



**IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE**

**Court Reference: COR 2013 3776**

**IN THE MATTER OF THE INQUEST INTO THE DEATH OF VLADO MICETIC**

**RULING ON APPLICATION REGARDING THE SCOPE OF THE INQUEST**

**Introduction**

1. I am investigating the death of Vlado Micetic (**Vlado**).
2. On 25 August 2013, while driving a vehicle with stolen number plates, Vlado was pulled over in Union Street, Windsor by then Leading Senior Constable Timothy Baker (**LSC Baker**) who was performing solo mobile traffic patrol duties in the St Kilda area.
3. Following a conversation with LSC Baker, Vlado got out of the car. LSC Baker told Vlado that he was under arrest and attempted to handcuff him. There was a physical struggle between LSC Baker and Vlado during which three shots were fired by LSC Baker. Vlado was seriously injured and fell to the ground.
4. Vlado was transported to The Alfred Hospital and died a short time later.
5. LSC Baker was later charged with Vlado's murder and, on 9 September 2017, was acquitted following a trial in the Supreme Court of Victoria. My investigation, which was placed on hold during the criminal proceedings, is now continuing.

**Jurisdiction**

6. Vlado's death was reported to the coroner as it appeared to have occurred as a result of an accident or injury pursuant to section 4 of the Coroners Act (2008) (**the Act**).
7. Pursuant to section 52(2) of the Act, his death is subject to a mandatory inquest, as immediately before his death Vlado was a person placed in custody.

8. Section 67 of the Act states a coroner investigating a death must find, if possible, the identity of the deceased, the cause of death, and the circumstances in which the death occurred.

### **Scope of the Inquest**

9. This coronial investigation is listed for hearing commencing on 21 October 2019 for a duration of two weeks.
10. The proposed scope of the Inquest is as follows:

#### ***Issues arising from the period immediately preceding the death***

1. *The appropriateness of mobile traffic patrol unit duties in the St Kilda area on the evening of 25 August 2013 being allocated to an officer working as a solo patrol.*
2. *Whether LSC Timothy Baker was fit for his assigned duties on 25 August 2013, and in particular, at the time he intercepted Vlado Micetic.*

#### ***Events on 25 August 2013***

3. *The immediate circumstances leading to the death of Vlado Micetic on 25 August 2013 from gunshot injuries received in Union Street, Windsor.*
4. *Whether LSC Timothy Baker's use of force against Vlado Micetic was;*
  - 4.1. *consistent with relevant Victoria Police policies, practices and training; and*
  - 4.2. *otherwise reasonable in the circumstances.*

#### ***Issues arising in the aftermath of the death***

5. *The appropriateness of Assistant Commissioner Luke Cornelius' statements to the media following the shooting of Vlado Micetic on 25 August 2013.*
6. *The manner in which evidence was obtained from LSC Baker, including:*
  - 6.1. *The mode of evidence being a written statement rather than an alternative such as video recording*
  - 6.2. *Access being provided by the Coroner to the CCTV footage for the purpose of making a statement; and*
  - 6.3. *The length of time the evidence took to obtain, that being 30 April 2014.*
7. *The appropriateness of the Coroner having access to information from the Victoria Police Force Psychology Unit following the Unit's consultation with a police member after a fatal incident.*

11. LSC Baker objects to the inclusion of matters in paragraphs 3 and 4 in the scope of my inquiry at the forthcoming Inquest.

### **Directions Hearing 8 July 2019**

12. On 9 July 2019, a directions hearing was held to hear submissions on behalf of LSC Baker, Vlado's family and counsel assisting me regarding the scope of the Inquest. Counsel had previously filed written submissions, and each of them spoke to those outlines during the directions hearing.

### **Relevant legislative provisions**

13. The role of the coroner in investigating a death is to find, if possible;
  - (a) the identity of the deceased
  - (b) the cause of death understood to refer to the medical cause of death; and
  - (c) the circumstances of the death; section 67(1).
14. The coroner may also comment on any matter connected with the death; section 67(3).
15. A coroner may hold an inquest into a reportable death notwithstanding the fact that a person has been charged with an indictable offence in respect the death; section 52(4).
16. In determining the scope of the investigation, the coroner should have regard to the objectives in Part 2 of the Act, including the desirability of promoting public health and safety and the administration of justice; section 8(f).
17. The obligation to make statutory findings, if possible, confers a duty on the coroner to pursue all reasonable lines of inquiry to investigate a death. The exemption of the rules of evidence displays a Parliamentary intention that the coroner not be constrained in carrying out an investigation.
18. Section 7 of the Act requires a coroner to "*avoid unnecessary duplication of inquiries and investigations*" and to investigate expeditiously.

### **LSC Baker's submissions**

19. Mr Lewis of counsel, on behalf of LSC Baker, objects to the inclusion of matters in paragraphs 3 and 4 in the scope of the Inquest because:

*“Certain of the circumstances of Mr Micetic’s death are clear from the evidence contained in the brief including the video recording from the patrol car, the audio recording from Mr Baker’s digital voice recorder and Mr Baker’s statement; Mr Micetic was pulled over by Mr Baker in the course of his duties as a police officer, after an interaction at the rear and then at the side of Mr Micetic’s car, both men then move towards the front of Mr Micetic’s car. Whilst in front of the car, Mr Baker shoots Mr Micetic three times in quick succession and Mr Micetic dies as a result thereof. These facts, it is submitted, are sufficient for the Coroner to make findings to comply with section 67 of the Coroners Act 2008. The Coroner could (and should) state in her findings that she has not enquired into the factual question of whether Mr Micetic produced the knife and threatened Mr Baker with it and has therefore not enquired into the reasonableness or otherwise of the response of Mr Baker to the threat posed by Mr Micetic, this matter having been the subject of a Supreme Court criminal trial”.*

20. Mr Lewis contends that it is not necessary for me to determine whether or not Vlado produced a knife. It is submitted that the “circumstances in which death occurred” are clear from what is cited in the paragraph above and that it is not necessary for me to resolve every factual issue concerning the circumstances of the death.

21. He submits that, as the central focus of the Supreme Court trial was whether LSC Baker or Vlado brought the knife to the scene, I should not now conduct an enquiry into the ‘*very same factual issue*’; an inquiry which, it is argued, is not required by section 67 and, in addition would be oppressive to LSC Baker.

22. With regard to LSC Baker’s use of force, Mr Lewis submitted that:

*“Whether Mr Baker’s use of force was consistent with policies and procedures can only be determined by reference to the threat to which he was responding...similarly, whether Mr Baker’s use of force was “otherwise reasonable in the circumstances, also, it seems, inevitably leads to an enquiry into what threat was he responding to – because that must be determined before one can determine if the use of force was reasonable”.*

23. This, it was submitted, will inevitably lead to an inquiry as to whether Vlado produced the knife and is;

*“tantamount to an inquiry into whether Mr Baker committed a criminal offence. That is because any finding that Mr Micetic did not produce the knife and that the shots were not fired in response to such a threat is tantamount to a finding that Mr Baker has committed murder – for it could hardly be suggested by Mr Baker that the shooting of Mr Micetic was a reasonable response to a threat posed by an unarmed civilian. That is not the function of a coronial inquest”.*

24. Mr Lewis submitted that “*the circumstances of this case do not warrant a re-agitation of the factual issue of whether Mr Baker or Mr Micetic brought the knife to the scene*”.

25. Mr Lewis submitted that the conduct of an inquest following a criminal trial is an exceptional circumstance which requires the exercise of great caution as outlined by Ashley J in *Domaszewicz v The State Coroner* as follows;

*"...it ought be expected that rarely will an inquest be held after acquittal. There should be, I consider, the gravest consideration before a coroner embarks upon an inquest subsequent to acquittal if there is no cogent material pointing to an alternative suspect, or no clearly new and cogent acts or evidence. Counsel for the plaintiff submitted before the Coroner that the public interest and the interest of the public are not the same thing".*

26. In the alternative, he submitted that in the event that the inquest proceeds in accordance with the proposed scope;

*"then the proposed witness list [and likely duration of the Inquest] is insufficient to deal with the issue concerned and the Coroner could not make a finding as to whether Mr Baker's actions were reasonable in the circumstances, without exploring a great deal of further evidence".*

27. Such evidence, it is contended would necessarily include, for example, expert opinion regarding the audio recording and evidence regarding Vlado's psychiatric history and criminal background. 14 additional witnesses are identified as being necessary because ;

*"the Coroner could not make a finding about whether Mr Micetic produced the knife and threatened Mr Baker with it without exploring all the evidence which impacts on that issue".*

28. In oral submissions, Mr Lewis submitted that the criminal trial largely revolved around the factual question of whether the knife was produced by Vlado prior to LSC Baker firing the fatal shots. Mr Lewis referred me to the transcript of the presiding judge's charge to the jury which deals with the question that the jury was asked to consider namely *"Are you satisfied beyond reasonable doubt that the accused brought the knife to the scene and planted that knife after shooting the deceased"*? I accept that this was the way the issues were framed in the criminal trial.

#### **The family's submissions**

29. The family agrees with the proposed scope of the Inquest and objects to the submissions made on behalf of LSC Baker;

*"to the extent that they describe as 'background' matters that involved findings of fact that may be made after evidence but cannot be made at present, in the absence of evidence. The family submits that the background section of the [Baker] submissions tends to mislead in that the section includes descriptions of various events as facts, when the descriptions are mere assertions. The background section also puts forward as facts matters from the criminal trial which are opinions, but no more, about aspects of the trial."*

30. The family details various matters in submissions made on behalf of LSC Baker described as;

*“mere untested assertions which should not be accepted as well founded until tested...The Baker submissions also assert as facts matters about the criminal trial which are open to argument and that are not established. For example, it is asserted that the “central allegation” in that trial was whether Baker had taken a knife to the scene and planted it after the shooting. It might be thought that this was but one of various allegations directed to a central allegation being that Baker killed Vlado unlawfully”*

31. The family contends that assertions about the evidence in the criminal trial *“are no more than selective accounts of matters in the evidence”* and urges that *“great caution should be applied to the matters set out in the submissions as background in view of the issues set out above”*.

32. With regards to the findings to be made under section 67 of the Coroners Act, the family submits that there;

*“is considerable scope for argument about the significance of evidence recorded by video and audio. Further Baker’s statement has never been tested...evidence relating to the circumstances described [above] should be tested before any determination can be made about the circumstances of death”*.

33. The family submits that the coroner’s obligations under section 67 of the Act require *“a consideration of the relevant circumstances, not a selection of a few matters on which there may be clarity”*.

34. The Supreme Court trial was before a jury and therefore findings and reasons for the verdict are not known. The family submits that;

*“the events which happened at the front of the car have not been established at all, let alone to the standard of proof applicable to an inquest”*.

35. Nor, it is submitted;

*“is it clear whether there was relevant conduct on the part of Baker which was inconsistent with Police policies, practices and training, the extent to which Baker had health issues affecting his conduct and whether his status as an officer working alone impacted on his conduct”*.

36. Even, if *“accepting for the sake of argument, that the reasonableness or otherwise of Baker’s conduct on the night was determined in the Supreme Court trial”* the family submits

that that I am not bound by such a finding because the Act requires me to make findings by reference to a civil, rather than a criminal standard of proof.

37. It is submitted that Mr Lewis' submission;

*“mis-states the scope of the inquest. While it may be necessary for the Coroner to consider evidence about where the knife came from, the purpose of the consideration is not to find ‘who did it’ but rather to inquire into whether the use of any force by Baker was in accordance with Victoria Police policies, practices and training, or was otherwise reasonable”.*

38. The family submits that this aspect of the proposed scope is reasonable not only for making findings under section 67(1) (c) but also to enable me to make comments on matters relevant to public health and safety and the administration of justice.

39. The family further notes that;

*‘the Baker submissions argue that any finding about who produced the knife is tantamount to a finding that Baker committed a murder. Such a finding by the Coroner would be wrong is clear from section 69(3) of the Act. That section operates to ensure that there is a bright line between the focus of a Coronial enquiry – relating to matters such as the circumstances of death, public health and safety and the administration of justice – and the focus of a criminal trial, being to make findings of guilt or otherwise in relation to offences’.*

40. The family submits that;

*“the Baker objection to consideration of the reasonableness of Baker's conduct misconceives the proposed scope. Paragraph 4.2 is not directed to a finding of whether Baker's conduct was reasonable per se but rather whether it was reasonable even if it did not comply with Victoria Police policies, practices and training. The family observes that if there is any doubt about the meaning of ‘reasonable’ in paragraph 4.2, the Coroner might consider substituting “appropriate” for “reasonable”.*

41. It is further submitted that the reasons of Justice Ashley in *Domaszewicz*;

*“are not inconsistent” with the proposed scope which “indicates that the purposes of the inquest include a consideration of serious matters relating to public health and the administration of justice, such as policies of the Victoria Police which permitted Baker, a person with seemingly substantial health issues to be working solo and to be armed. These very same matters are also significant in the context of findings concerning the circumstances of the death. It would be right to characterise these matters as meriting investigation, even after the gravest consideration, due to their significance to the public.*

42. The family also set out the following additional reasons (and desirability) for the inclusion of paragraphs 3 and 4 of the proposed scope:
- *“The criminal trial dealt only with the criminal responsibility of Baker and did not consider at all the role of the Victoria Police policies, practices and training that may have been relevant to the events leading up to the death. There is no duplication of evidence of inquiry on these matters;*
  - *The inquest may reveal previously unknown matters that will help to improve Police policies, practices and training or the public good and for the good of Victoria Police*
  - *This inquest may assist with understanding whether changes to police policies, practices and training will help to prevent future deaths or injuries to members of the public.”*
43. In response to the alternative submissions regarding the adequacy of the witness list, the family does not dispute that Vlado had a long history of psychiatric illness, but contend that this is of limited, if any, relevance. Consideration will be given by the family to consenting to tender of extracts from the medical records which go to any issue considered relevant by the coroner.
44. Similarly, the family does not dispute that Vlado had a long criminal history. However, the criminal history and any propensity to carry weapons other than knives, is, it is submitted not relevant to the coroner’s findings.
45. In oral submissions, counsel for the family, Ms Hartley QC, relied on her written submissions and referred me in particular to two matters.
46. First, she urged me not to view paragraph 81 of Justice Ashley’s judgement *“as a statute that needs to be interpreted paragraph by paragraph* *“but rather to deal with the matters listed by His Honour “as being illustrative of circumstances under which a coroner might consider embarking on an inquest after an acquittal”* with the overwhelming issue being public health and safety and the administration of justice, *“and they are, in our submission, grave matters because they deal with the difficult questions of how police might on the one hand enforce the law but do so in a way that protects the health and safety of the public”*.
47. Secondly, Ms Hartley took issue with Mr Lewis’ submission that should there be a finding that Vlado brought the knife to the scene, then no further inquiry is required. Ms Hartley submitted that if I came to the point of finding that Vlado brought a knife to the scene, it would nonetheless, merit further inquiry and would not obviate the need for an inquiry about the reasonableness of the shooting in those circumstances. *“the whole of the circumstances are relevant – not to who brought the knife and who behaved appropriately, but from the*



*viewpoint of, in all the circumstances, what do the circumstances of death teach us about matters of public health and safety and the administration of justice”.*

### **Submissions of counsel assisting**

48. Ms Ellyard submitted that the focus of the coronial investigation ought not be limited by reference to the outcome of the criminal trial which was concerned only with whether a particular criminal offence had been committed by LSC Baker.
49. She submitted that:
  - a. In LSC Baker’s criminal trial, the jury returned a verdict of not guilty of murder in circumstances where it was for the Crown to exclude, beyond reasonable doubt, the possibility that LSC Baker was acting in self-defence. No finding was made by the jury on the question of who brought the knife to the scene and no conclusions can be drawn about the extent to which a view was reached as to what happened in the moments before LSC Baker fired his gun. The verdict reflects the jury having been unable to be satisfied beyond reasonable doubt that Vlado did not produce a knife.
  - b. It is not appropriate for me to make findings about the circumstances of Mr Micetic’s death based on how facts were presented to a jury *“neither the Crown nor the defence theory of what occurred can be a substitute for the making of factual findings by the Coroner on the material that will be paced before the court at inquest”*
  - c. Whether or not I will feel in a position to reach a firm conclusion as to who brought the knife to the scene is a different question from whether I should enquire into the circumstances in which fatal force was used by a serving police member against a civilian. It would, she said, be a failure by the Court to exercise its coronial functions if those circumstances were not fully enquired into as part of the coronial investigation with a view to making findings if possible.
  - d. The use of force by LSC Baker is not limited to his use of a firearm but includes his earlier action in seeking to handcuff Vlado. *“It is not solely to be assessed by reference to whether or not Vlado produced a knife but to the totality of the circumstances as the Coroner finds them to be”.*
  - e. The inclusion of matters in paragraphs 3 and 4 in the proposed scope of the investigation does not mean all additional witnesses identified in Mr Lewis’ submissions need to be called to give oral evidence at the inquest. It is open to me to take account of evidence given in the criminal trial which falls within the scope of the coronial investigation, as part of or in substitution for oral evidence at inquest. Such evidence might include evidence regarding Vlado’s criminal and medical

history and about conclusions, if any to be drawn from the audio recording to LSC Baker in the immediate aftermath of the shooting.

50. In oral submissions Ms Ellyard noted, first that it is important to draw a relevant distinction between matters that inquired into on the one hand as being potentially capable of findings, and, on the other hand, whether findings can actually be made. Matters that are relevant can be inquired into, but whether or not any particular issues will ultimately be capable on the evidence of supporting a finding is a separate issue to be determined after the inquiry has occurred. She submitted that it would be perverse to suggest that I could not investigate the critical period at all because of its complexity or because it might not be capable of a final finding.
51. Ms Ellyard further submitted that it may well be that there are substantial areas which I will be able to deal with on the basis of written material. I agree that I can in the running make appropriate decisions about the necessity to hear oral evidence or to rely on documentary evidence, including transcripts, where that evidence is available.

### **Finding**

52. Having considered all the submissions, I am satisfied that retention of the matters in paragraphs 3 and 4 of the proposed scope is necessary for me to discharge my functions consistent with the Act.
53. I accept entirely that, consistent with section 69(1) of the Act, I must not include in my finding or comment any statement that a person is, or may be, guilty of an offence. I do not accept that an enquiry into the factual circumstances in which LSC Baker fired his weapon at Vlado is necessarily an enquiry into the commission of a criminal offence. The coroner's perspective is quite distinct from a criminal trial.
54. There is substantial potentially relevant evidence available to me which was not before the jury. This evidence includes LSC Baker's personal and medical history and his own version of events as contained in comments made by him on social media and in other forums since Vlado's death. I am also able to consider a wider range of materials in the brief because I am not bound, as the Supreme Court was, by the rules of evidence.
55. It will be open to interested parties to make submissions about the extent to which definite findings can be made on the question of the knife, the availability of non-lethal force options or on related topics, including whether Vlado resisted arrest.
56. The nature, object and outcome of an Inquest is substantially very different to the nature, object and outcome of a criminal trial. Coroners do not adjudicate issues *inter partes* and their findings do not determine legal rights. Rather, the purpose of the coroner's investigation is to determine what happened (*Domaszewicz v State Coroner*). In seeking to determine what happened, I must keep in mind the preventative and public health purposes of coronial

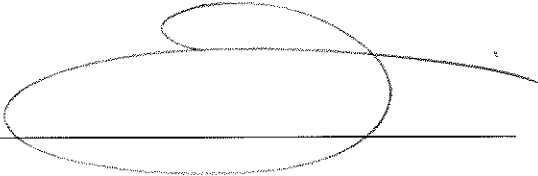
investigations. The circumstances of Vlado's death have implications for the training and support of police officers in their interactions in dealing with persons like Vlado. They also have implications for the safety of persons who interact with police and the broader public.

57. The proposed scope of the investigation includes whether LSC Baker's actions as a police officer were consistent with the policies, practices and guidelines with which he was required by Victoria Police to comply.
58. If LSC Baker's actions were so consistent, questions may arise about the appropriateness or sufficiency of those processes and guidelines and whether any changes to them should be recommended in the interests of public safety. If LSC Baker's actions were inconsistent with the processes and guidelines, it may be open to me to make findings about the sufficiency of those processes and guidelines. In either case, it is appropriate for me to inquire into those matters. They are causally related to Vlado's death and they are not matters that have been the subject of consideration or findings in any other forum.
59. Although a full Inquest after a criminal trial is not common, in addition to the Inquest into the death of Jaidyn Leskie, which followed the acquittal of Greg Domaszewicz, there have been other recent examples including inquests into the death of Chloe Murphy (COR 2010 4637) and Anthony Dunning (COR 2011 2480). I am conscious of the complexities of the evidence as that evidence was presented before the jury, and I have had regard in particular to what has been submitted by LSC Baker about the potential for my investigation to be oppressive to him. An Inquest by its nature is likely to be oppressive to many, including, in particular, Vlado's family.
60. I accept that my investigation represents a potential burden to Timothy Baker. However, I do not accept that the personal impact on him is sufficient reason to remove what are otherwise relevant and appropriate matters from the scope of that investigation.
61. In my view the comments of Ashley J in *Domaszewicz* are entirely consistent with the inclusion of paragraphs 3 and 4 in the scope of my investigation.
  - (a) The acquittal does not operate as a bar to the Inquest;
  - (b) LSC Baker is not at any risk of being found to have committed any offence
  - (c) The criminal trial did not deal with, or dealt with in only a confined way, with issues directly relevant to the circumstances of Vlado's death, including the compatibility of LSC Baker's actions with applicable Victoria Police policies and LSC Baker's own fitness for duty;
  - (d) There are strong public interest reasons for those issues to be considered by a coronial investigation.
  - (e) The proposed scope of the Inquest does not represent a re-hearing of the criminal trial and does not improperly traverse Timothy Baker's acquittal or subject him to an abuse of process.



62. In pursuing the aspects of the investigation in paragraphs 3 and 4 it will be open to me to make use of evidence which was before the Supreme Court during Mr Baker's criminal trial and to limit the extent to which all of that evidence needs to be given orally at Inquest.
63. I also retain the power in the running of the Inquest to limit or disallow lines of questioning or evidence if satisfied that the questions or evidence traverse the jury's verdict or are otherwise inappropriate.

Signature:



A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right, positioned above a solid horizontal line.

**AUDREY JAMIESON**

**CORONER**

Date: 19. 8. 19

