

FORM 37

Rule 60(1)

FINDING INTO DEATH WITH INQUEST

Section 67 of the Coroners Act 2008

Court reference: 4470/08

Inquest into the Death of SEAN WAYNE LEE

Delivered On: 17th February 2011
Delivered At: Melbourne
Hearing Dates: 14th February 2011
Findings of: IAIN TRELOAR WEST
Representation: Ms Christine Melis for Chief Commissioner of Police
Place of death: Prahran : Alfred Hospital

Counsel Assisting the Coroner: Mr Neil Hutton of counsel
Instructing Solicitor, Ms Caroline Tuohey; Meridian Lawyers

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Court reference: 4470/08

In the Coroners Court of Victoria at Melbourne
I, IAIN TRELOAR WEST, Deputy State Coroner
having investigated the death of:

Details of deceased:

Surname: LEE
First name: SEAN
Address: 5 Iluka Court, Jan Juc

AND having held an inquest in relation to this death on 14th February 2011
at Melbourne find that the identity of the deceased was SEAN WAYNE LEE
and death occurred on the 3rd October, 2008

at Alfred Hospital from

1a. Head injury

in the following circumstances:

1. Sean Lee, aged 20 years, was a university student from Melbourne at the time of his death and resided in Jan Juc in order to attend Deakin University in Geelong. He was a probationary licence holder and routinely, on Thursday or Friday evenings, would return to Melbourne in order to spend the weekend with family and friends.

2. At approximately 7.00 pm on the 2nd October 2008, Sean Lee was intercepted by police on the Princes Freeway at Laverton, travelling at 149 km/h in a designated 100 km/h zone. He was intercepted by Leading Senior Constable David Winton of the Corio Traffic Tasking Unit and his vehicle, a Kia Rio sedan, was impounded pursuant to Section 84 (k) of the Road Safety Act 1986. After routine preliminary questioning of the driver, LSC Winton contacted the authorizing Senior Sergeant at Geelong Police Station and obtained permission to impound the vehicle. He then asked Sean Lee how he was going to get home, to which there was no reply, merely a shrugging of the shoulders. He responded "no" to being asked if there was anyone he could ring in order to get a lift and upon it being suggested that he might be able to get a lift with the tow truck-driver, Sean Lee responded "I'll see." When further pressed by being asked, "What about a taxi or can I give you a lift back to the servo, (a petrol station 300 to 400 metres away), or into Geelong?", there was no response. Whilst details of the vehicle were being recorded by LSC Winton on the impound notice, he was asked by Sean Lee whether he had to stay and was told it would be preferable if he did, so that he could sign for the tow and arrangements could be made to get him somewhere. LSC Winton returned to the police vehicle, with Sean Lee then attending to hand over his car keys, before going back towards his vehicle. The tow-truck arrived approximately 15 minutes later, during which time LSC Winton had remained in the police

vehicle completing further paper work. He assumed Sean Lee had similarly been waiting in his vehicle for the tow-truck to arrive, however, upon re attending at the vehicle, Sean Lee was not there nor anywhere in the vicinity. After finalizing matters with the tow-truck driver, LSC Winton drove approximately 6 km along the freeway towards Melbourne and then back along the Geelong bound carriageway, but was unable to locate him.

3. Shortly before 11:00 pm, Neil Lauder was travelling towards Melbourne on the Princes Freeway, driving a 2001 Volvo Prime Mover, with single trailer attached. Mr Lauder was a heavy vehicle licence holder of thirty years experience, and was proceeding in the left lane with the cruise control set at 95 km/hour. When approaching the Werribee turn off, Mr Lauder caught a glimpse of a person running towards the truck and into it's path. Given the sudden movement Mr Lauder had no time to take evasive action, with Sean Lee being struck by the front near side of the vehicle, before coming to rest in the left hand emergency lane. Mr Lauder stopped his vehicle 140 metres from the point of impact and immediately called for ambulance and police assistance, with their attendance occurring shortly thereafter. Sean Lee was stabilized at the scene and transferred to the Alfred Hospital where he was admitted and subsequently underwent decompressive craniectomy. Postoperatively he had uncontrollable increasing intracranial pressure and following family consultation, treatment was withdrawn. Sean Lee died at 11:34 am on the 3rd October, 2008.

4. The investigation into the circumstances surrounding the death was undertaken by Senior Constable Greg Grinstein. On the afternoon of the 3rd October he received a telephone call from a female caller, who reported that she had been driving on the Freeway the previous night. She stated that at about 10:00 pm when she was approaching the Werribee turn-off signs, she observed a man in dark clothes sitting on the Armco railing watching the traffic as it approached. There was no report of him attempting to wave her down. The caller refused to make a statement and would not identify herself. A later appeal through print media in the Geelong and Werribee areas failed to bring forward any witnesses who had either seen Sean Lee on the Freeway, or the incident itself.

5. In correspondence to the Court and in evidence at the Inquest, family were critical of the conduct of LSC Winton and of Mr Lauder and remained adamant that Sean Lee would not have committed suicide. Their criticism of LSC Winton related to him not returning to check on Sean Lee while waiting for the arrival of the tow-truck and ultimately, for allowing him to walk off along the darkened Freeway and not to make sure that he was safe. The criticism of Mr Lauder was that after stopping his truck and contacting the emergency services, he remained in the vehicle and did not assist their loved one. In addition, they pointed to discrepancies in the two statements he made when detailing the circumstances of the incident.

Conduct of Leading Senior Constable Winton

6. LSC Winton had a responsibility to intercept Sean Lee and to impound his car, but in the circumstances, had no power to apprehend or restrain him. He had no power or duty to control Sean Lee's actions, even had he been aware that he was going to walk off along the Freeway. Whilst the necessary paper work was being completed, he reasonably assumed that Sean Lee had returned to his vehicle to wait for the tow-truck. Upon learning that he had left the area, he made attempts to locate him. They had earlier discussed the various transport options, with these options being recorded in contemporaneous notes he made in his "Patrol Duty Return" form. LSC Winton was aware that Sean Lee had a mobile phone with which he could have called family, a friend or a taxi and I accept his evidence that he observed no change in Sean Lee's mental state and that he gave no indication that he was going to leave, or walk off.

Conduct of Mr Neil Lauder

7. Mr Lauder should not be criticized for remaining in his truck to await the arrival of police. This was the direction given by the emergency call operator and he was right to follow it. He would not have known where Sean Lee had come to rest after the impact and to attempt to search for him, on a high speed, unlit multi lane Freeway, would have placed him and other road users at substantial risk. As for the discrepancies in his statements, I do not find them surprising, with the first statement being made the following day and the second, more detailed statement, almost twelve months later. What is consistent to both statements is that Sean Lee was observed to be running onto the road. There was no suggestion of Sean Lee attempting to flag the truck down, with Mr Lauder stating in evidence at the Inquest, that the person intentionally ran into the truck, "wanting to be hit".

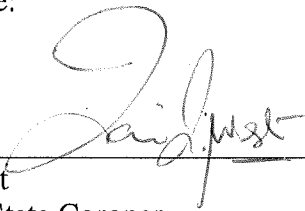
Question of Intent

8. Sean Lee's mother and sister both stated in evidence that they believed he was not depressed and that he had been making plans for his short term future. His mother told the inquest that he was concerned and stressed by his pending exams, in which he was hoping to do well in order to get a transfer to a campus in Melbourne where he would be closer to family and friends. She advised him to see a doctor. The investigation disclosed that he had previously seen a doctor in May 2008 when he was diagnosed as suffering anxiety depression and was given a referral to a psychiatrist and a referral for counselling. He did not act on these referrals.

9. The weight of evidence satisfies me that Sean Lee intended the fatal consequences of his actions and that his running onto the road in front of the oncoming truck, was a calculated and deliberate act. In all probability Sean Lee was the male reported by the female caller, observed some 45 minutes prior to the incident, sitting on the Armco railing watching the approaching vehicles. There was no report of him trying to flag her down, and he was not flagging Mr Lauder down. He had passed at least five roadside emergency phones in the distance between the point of interception and the fatal incident, with there being no evidence of these phones having been used. The Freeway in the vicinity of the incident is flat and straight, hence he would have been well aware of any approaching vehicle and with uninhabited land opposite, there was no conceivable reason for him to cross. In my experience, the act of running is a common practice that is indicative of intention, since it reduces the opportunity for a driver to swerve and avoid.

10. When investigating suicide cases it is often heard that plans had been made for the future and that it would be out of character for an individual to take his or her life. Nevertheless the deaths occur, as they are frequently the result of an impulsive act. Sean Lee had a number of known stressors in his life which were no doubt added to by the prospect of the loss of his licence for twelve months and the impact that would have had on being able to continue his university studies. What caused him to cross the suicide threshold, however, can only be speculative and hence of no probative value.

Signature:



Iain West
Deputy State Coroner
17th February 2011

