



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2010 1494

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Deceased:	ROSARIO (ROSS) PEZZANO
Findings of:	JUDGE SARA HINCHEY, STATE CORONER
Hearing date:	23 February 2017
Delivered on:	23 February 2017
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Counsel assisting the Coroner:	Ms Jodie Burns, Senior Legal Counsel
Representation	Nil
Catchwords	Homicide, no person charged with an indictable offence in respect of a reportable death, mandatory inquest

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HER HONOUR:

BACKGROUND

- 1 Rosario (Ross) Pezzano (**Mr Pezzano**), born on 18 of January 1974, was 27 years of age at the time he disappeared, without notice.
- 2 Mr Pezzano was one of two children to Rocco and Mary Pezzano. At the time of his disappearance, he lived with his parents at the family home in Croydon North.
- 3 Mr Pezzano was employed by his family's business, Burnt Bridge Fruit Supplies, situated at Shop 11, Burnt Bridge, Burnt Bridge Shopping Centre, Maroondah Highway, Croydon.
- 4 At the time of his disappearance, Mr Pezzano was in a long term relationship with girlfriend, Pamela Addicott-White.

THE PURPOSE OF A CORONIAL INVESTIGATION

- 5 At the time of Mr Pezzano's disappearance and suspected death, the *Coroners Act 1985* (Vic) applied. Both the *Coroners Act 1985* (Vic) and the *Coroners Act 2008* (**the Act**) provide a definition of 'death' to include a "*suspected death*".
- 6 From 1 November 2009, the Act has applied to the finalisation of investigations into deaths, including suspected deaths, which occurred prior to the commencement of the Act.¹
- 7 Mr Pezzano's death constituted a '*reportable death*' under the *Coroners Act 1985* (Vic), as he ordinarily resided in Victoria at the time of his suspected death and it appears to have been unexpected.²
- 8 The jurisdiction of the Coroners Court of Victoria is inquisitorial.³ The purpose of a coronial investigation is independently to investigate a reportable death to ascertain, *if possible*, the identity of the deceased person, the cause of death and the circumstances in which death occurred.

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

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

³ Section 89(4) *Coroners Act 2008*.

- 9 It is not the role of the Coroner to lay or apportion blame, but to establish the facts.⁴ It is not a coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.
- 10 The term "*cause of death*" refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
- 11 For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all of the circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.
- 12 The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the 'prevention' role.
- 13 Coroners are also empowered:
- (a) to report to the Attorney-General on a death;
 - (b) to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and
 - (c) to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.
- These powers are the vehicles by which the prevention role may be advanced.
- 14 All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁵ The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.
- 15 Section 52(2) of the Act provides that it is mandatory for a coroner to hold an inquest into a death if the death (or suspected death) or cause of death occurred in Victoria and a coroner suspects the death was as a result of homicide (and no person or persons have been charged

⁴ *Keown v Khan* (1999) 1 VR 69.

⁵ (1938) 60 CLR 336.

with an indictable offence in respect of the death), or the deceased was immediately before death, a person placed in custody or care, or the identity of the deceased is unknown.

- 16 While Mr Pezzano's body has not been recovered, there is sufficient evidence to satisfy me that his disappearance is due to him being deceased and that the death is a suspected homicide. There is no evidence that Mr Pezzano was a person placed in "custody or care" as defined by section 3 of the Act. The Act provides that an inquest must be conducted into the circumstances of all deaths suspected to be a homicide, if no person has been charged with an indictable offence in respect of the death.

VICTORIA POLICE HOMICIDE INVESTIGATION

- 17 Immediately after Mr Pezzano was reported to Victoria Police as being a missing person, police officers commenced a criminal investigation because he was suspected to be deceased and the death was considered to be a homicide.
- 18 Mr Pezzano's disappearance and suspected death was investigated by police officers from the Homicide Squad. Despite this investigation, no person or persons have been charged with indictable offences in connection with Mr Pezzano's death.
- 19 I note the observations of the Victorian Court of Appeal in *Priest v West*,⁶ where it was stated:

"If, in the course of the investigation of a death it appears that a person may have caused the death, then the Coroner must undertake such investigations as may lead to the identification of that person. Otherwise the required investigation into the cause of the death and the circumstances in which it occurred will be incomplete; and the obligation to find, if possible, that cause and those circumstances will not have been discharged."

- 20 Consistent with this judgment, and mindful that the Act mandates that I must conduct an inquest, one of the purposes of the inquest is to investigate any evidence that may lead to the identification of the person (or persons) who may have caused the death, bearing in mind that I am required to make findings of fact and not express any judgment or evaluation of the legal effect of those findings.⁷
- 21 Section 7 of the Act specifically states that a coroner should avoid unnecessary duplication of inquiries and investigations, by liaising with other investigative authorities, official bodies or statutory officers. The rationale behind this provision is to allow for consideration of public interest principles that weigh against the potential benefits of any further investigation, such as further cost to the community. It also acknowledges that although a number of authorities or

⁶ (2012) VSCA 327.

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

organisations may have the mandate to investigate, some are more appropriately placed than others to do so in any given circumstance.

- 22 In this case, I acknowledge that the Victoria Police through the Homicide Squad, has conducted an extremely thorough investigation in this matter.
- 23 In making this Finding, I have been careful not to compromise any potential criminal prosecution in the course of my investigation, mindful that Mr Pezzano's disappearance is considered to be an unsolved homicide case which Victoria Police continues to investigate.
- 24 The Coroner's Investigator, Detective Senior Constable Joshua Renfrey, has provided to the Court a statement in relation to this matter.
- 25 The confidential nature of the Victoria Police's ongoing investigation prevents me from reciting each and every matter which has been established by the Homicide Squad. However, Detective Senior Constable Renfrey statement indicates that the following important matters have been established and are able to be disclosed:
 - (a) that Victoria Police believes that Mr Pezzano was killed sometime after 7.24pm, on 24 September 2001;
 - (b) that forensic testing of Mr Pezzano's vehicle provided no evidence that could assist the circumstances of his disappearance or suspected death;
 - (c) that due to Mr Pezzano's associates not cooperating with the Victoria Police's investigation, Mr Pezzano's activities leading up to his disappearance were unable to be fully explored;
 - (d) that Mr Pezzano's family and associates have been unable to offer any explanation for his disappearance;
 - (e) that extensive proof of life checks have been conducted including telephone, bank, Medicare and Centrelink enquiries. However, none of these enquiries reveal the location or whereabouts of Mr Pezzano;
 - (f) that there has been no match of Mr Pezzano's medical and dental records to the register of unknown recovered human remains;

- (g) that the Victoria Police investigation reveals that Mr Pezzano was actively making plans for his future and did not suffer from any psychiatric or medical conditions which would explain his disappearance;
- (h) that despite the extensive missing person and homicide investigations, the person or persons responsible for Mr Pezzano's disappearance and suspected death have, to date, not been identified; and
- (i) that the homicide investigation into Mr Pezzano's suspected death is ongoing and the file remains open.

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

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

- 26 While Mr Pezzano's body has not been located, I am satisfied, on the balance of probabilities, that he is deceased. Therefore, I find that the identity of the deceased is Rosario Pezzano, born on 18 of January 1974.

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

- 27 Due to Mr Pezzano's body not being located deceased, his body has not been examined to identify a cause of death. Therefore, it is not possible to make a finding with respect to cause of death.

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

- 28 In the months preceding Mr Pezzano's disappearance he had entered into a business venture with associates Michael Laverde (**Mr Laverde**) and Mark Diaco to purchase a bar named 'The Gap' located in Bourke Street, Melbourne.
- 29 Mr Laverde negotiated to purchase the bar for \$110,000.00. Mr Laverde, Mr Diaco and Mr Pezzano agreed to contribute \$40,000.00 to purchase the business with \$10,000 set aside for renovations and fit out for the bar.
- 30 A meeting had been arranged at 'The Gap' at 8.00pm on Monday 24 September 2001 for Mr Laverde, Mr Diaco and Mr Pezzano to meet the current owners of the business. Mr Laverde also arranged for a number of tradesmen to attend the meeting to discuss the renovations.

- 31 Mr Pezzano had also invited a number of associates including his cousin Frank Lucisano to attend 'The Gap' to have a look at the business along with two cabinet makers with whom he had previously employed at his father's fruit shop.
- 32 At 6.00am on 24 September 2001, Mr Pezzano followed his usual routine and worked with his mother at the Burnt Bridge Fruit Supplies.
- 33 At 7:30am, a friend of Mr Pezzano attended the fruit shop and had a coffee with him.
- 34 Mr Pezzano remained at the fruit shop all day and left the business with his father just before 7.00pm to return home for the evening meal with his family.
- 35 Mr Pezzano arrived home with his father at 7:00pm and rushed through his meal telling his father he was going out for a couple of hours. He did not tell his family where he was going, however, Mr Pezzano received a number of telephone calls throughout the meal and stated it was Mr Lucisano calling him.
- 36 Mr Pezzano left home at 7:15pm in his vehicle, a Ford utility. This was the last known sighting of Mr Pezzano.
- 37 Telephone records reveal that at 7:18pm, Mr Pezzano received a telephone call from Mr Lucisano. Mr Lucisano's evidence is that he asked Mr Pezzano to meet him at the Croydon Hotel. Mr Lucisano states that it was his understanding that he and Mr Pezzano would travel to 'The Gap' bar together. However, Mr Pezzano had already left his home prior to his call. Mr Pezzano declined to meet Mr Lucisano stating he was filling up his vehicle with petrol in Ringwood.
- 38 At 7:24pm, Stan Margilano (**Mr Margilano**) rang Mr Pezzano and enquired as to where he was as they had also arranged to travel to 'The Gap' bar with Mr Giuliano leaving from Mr Giuliano's house in Rowville. Mr Pezzano advised Mr Margilano that he was already in Croydon and would meet them at 'The Gap' bar at 8.00pm. This is the last known contact with Mr Pezzano.
- 39 Mr Pezzano did not attend the meeting at 'The Gap' as scheduled and also failed to return to his home that night.
- 40 There have been no sightings or contact from Mr Pezzano since 7.24pm on 24 September 2001.
- 41 Mr Pezzano was reported missing by his family on 26 September 2001 after he failed to attend work or home on 25 September 2001.

- 42 At 2:30pm on 26 September 2001, Mr Pezzano's vehicle was located parked behind San Marino's restaurant in Ringwood by his sister and girlfriend, Pamela.
- 43 Mr Pezzano was known to frequent the restaurant and had previously been employed at the restaurant on a part time basis.
- 44 The vehicle was parked on an angle and not in a position that Mr Pezzano would usually park his vehicle. The rear driver side vent window was also smashed.

FINDINGS AND CONCLUSION

- 45 Having investigated the death of Mr Pezzano and having held an Inquest in relation to his death on 23 February 2017, at Melbourne, I am satisfied of the following matters to the required standard:
- (a) that, despite no body being located, it is likely that Mr Pezzano, born 18 of January 1974 is deceased;
 - (b) that, despite there being no evidence as to the exact circumstances and cause of Mr Pezzano's death, it is likely that his death was the result of a homicide; and
 - (c) that, despite an extensive criminal investigation conducted by Victoria Police, no person or persons have been identified, to date, as being responsible for causing Mr Pezzano's death. On that basis, I am also satisfied that no investigation which I am empowered to undertake, would be likely to result in the identification of the person or persons who caused Mr Pezzano's death.
- 46 I make the findings set out above pursuant to section 67(1) of the Act.
- 47 I note that in the future, if new facts and circumstances become available, section 77 of the Act allows any person to apply to the Court for an order that some or all of these findings be set aside. Any such application would be assessed on its merits at that time.
- 48 I convey my sincerest sympathy to Mr Pezzano's family and friends.
- 49 Pursuant to section 73(1) of the Act, I order that this Finding be published on the internet.

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

- (a) Mr Pezzano's family.
- (b) Detective Senior Constable Joshua Renfrey, Coroner's Investigator.
- (c) Detective Senior Sergeant Peter Trichias, Homicide Squad – Cold Case Team.
- (d) Detective Inspector Michael Hughes, Homicide Squad, Victoria Police.

Signature:



JUDGE SARA HINCHEY
STATE CORONER

Date: 23 February 2017