through the back entrance to the car park.
171. At 5.37.31pm, ambulance paramedics began to assess Mr McLarty. At 5.40.44pm and 5:42:09pm, Mr Moloney helped them to obtain some equipment from the left hand side of the ambulance.
172. At 5:43:21pm, the ambulance paramedics took their wheeled stretcher out of the ambulance. At 5:44:25pm, a third paramedic arrived on foot. At 5:45:40pm, Mr Moloney and an ambulance paramedic transferred Mr McLarty on to the stretcher and placed the stretcher in the ambulance. Mr Moloney also assisted with packing up the equipment.
173. At 5:47:56pm, Mr Board walked past the scene and went back into the hotel through the back door.
174. At 5:51:31pm, the third ambulance paramedic left the scene on foot through the back entrance to the car park. At 5:51:50pm, the ambulance left the car park. By then, Mr Moloney had also left the car park.
175. At 5:54:28pm, Mr Moloney returned to the car park and inspected the back of his car.

176. At 5:54:57, Mr O'Malley and Sean Payne entered the car park through the back door and spoke to Mr Moloney. Mr Moloney then went back inside. Mr O'Malley got into a car on the eastern side of the car park. At 5:55:56pm, Mr O'Malley's car left the car park.

177. At 6:00:31pm, the CCTV recording stopped.

CCTV footage from the camera over the fire escape

178. The CCTV surveillance record from the camera over the fire escape produced to the Court covers the period from 5:00pm to 6:00pm on 5 November 2006.

179. This data shows a fire escape access to the first floor of the hotel from the northern end of the rear car park of the Caledonian Hotel and a rubbish skip at the bottom of the stairs.

180. At 5:10:46pm, Mr Moloney parked his car in the car park and walked towards the back door entrance to the Sly Bar.

181. At 5:29:00pm, Mr Board entered the car park from the direction of the back door. Mr McLarty followed him from a distance of three car widths or about 5.4 metres.

182. At the same time, Mr Finn's taxi entered the car park from the southern end and stopped near the back door. Mr McLarty was beside and close to the taxi when he entered the car park.

183. At 5:29:10pm, Mr Board turned towards Mr McLarty when Mr McLarty was about two car widths or 3.6m from him. At this time, Pixie Gleeson was out of the taxi and the rear door of the taxi was open.

184. Mr McLarty moved quickly towards Mr Board before he extended his right arm with a closed fist in a move that seemed intended to hit or push Mr Board in the left shoulder. Mr Board raised his left arm in a defensive motion and seemed to lose his balance slightly so that he was leaning backwards standing on his left leg with his right leg extended forward.

185. At 5:29:11pm, Mr Board and Mr McLarty separated facing each other with Mr McLarty in a submissive position backed up against Mr Moloney's car.

186. Mr Board then punched Mr McLarty on the right side of his head with his left closed fist. This caused Mr McLarty's head to flex to the left. At 5:29:12pm, a second punch seemed to hit Mr McLarty in the shoulder.

187. Mr McLarty collapsed on to the ground. Pixie Gleeson was almost beside him by this time.
188. At 5:29:13pm, Pixie Gleeson spoke to Mr Board and then walked away towards the back entrance to the car park. Mr Board walked towards the back door to the Sly Bar. Neither man made any attempt to check Mr McLarty.
189. By 5:29:22pm, the taxi was turning around and Sly Gleeson was approaching Mr Board as he walked towards the back door. Mr Board turned towards Mr McLarty and seemed to make a gesture that disclaimed responsibility. Sly Gleeson did not approach Mr McLarty. He and Mr Board went inside.
190. At 5:29:27pm, the taxi stopped and Mr Finn began to get out of the driver's seat.
191. At 5:29:30pm, Pixie Gleeson returned into view without his stubby and walked across the car park towards Mr Finn. The two men spoke to each other. Pixie Gleeson and Mr Finn then approached Mr McLarty together.
192. At 5:29:47pm, Mr Finn returned to his taxi and Pixie Gleeson entered the hotel.
193. At 5:30:42pm, Pixie Gleeson and Mr Moloney entered the car park from the back door of the hotel and approached Mr McLarty.
194. At 5:30:50pm, Mr Moloney bent down to tend to Mr McLarty. At 5:31:23pm, he was speaking on his telephone. Mr Gleeson then turned Mr McLarty into the coma position. A number of other witnesses approached him including Ms Mitchell and Ms Quinn. They continued to bring towels and blankets.
195. At 5:36:29pm, Mr Moloney was dialling his telephone again. Ms Quinn left the car park through the side entrance.
196. At 5:37:10pm, a paramedic and Ms Quinn walked into the car park through the back entrance, followed by the ambulance. Mr Moloney was still standing over Mr McLarty.
197. At 5:37:25pm, the second paramedic exited the ambulance.
198. One paramedic assessed Mr McLarty while the other took the stretcher from the ambulance.
199. At 5:40:42pm, Mr Moloney obtained a bag from the left side of the ambulance while the paramedics got a spinal board or similar looking object.

200. At 5:44:19pm, all three men cooperated to lift Mr McLarty on to a board and then the ambulance wheeled stretcher.
201. At 5:44:25pm, a third paramedic arrived on foot through the back entrance. At 5:46:30pm, Mr McLarty was placed in the ambulance.
202. At 5:47:11pm, Mr Maloney went in the back door of the hotel. At the same time, Mr Board came down the fire escape from upstairs with a bag. He walked between the rubbish skip and the fire escape out of view.³
203. At 5:47:51pm, Mr Board re-entered the car park from between the rubbish skip and the fire escape without the bag. He walked south past the waiting ambulance and into the back door of the hotel.
204. At 5:51:51pm, the ambulance left the scene. One paramedic drove. One was in the back of the ambulance with Mr McLarty. Another left by foot through the back entrance to the car park.
205. At 5:54:23pm, Mr Moloney re-entered the car park through the back door. He walked straight to his car and examined the boot closely as well as the surrounding area.
206. At 5:54:57pm, Mr O'Malley and Mr Payne came out and also looked at Mr Moloney's car.
207. At 5:55:16pm, Mr Moloney, Mr O'Malley and Mr Payne went into the hotel through the back door.
208. At 6:00:00pm, the CCTV recording ended.

Witnesses' evidence of events in the Sly Bar of the Caledonian Hotel on 5 November 2006

209. The Caledonian Hotel is in Fairy Street in Warrnambool. The hotel provides bar, lounge and dining facilities on the ground floor and accommodation on the first floor.
210. The main bar has a 350cm wide island counter dividing it into a 780cm wide so-called Sly Bar or members bar and a much wider public bar. The Sly Bar has two doors: a door to the private

³ Mr Krause confirmed that the rubbish bins, the laundry and the kitchen were in the same direction as the skip bin but probably 10 to 15 metres further to the left, off camera.

dining room and lounge room and a door to the men's toilets and, along a short corridor to a covered entry from the rear car park.

211. There were at least 11 witnesses who could observe Mr McLarty and Mr Board in the Sly Bar on 5 November 2006. They were:

- Kylie Mitchell
- Tasma Quinn (previously Tasma Wickham)
- Michelle Romaniszyn
- Sean Payne
- Tom Bailey
- Damien Gleeson
- Francis Gleeson
- Bruce Dixon
- Dennis O'Malley
- Brian Anthony (Pixie) Gleeson
- Brian Julian (Sly) Gleeson
- Chris Moloney.
- Adrian Krause
- Nick Board

212. I will now summarise and evaluate the evidence from each of these witnesses in relation to events in the Sly Bar at the Caledonian Hotel on the afternoon of 5 November 2006.

213. **Kylie Mitchell** made three statements in relation to events on 5 November 2006: 17 November 2006, 21 November 2006 and 21 May 2007. She also gave evidence at the Inquest.

- Ms Mitchell's third statement was made in the presence of John Nurrick who was her rehabilitation and support worker. This third statement withdrew much of the information she had previously provided about the events of the afternoon of 5 November 2006.

- Ms Mitchell told the Court that the reason she withdrew the information in her first and second statements was that she had purported to be a primary witness of Mr McLarty's drug seeking behaviour on 5 November 2006. However, Mr McLarty had only spoken to her once about cannabis. Two other people in the lounge had already told her that Mr McLarty had asked Mr Board for cannabis.
- Therefore, to the extent that I accept her memory of events, I have relied on her second statement as amended by her third statement and her evidence in court. Ms Mitchell's evidence included the following:
 - At 1:45pm on 5 November 2006, Mr McLarty and Ms Mitchell went to the Caledonian Hotel together.
 - Ms Mitchell spent most of the afternoon playing poker in the private dining room or lounge. This evidence is supported by Mr Krause.
 - While she was in the lounge, two people told her that Mr McLarty had asked Mr Board for cannabis.
 - Mr McLarty spent most of the afternoon in the public bar drinking full strength beer for diabetics and placing bets on the races. This evidence is supported by CCTV evidence for the period after 4:44:01pm.
 - At about 5:00pm, Ms Mitchell joined Mr McLarty in the Sly Bar. This is confirmed by the CCTV evidence.
 - Ms Mitchell stated that Mr McLarty told her he was waiting for Mr Board to get him some cannabis and he did not know why it was taking so long. There is no collaborative evidence to support or reject this evidence
 - Mr McLarty asked Ms Mitchell to ask Mr Board the reason for the delay in his providing him with cannabis. The CCTV evidence shows Ms Mitchell searching the room while Mr Board was away and responding immediately he returned.
 - At 5:22pm, Ms Mitchell was walking towards Mr Board when she dropped her jumper on the floor of the Sly Bar. In her third statement, Ms Mitchell said that she spoke to Mr

Board at this time. This seems to be confirmed by the CCTV footage and Mr Krause's interpretation of the CCTV evidence.

- In evidence, Ms Mitchell said that she asked Mr Board about Mr McLarty's request for cannabis. Mr Krause's interpretation of this incident is consistent with Ms Mitchell's evidence to the extent that it seemed to create the difference of opinion between Mr Board and Mr McLarty which evolved into their leaving the Sly Bar together.
- Ms Mitchell told the Court that Mr Board came up to Mr McLarty and whispered something in his ear after this incident. However, Mr McLarty would not tell Ms Mitchell what Mr Board had said. CCTV evidence supports a conversation between Mr Board and Mr McLarty at 5:28:04pm.
- Ms Mitchell said that Mr McLarty blushed and seemed to want to argue with Mr Board. Mr McLarty was mainly out of view of the CCTV camera when he was sitting at the table with Ms Mitchell and therefore there is no collaborative evidence to support or reject this evidence.
- Ms Mitchell described the reasons that she thought Mr McLarty was angry about what Mr Board had said to him:

"It's just the face impressions of Russell like his face looked angry and red. It was bright red like fire-in a way."

- Ms Mitchell says that Mr Board left the Sly Bar first and Mr McLarty followed him. This is confirmed by CCTV footage.

214. **Tasma Quinn** was the barmaid working in the Sly Bar at the Caledonian Hotel from 1.00pm on 5 November 2006. She knew Mr McLarty and Mr Board from her work at the hotel.

215. Ms Quinn told the Court:

"In all the time I knew him (Mr McLarty) during the pub he was never aggressive and he was always respectful."

216. Ms Quinn made her statement on 17 November 2006. She also gave evidence at the Inquest.

- Ms Quinn was concerned that Mr McLarty looked unwell on 5 November 2006 and asked him three times about his blood sugar level. Mr McLarty insisted he had tested his sugar levels before he left home and he was fine.
- Ms Quinn was never concerned about the interaction between Mr McLarty and Mr Board up to the time they left the Sly Bar. She did not see any indications of animosity in their body language.
- However, Ms Quinn would not necessarily have seen and heard everything that occurred in the Sly Bar on 5 November 2006 because she was also serving drinks in the lounge and she has a slight hearing problem.

217. **Michelle Romaniszyn** was also working in the Caledonian Hotel from 12.00pm to 4.15pm on 5 November 2006. Ms Romaniszyn made her statement on 14 November 2006. She also gave evidence at the Inquest.

- Ms Romaniszyn spoke to Mr McLarty during the afternoon of 5 November 2006. He told her he had a bad shoulder. She also remembers that Mr McLarty was becoming influenced by alcohol by the end of her shift but he “*certainly was not drunk*”.
- Ms Romaniszyn also told the Court that she did not see any contact at all between Mr Board and Mr McLarty before she finished work at 4.15pm. Further, no one suggested to her that there may have been a problem between them.

218. **Sean Payne** was the TV repairs/handy man at the Caledonian Hotel. On 5 November 2006, he was seated at the table in the Sly Bar underneath the TV screens and out of camera view. He was also in the car park on a number of occasions including when Mr Moloney exited the back door to attend to Mr McLarty. In January 2012, Detective Senior Sergeant Mark Canavan spoke to Mr Payne but he had no information that could assist the Coroner and no statement was taken.

219. **Tom Bailey** was the publican and served behind the bar at the Caledonian Hotel. Mr Ryan spoke to him during the initial investigation of Mr McLarty’s assault but he had no information that could assist the Coroner and no statement was taken.

220. **Damien Gleeson** was also the publican at the Caledonian Hotel. Mr Ryan spoke to him during the initial investigation of Mr McLarty's assault but he had no information that could assist the Coroner and no statement was taken.

221. **Adrian Krause** was the Bar Manager of the Caledonian Hotel on 5 November 2006. Mr Krause was running the poker tournament and the main bar. He made a statement on 11 January 2010. He also gave evidence in the Inquest.

- Mr Krause knew both Mr McLarty and Mr Board because they had both lived in the Caledonian Hotel while he had been working there. He also confirmed that they knew each other through that association. Mr Krause had never seen any problems between them.
- Mr Krause confirmed that Ms Mitchell was playing in the poker tournament until that was finished and he then went to work in the main bar.
- While Mr Krause was working in the main bar and Mr Moloney was still in the bar, one of Mr Krause's staff, Danielle Hale, told him that Mr McLarty had been injured in the car park of the hotel.
- Mr Krause also said that Ms Hale was a qualified nurse but she did not tell him any more details about Mr McLarty's injuries at that time.
- Mr Krause went out and saw Mr McLarty on the ground, the taxi still in the car park and people around near the back of a car. He then went back into the hotel. At that time, Mr Krause was not aware that Mr McLarty had been involved in a fight.
- Mr Krause told the Court that he and another person he thinks was the publican, Damian Gleeson, reviewed the CCTV surveillance record of the Sly Bar soon after the ambulance left.
- From this evidence, they formed the opinion that Mr Board and Mr McLarty had an argument in the Sly Bar before they went to the car park.
- In particular, Mr Krause said he formed this opinion because:

“It appeared that Nick walked past Kylie and sort of knocked her jumper off her waist or knocked something out of her hand, I believe...”

That's all, yeah, just look back through the cameras and see if there's anything that might have started something outside, yes. Only sort of appears from then on that sort of Russell got, maybe a little bit (touchy).”

- Telephone records indicate that Mr Krause rang Mr Moloney's mobile telephone at 8:23pm. Mr Krause confirmed he would have discussed the incident with Mr Moloney.
- Mr Krause did not inform police about the incident because he presumed they already knew.
- Further, Mr Krause confirmed that he watched the CCTV footage from the Sly Bar for a longer period than that made available to the Court. This footage confirmed Sly Gleeson's evidence that Mr Board left the Sly Bar soon after 5:30pm and walked towards the stairs leading to his upstairs room.
- After viewing the CCTV footage from the fire escape, Mr Krause also said that it was likely that Mr Board went to the laundry at 5:47:15pm on 5 November 2006. Mr Krause based this opinion on the direction which Mr Board walked after he came down the fire escape and the 40 seconds it took him to return to view of the fire escape camera.
- I note from CCTV evidence at 5:29:22pm that Pixie Gleeson took eight seconds off camera to deposit his stubby. However, he left and returned in a different direction from that taken by Mr Board.
- Therefore, I accept Mr Krause's evidence that it is unlikely that Mr Board deposited his bag in the same rubbish bin that Pixie Gleeson had earlier used to dispose of his stubby. I remain uncertain about where he placed the bag or what was in it.

222. **Francis (Frank) Gleeson** was in the Sly Bar from about 5:00pm to 6:00pm on 5 November 2006. Mr Gleeson made his statement on 8 November 2006. He has since died.

- Francis Gleeson stated that he had been part owner of the Caledonian Hotel from 1999 to October 2002. He had known both Mr McLarty and Mr Board since that time.

- CCTV evidence confirmed that Francis Gleeson arrived in the Sly Bar at 5:08pm.
- Francis Gleeson noticed that Mr McLarty appeared intoxicated during the afternoon. However, he did not appear to be aggressive in any way.
- Francis Gleeson also noticed that Mr Board was not drunk at all in his opinion.
- Francis Gleeson stated that he was sitting next to Mr Board shortly after 5:00pm when Mr McLarty approached him. At this time, Francis Gleeson heard Mr Board say something like:

“just leave it, go away”

- CCTV evidence shows Francis Gleeson returned to his seat in the corner of the Sly Bar at 5:11:37pm. At that time, Mr Board appeared to be buying a drink and talking to Mr McLarty and Ms Mitchell at the end of the bar. Therefore, I presume that he heard Mr Board made these comments as he passed him at the end of the bar.
- At about 5:20pm, Francis Gleeson also heard Mr Board say to Mr McLarty:

“Fuck you, you have been hassling me all afternoon, outside.”

- Francis Gleeson also saw Mr Board walk out the back door at 5:29pm and Mr McLarty followed him.
- Francis Gleeson says Mr Board returned to the bar within about two minutes of leaving with Mr McLarty. The CCTV evidence shows that Mr Board was gone from the Sly Bar for less than one minute.
- Other than time estimates, Francis Gleeson’s evidence is consistent with CCTV evidence from the Sly Bar. Therefore, I accept his evidence on matters not contained in the CCTV footage.

223. **Bruce Dixon** was sitting in the Sly Bar on the afternoon of 5 November 2006.

- CCTV evidence from 4:44:01pm confirms that Mr Dixon spoke to Mr Board in the Sly Bar on 5 November 2006. There is no indication that these interactions were other than

cordial and sociable. He did not seem to speak to Mr McLarty during the period that CCTV evidence is available.

- CCTV evidence shows that Mr Dixon reacted to the altercation between Mr Board and Mr McLarty at 5:28:39pm on 5 November 2006. Therefore, he must have heard the content or at least the tone of their conversation.
- Mr Dixon was approached to provide a statement but he denied having any information that could assist the Coroner.

224. **Dennis O'Malley** was also drinking in the Sly Bar on the afternoon of 5 November 2006. Mr O'Malley was spoken to during the initial investigation of Mr McLarty's assault and again in January 2012. No statement was taken.

- CCTV evidence from 4.44pm confirms that Mr O'Malley spoke to both Mr Board and Mr McLarty in the Sly Bar on 5 November 2006. There is no indication that these interactions were other than cordial and sociable.
- CCTV evidence also shows that Mr Dixon reacted to the altercation between Mr Board and Mr McLarty at 5:28:39pm on 5 November 2006. Therefore, he must have heard the content or at least the tone of their conversation.
- Mr O'Malley confirmed he was present but remembered it was just a normal day and had no recollection of speaking to Mr McLarty.

225. **Brian Anthony (Pixie) Gleeson** was in the Sly Bar between about 2.45pm and 3.15pm. He made a statement on 15 November 2006. He also gave evidence at the Inquest.

- Pixie Gleeson was a publican at the Victoria Hotel in Warrnambool. Mr Board had previously lived at the Victoria Hotel and Pixie Gleeson had known Mr Board for 30 years. He did not know Mr McLarty.
- Pixie Gleeson called in to the Caledonian Hotel to pick up his friend, Sly Gleeson, before they went to the Terang races together.
- Pixie Gleeson remembered seeing Mr McLarty with Ms Mitchell in the Sly Bar during this time and that he did not appear drunk. He also saw Mr Board.

- Pixie Gleeson did not observe any animosity between Mr McLarty and Mr Board during this time.
- Pixie Gleeson also told the Court that he spoke to Mr Moloney in the Sly Bar at about 5:30pm on 5 November when he asked Mr Moloney to call an ambulance and police. He told the Court he said to Mr Moloney:

"there's been a blue."

- Pixie Gleeson also said he said:

"Moses, there's been an incident out the back, could you ring the ambulance and the police."

- Later, Pixie Gleeson said he said:

"Moses could you come please? There's been an incident and there's been a fight".

- Pixie Gleeson's evidence on this matter is inconsistent with the CCTV evidence which shows he did not go into the hotel until after Mr Moloney was entering in the car park. Therefore, he could not have said these things to Mr Moloney in the Sly Bar.
- Pixie Gleeson went further in evidence when he told the Court:
"as I said it was a long time ago and it was a pretty horrific incident for obviously everyone that was involved and that's why I've never spoken about it since."
- However, the similarity between Mr Moloney's evidence and Pixie Gleeson's evidence and the inconsistency between this evidence and other evidence provided to the Court about events in the Sly Bar in 5 November 2006 implies that Mr Moloney and Pixie Gleeson had spoken to each other in depth about their movements on 5 November 2006 before Pixie Gleeson made his statement on 15 November 2006.

226. **Brian Julian (Sly) Gleeson** entered the Sly Bar at about 5:30pm after Mr McLarty was injured. He made a statement on 15 February 2009. He also gave evidence at the Inquest.

- Sly Gleeson had known Mr Board for about 30 years but he did not know Mr McLarty well:

"I never ever knew his name but I'd seen him at the Cally on various occasions but I never knew his name or anything."

- Sly Gleeson had also known Pixie Gleeson and Mr Moloney for about 40 years.
- Sly Gleeson went straight into the hotel after Mr McLarty was injured.
- Sly Gleeson told the Court he spoke to Mr Moloney:

"I think I said someone better get an ambulance, Nicky's just pushed a bloke and then he's hit his head and he might be in a spot of bother."

- Mr Moloney went straight out the door to the car park. Sly Gleeson told the Court that Pixie Gleeson did not come into the bar before he left to go to the car park.
- Sly Gleeson's evidence is entirely consistent with the CCTV evidence of his movements in the car park after Mr McLarty left the Sly Bar. Therefore, I accept his evidence on matters not contained in the CCTV footage.

227. **Chris Moloney** entered the Sly Bar at about 5:15pm on 5 November 2006. He made a statement early in the morning of 6 November 2006. Mr Moloney also gave evidence at the Inquest.

- Mr Moloney was an off duty policeman. He had been a member of Victoria Police for 21 years. He had worked in Warrnambool for four years.
- Mr Moloney did not know Mr McLarty but he had seen him at the Caledonian Hotel as a regular patron. He also noticed Ms Mitchell in the Sly Bar on 5 November 2006 and assumed she and Mr McLarty were a couple.
- Mr Moloney had known Mr Board for 30 years and was a family friend. He explained to the Court:

"Nick's had a fairly chequered past (with heroin) and I was probably closest to Nick when we 17 or 18 playing footy. He went away to Queensland. He went down a path that I certainly didn't go down and so - - -"

So, yeah, whilst we remain friends, he would never socialise with me and I wouldn't socialise with him outside seeing him at a hotel situation...

...he's had chronic health issues which prompted him to give up heroin. But if I said 10 to 15 years ago maybe....

I would say he probably did (still use cannabis). "

- Mr Moloney had also known Pixie Gleeson and Sly Gleeson for about 40 years.
- Mr Moloney told the Court that he consumed one pot of beer in the 15 minutes after he arrived in the Sly Bar.
- Mr Moloney stated that Brian Gleeson spoke to him in the Sly Bar at about 5.30pm on 5 November 2006 and asked him to follow him to the back yard of the Caledonian Hotel. In Court, Mr Moloney confirmed that the person who spoke to him was Brian "Pixie" Gleeson.

- Mr Moloney told the Court that Pixie Gleeson told him:

"There's a male - there's a bloke out the back in trouble." He said, "I don't want to touch him because I've been drinking," and that was as much as he said."

- Mr Moloney's evidence on this matter is inconsistent with the CCTV evidence which shows Pixie Gleeson did not go into the hotel until after Mr Moloney was already entering the car park. Therefore, I do not accept Mr Moloney's evidence that Pixie Gleeson approached him in the Sly Bar at about 5.30pm and asked him to go outside to assist someone in the car park.
- Further, Mr Moloney denied that the person who spoke to him in the Sly Bar also said that there had been an argument:

"There was certainly no mention of a blue to me"

However, I accept Sly Gleeson's evidence on this point.

- Accordingly, when Mr Moloney left the Sly Bar to attend to Mr McLarty, he was or should have been aware from his conversation with Sly Gleeson that the argument

between Mr McLarty and Mr Board that he had seen in the Sly Bar had continued in the car park. Further, he was or should have been aware that this argument was related to Mr McLarty's current condition in the car park.

- At 5:51pm, after the ambulance had left, Mr Moloney says that he returned to the Sly Bar and drank another one or two glasses of beer. He says that did not talk to anyone at the hotel about what had occurred in the car park. He left the hotel at about 6:30pm.
- Mr Moloney told the Court that he still did not know that Mr McLarty had been assaulted when he left the hotel. He said that it did not cross his mind that Mr McLarty had been assaulted when he was administering first aid to him in the car park of the Caledonian Hotel on 5 November 2006. Although the possibility of a diabetic hypoglycaemic attack had been excluded, he believed that Mr McLarty had collapsed for some medical reason.
- However, the similarity between Mr Moloney's evidence and Pixie Gleeson's evidence and the inconsistency between this evidence and other evidence provided to the Court about events in the Sly Bar at about 5.30pm on 5 November 2006 can only be explained if Mr Moloney and Pixie Gleeson spoke to each other before Pixie Gleeson made his statement on 15 November 2006.
- Accordingly, I do not accept Mr Moloney's evidence that that he did not talk to anyone about the events of 5 November 2006.

228. **Adrian Krause** was the Bar Manager of the Caledonian Hotel on 5 November 2006. Mr Krause was running the poker tournament and the main bar. He made a statement on 11 January 2010. He also gave evidence in the Inquest.

- Mr Krause knew both Mr McLarty and Mr Board because they had both lived in the Caledonian Hotel while he had been working there. He also confirmed that they knew each other through that association. Mr Krause had never seen any problems between them.
- Mr Krause confirmed that Ms Mitchell was playing in the poker tournament until that was finished and he then went to work in the main bar.

- While Mr Krause was working in the main bar and Mr Moloney was still in the bar, one of Mr Krause's staff, Danielle Hale, told him that that Mr McLarty had been injured in the car park of the hotel.
- Mr Krause also said that Ms Hale was a qualified nurse but she did not tell him any more details about Mr McLarty's injuries at that time.
- Mr Krause went out and saw Mr McLarty on the ground, the taxi still in the car park and people around near the back of a car. He then went back into the hotel. At that time, Mr Krause was not aware that Mr McLarty had been involved in a fight.
- Mr Krause told the Court that he and another person he thinks was the publican, Damian Gleeson, reviewed the CCTV footage of the Sly Bar soon after the ambulance left.
- From this evidence, they formed the opinion that Mr Board and Mr McLarty had an argument in the Sly Bar before they went to the car park.
- In particular, Mr Krause said he formed this opinion because:

"It appeared that Nick walked past Kylie and sort of knocked her jumper off her waist or knocked something out of her hand, I believe."

- At 8:23pm, Mr Krause rang Mr Moloney. The timing of this telephone call is consistent with the time that Mr Krause was watching the CCTV footage and forming the opinion that Mr Board and Mr McLarty had an argument in the Sly Bar before they went to the car park.
- Mr Krause conformed that he would have discussed the incident in which Mr McLarty was injured with Mr Moloney at that time.

229. **Nick Board** was in the Sly Bar of the Caledonian Hotel on 5 November 2006. At 9:55pm, Mr Porter, Detective Senior Constable Neagle and Mr Ryan approached Mr Board in his bedroom at Room 6 of the Caledonian Hotel. Mr Ryan recorded the conversation in his diary. During his conversation with Mr Ryan, Mr Board confirmed the following:

- He had been drinking all weekend.

- He did not know Mr McLarty's name but he knew Mr McLarty had been drinking at the pub for a couple of years and he worked on trucks.
- He was in the bar with Mr Moloney and Mr McLarty came over and started arguing with him. He told Mr McLarty to "*piss off*".
- He said Mr McLarty was getting loud and Mr Board said come with me to tell him to shut up and leave him alone.
- Mr Board went outside and Mr McLarty followed him.

230. Further, in a recorded interview commencing at 1.09am on 6 November 2006, Mr Board confirmed that:

- Mr Board had lived at the Caledonian Hotel for over 10 years.
- Mr Board had been drinking for three or four hours on 5 November 2006 and had a big night the night before.
- Mr Board knew Mr McLarty because he drank regularly at the Caledonian Hotel.
- Mr McLarty kept on interrupting Mr Board while he was watching the races in the bar.
- Mr Board did not know why Mr McLarty was hassling him:

"I don't know whether he was drunk or what it was but he was just, you know, being annoying, yeah."

- Mr Board asked Mr McLarty:

"Can you piss off and leave me alone?"

- Mr Board said that Mr McLarty raised his voice again and told Mr Board:

"I'm not happy now".

- Mr Board said to Mr McLarty:

"Righto. Follow me."

- Mr McLarty said:

“Right”

- The reason he asked Mr McLarty to come outside was:

“Because he was embarrassing in the bar and getting louder”.

- Mr McLarty followed Mr Board out of the Sly Bar. Mr Board said:

“He’s marched behind me sort of thinking, you know, that I probably wanted to fight him, which I didn’t though.”

- This sequence of events reported by Mr Board on the night is largely consistent with the CCTV evidence and the evidence of other witnesses.
- However, Mr Board’s explanation of these events is inconsistent with witnesses’ reports and CCTV evidence from the Sly Bar.
- In particular, the altercation between Mr McLarty and Mr Board did not attract the joint attention of Mr Moloney and Mr O’Malley in the Sly Bar until 5:28:39pm.
- Alternatively, if I accept Ms Mitchell’s evidence, other people in the hotel told her that Mr McLarty was annoying Mr Board before she left the lounge at 4:54:09pm. If I accept Mr Krause’s interpretation of the CCTV evidence, their disagreement was detectable at 5:22:36pm. If I accept Francis Gleeson’s evidence, he heard Mr Board tell Mr McLarty to leave him alone at about 5.00pm. If I accept Mr Neagle’s evidence that he saw no interaction between Mr Board and Mr McLarty anywhere in the hotel before the time he seized the CCTV footage, it could not have commenced before 4:44:01pm on 5 November 2006.

231. In other words, Mr Board’s frustration and Mr McLarty’s active insistence were not extended over the whole afternoon that Mr Board alleges and did not reach a stage where it attracted the general attention of patrons in the Sly Bar until less than ten minutes before the two men left the Sly Bar.

232. I note that Mr Board did not provide any information about the reason that Mr McLarty was hassling him in the Sly Bar. However, Mr Ryan did not put this issue to Mr Board in his interviews with him on the night of 5/6 November 2006.

233. Further, Mr Board did not volunteer any information about the reason he came down the fire escape or the bag he disposed of at 5:47:11pm. At that stage of the investigation, Mr Ryan did not have this CCTV evidence and could not have known that Mr Board re-entered the car park at this time.

Witnesses' evidence of events in the car park of the Caledonian Hotel on 5 November 2006

234. There were at least six witnesses who were in the position to observe Mr McLarty and Mr Board in the car park of the Caledonian Hotel at about 5:29pm on 5 November 2006. They were:

- Michael Finn
- Brian Anthony (Pixie) Gleeson
- Brian Julian (Sly) Gleeson
- Chris Moloney
- Sean Payne
- Nick Board.

235. I will now summarise the evidence from each of these witnesses in relation to events in the car park of the Caledonian Hotel between 5:25:11pm and 6:00:31pm on 5 November 2006.

236. **Michael Finn** was driving his taxi into the car park of the Caledonian Hotel when Mr Board and Mr McLarty exited the rear door of the hotel at 5:28:45pm on 5 November 2006. Mr Finn made a statement that seems to have been made on 6 November 2006. He also gave evidence at the Inquest.

- Mr Finn was a retired police officer and interpreted his observations from that experience.
- Mr Finn's taxi entered the car park of the Caledonian Hotel to drop off Pixie Gleeson and Sly Gleeson. They had been to the Terang races.

- Mr Finn told the Court that Pixie Gleeson and Sly Gleeson had been drinking but they were not affected by the alcohol.
- From the driver's seat of his taxi, Mr Finn saw Mr Board and Mr McLarty speak to each other face to face. They appeared to be agitated but he could not hear what they were saying to each other.
- Mr Finn then saw Mr Board turn and walk away from Mr McLarty. Mr Board never had his back completely to Mr McLarty. He was aware that Mr McLarty was following him.
- Mr Finn saw Mr McLarty catch up and seem to place his hand on Mr Board's shoulder. Mr Finn thought Mr McLarty was going to hit Mr Board.
- Mr Finn saw Mr McLarty and Mr Board have a brief conversation and then there was a flurry of arms. Mr Finn described this interaction between Mr McLarty and Mr Board:
"I can't swear to the fact who hit who. Yes, there was pushing and shoving, but I couldn't directly say that there was an actual blow struck."
- Mr Finn saw Mr McLarty fall down on to the boot of a car and on to the ground. He described the event as:
".... there's a loud thud when he hits the ground and it bounces when he - it bounced when he hit the ground and then he didn't move. "
- Mr Finn could not explain how he heard the thud but could not hear any of the conversation between Mr McLarty and Mr Board.
- Mr Finn believed that Mr McLarty was in a serious situation. After reversing out of the car park he returned to express that opinion to Pixie Gleeson who remained in the car park but was assured that the situation was under control. Mr Finn then left the scene.
- Mr Finn's evidence is entirely consistent with the CCTV evidence of the car park of the Caledonian Hotel on 5 November 2006. Therefore, I accept his evidence on matters not contained in the CCTV footage.

237. **Brian Anthony (Pixie) Gleeson** was returning to the Caledonian Hotel car park in Mr Finn's taxi when it passed the rear door of the hotel at 5:28:45pm on 5 November 2006. He made a statement on 15 November 2006. He also gave evidence at the Inquest.

- Pixie Gleeson saw Mr Board and Mr McLarty enter the car park through the back door of the Caledonian Hotel.
- From the taxi, Pixie Gleeson also saw Mr Board make a movement that suggested that Mr McLarty go away. After that, Mr Board walked away from Mr McLarty. He then saw Mr McLarty make an aggressive movement towards Mr Board.
- Pixie Gleeson could see that Mr Board and Mr McLarty were not happy with each other and got out of the taxi to approach them. However, he could not hear what they were saying to each other.
- Before Pixie Gleeson could approach Mr Board and Mr McLarty, Mr McLarty had collapsed on to the ground. Pixie Gleeson says that he did not see Mr Board hit Mr McLarty.
- Pixie Gleeson says he threw his stubby in the bin as he approached Mr Board and realised the severity of Mr McLarty's injuries.
- CCTV evidence indicates that Pixie Gleeson was within 3.6 metres of Mr Board and Mr McLarty when they were speaking to each other at 5:29:08pm. Therefore, I do not accept that he could not hear what they were saying or at least the tone of their conversation.
- Further, CCTV evidence indicates that Mr Board and Mr McLarty were side on to Pixie Gleeson when Mr Board hit Mr McLarty. Therefore, I do not accept that he could not see Mr Board hit Mr McLarty.
- CCTV evidence also shows that Pixie Gleeson spoke to Mr Board after Mr McLarty collapsed and before he went to put his stubby in the bin. He then walked away without checking on or arranging assistance for Mr McLarty.
- CCTV footage indicates that, after depositing his stubby, Pixie Gleeson walked back past Mr McLarty who remained in the same position on the ground. He did not

approach Mr McLarty to assess his condition but rather walked across the car park towards the back door of the Caledonian Hotel.

- CCTV video shows that Pixie Gleeson met Mr Moloney at the door and accompanied him back to Mr McLarty. After talking to Mr Moloney while Mr Moloney assessed Mr McLarty, Pixie Gleeson made a telephone call before he walked back towards the back door of the Caledonian Hotel. I am unable to say who he spoke to on the telephone or what he did after that.
- Pixie Gleeson's evidence about what he did, saw and heard in the car park of the Caledonian Hotel on 5 November 2006 is inconsistent with CCTV evidence about what he did in the car park of the Caledonian Hotel on 5 November 2006.
- Therefore, I do not accept Pixie Gleeson's evidence in relation to the altercation between Mr McLarty and Mr Board in the car park of the Caledonian Hotel on 5 November 2006.

238. **Brian Julian (Sly) Gleeson** was a left hand side back seat passenger in the Mr Finn's taxi. He had known Mr Board for 40 years.

- Sly Gleeson confirmed that the reason he and Pixie Gleeson went to Terang in a taxi was:

"Cos we were going to be on - we knew we were going to be on the drink."

- As they entered the car park, Sly Gleeson saw a person come out the back door of the hotel followed by another person. They seemed to be having words but he could not hear what they were saying.
- Sly Gleeson told the Court that, while he was getting out of the taxi, he saw the front person turn around and make a gesture that indicated that the following person should leave him alone. He described the movement as:

"just a fend off sort of thing."

- Sly Gleeson told the Court that he then saw:

"...it looked like the guy was walking up sort of like abusing Nick or whatever and Nick sort of turned around and said "piss off, leave me alone", and whatever. Then he turned

away to walk up the way and the bloke sort of come up behind him and just sort of raised his arm. I don't know if he's going to hit him or just spin him around and talk to him..."

- Sly Gleeson elaborated:

"You could just say the bloke wanted Nick's attention, you know, sort of guessing he was abusing him about something... What obviously I don't know."

- Sly Gleeson then saw the second person rush up behind Mr Board as if he was going to grab him.
- Although the CCTV footage does not show any time when Mr Board has his back to the person following him, Sly Gleeson says he saw Mr Board momentarily with his back to the other person before he swung around so he was facing him.
- Sly Gleeson told the court he then saw Mr Board push the other person with two hands. The other person fell straight back on the ground. Sly Gleeson did not hear any noise when Mr McLarty hit the ground.
- Sly Gleeson told the Court that he saw Mr Board walk towards the back stairs in the direction of his room.
- Sly Gleeson went straight into the hotel and spoke to Mr Moloney. Mr Moloney went straight out the door to the car park.
- Sly Gleeson went back out to the car park about 3-4 minutes after Mr Moloney left the Sly Bar. Mr Moloney was already there bending over Mr McLarty. The ambulance was already on its way.
- Sly Gleeson returned to the Sly Bar after about 30 seconds and before the ambulance arrived.
- In general terms, Sly Gleeson's evidence is consistent with CCTV evidence of the events in the car park of the Caledonian Hotel on 5 November 2006. Therefore, I accept his evidence where the CCTV evidence is unavailable.