

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2016 4755

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of Sonya SZALA

Delivered On:	28 NOVEMBER 2019
Delivered At:	THE CORONERS COURT OF VICTORIA 65 KAVANAGH STREET, SOUTHBANK
Hearing Date:	14 NOVEMBER 2019
Findings of:	CORONER PHILLIP BYRNE
Counsel Assisting the Coroner:	MR DARREN McGEE
Representation:	MR JAMES FITZGERALD ON BEHALF OF MR JOHN SZALA

I, PHILLIP BYRNE, Coroner, having investigated the death of Sonya SZALA
AND having held an inquest in relation to this death on 14 November 2019
at The Coroners Court of Victoria
find that the identity of the deceased was Sonya SZALA
born on 15 May 1967
and the death occurred 6 October 2016
at 124 Rokewood Crescent, Meadow Heights, Victoria, 3048
from:
1(a) ANOREXIA

The Finding does not purport to all aspects of the evidence obtained in the course of the Investigation. The material relied upon included statements and documents tendered in evidence together with the Transcript of proceedings and submissions of legal representatives/Counsel. The absence of reference to any particular aspect of the evidence, either obtained through a witness or tendered in evidence does not infer that it has not been considered.

in the following circumstances:

BACKGROUND

1. Sonya Szala, 49 years of age at the time of her death, resided with her husband John Szala at 124 Rokewood Crescent, Meadow Heights. The death of her mother, Mrs Stefani Smrdelj, in 2016—in what can only be described as horrific circumstances—impacted greatly on Mrs Szala. She became a virtual recluse, noticeably losing weight and general interest in life. In short, Mrs Szala's health, both physical and mental, progressively deteriorated. Although it appears she was never specifically diagnosed, the inescapable conclusion is that Mrs Szala suffered anorexia nervosa, a serious debilitating psychological condition.

CIRCUMSTANCES SURROUNDING THE DEATH

2. In relation to the events of Wednesday 6 October 2016, I have of necessity relied upon a version of events provided by Mr Szala.
3. At 7:50pm on 6 October 2016, Mr Szala rang the 000-emergency number seeking the attendance of an ambulance as he had just located his wife in bed cold and stiff. Paramedics arrived at the Rokewood Crescent address at 8:03pm and were shown to a bedroom. Paramedics described the scene as follows:

"Pt was lying in right lateral semi foetal position, covered in faecal matter with obvious rigor mortis."

4. The first police members to arrive were Senior Constable Maxine Phillips and Constable Samuel Modica. Senior Constable Phillips described her observations of the deceased:

"I observed what appeared to be an elderly female laying on her right hand side, extremely emaciated as if there was nothing to her. Just skin and bone. She lay there surrounded in a body of faecal matter."

A supervising member Sergeant Caroline Johnson attended and having been briefed, directed the Hume Crime Scene Investigation Unit be notified. Sergeant Johnson made the following observations:

"Sonya was covered in faecal matter, she was lying on the right side of her body, facing towards the rear of the house. I could see her bones through her skin and I felt stiffness in her body. Her eyes were open, as was her mouth. I observed what I know as blood pooling on her right oblique abdomen. I could clearly make out the female

pelvic area, as her bones were visibly prominent. I could see her ribs, her coccyx bone and her collar bones and scapular bones."

At about 9:15pm, Detective Senior Constable Stacey Keenan and her colleague Detective Senior Constable Mark Vetter attended. Detective Keenan asked her colleague to notify the on-call Homicide Squad crew. Apparently the Homicide Squad decided to leave the matter with the local CIU.

5. Ambulance paramedic Ms Ciara Bloomer formally verified Mrs Szala deceased at the residence at 8:04pm.

REPORT TO THE CORONER

6. Mrs Szala's death was reported to the coroner. Having considered the circumstances, including police interest in the circumstances surrounding Mrs Szala's death, and having conferred with a forensic pathologist, I directed an autopsy and ancillary tests.
7. An autopsy was performed at the Victorian Institute of Forensic Medicine (VIFM) by Forensic Pathologist Dr Paul Bedford. Subsequently, I received an autopsy report under the hand of Dr Bedford in which he advised the cause of Mrs Szala's death was:

I(a) ANOREXIA

Dr Bedford described Mrs Szala as "markedly emaciated". Dr Bedford commented:

"Toxicology is non-contributory with a low level of oxycodone being noted.

Biochemistry available via post mortem sampling shows disordered renal function with elevated creatinine and a markedly elevated urea in keeping with significant dehydration.

Death in anorexia can occur in a number of ways including by the development of an infection. In this case it is most likely that there has been a marked electrolyte imbalance which predisposes to an abnormal heart rhythm."

The only comment I make about the toxicological analysis of a post mortem blood sample is that Oxycodone was not prescribed for Mrs Szala, although it was prescribed and dispensed to Mr Szala.

ROLE OF THE CORONER

8. Before turning to the course of the investigation, which it must be said took somewhat of a tortuous path, I propose to make several comments about the role/function of the coroner. From my perspective, a role that is often misunderstood in the broader community.

9. Section 67 of the *Coroners Act 2008* provides three core findings I am required, if possible, to make:
- a) The identity of the deceased person;
 - b) The medical cause of that person's death; and
 - c) The circumstances surrounding the death.

10. The judgement of Callaway JA in *Keown v Khan* (1999) (VR 69) was a landmark judgement. Adopting a statement in the *Brodrick Committee (UK) Report* His Honour said:

"In future the function of an inquest should be simply to seek out and record as many of the facts concerning the death as public interest required, without deducing from those facts any determination or blame".

and added:

"In many cases, perhaps the majority, the facts themselves will demonstrate quite clearly whether anyone bears any responsibility for the death; there is a difference between a form of proceedings which affords to others the opportunity to judge an issue and one which appears to judge the issue itself."

In *R v South London Coroner: ex parte Thompson* [1982] 126 SJ 625 Lord Lane commented:

"It should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning blame".

11. Again in *Keown v Khan*, Justice Callaway made a comment which assists in determining whether an act or omission can reasonably be considered a causal or contributing factor, as distinct from a "background circumstance", that is a non-causal factor. In considering this dichotomy His Honour said one should consider whether an act complained of departed from a norm or standard, or an omission was in breach of a recognised duty.
12. Several New Zealand cases assist in explaining the apparent conundrum between concluding an entity has caused or contributed to a death, but not laying, or apportioning blame. See *Louw v McLean* (1998 High Court of New Zealand unreported 12 January 1988) and *Coroners Court v Susan Newton and Fairfax New Zealand* [2006] NZAR 312. The notion is that in finding causation or contributing to a death, the implicit attribution of responsibility is unavoidable.

COURSE OF CORONIAL INVESTIGATION

13. At quite an early stage, the Coroner's Investigator Detective Senior Constable Botterill indicated there was a prospect police would charge Mr Szala with a criminal offence relating to alleged gross neglect of his wife. However, in an email dated 12 February 2018, Detective Senior Constable Botterill advised legal opinion had been received resulting in a "management" decision taken "at this time" not to pursue a prosecution. In light of the reference to "at this time" I left my matter in abeyance to see if the position might change.
14. In May 2018 at my request my solicitor Mr Darren McGee enquired of Detective Senior Constable Botterill whether any further decision had been taken as to the prospect of a prosecution. Detective Senior Constable Botterill advised Mr McGee her management had directed her to forward the brief to the Coroners Court before a further decision would be made in relation to referring the matter to the Office of Public Prosecutions (**OPP**) for advice.
15. I indicated I was not prepared to take the matter to formal inquest until a decision was taken as to referral to the OPP; the matter continued to lay in abeyance.
16. In an email dated 10 September 2018, Detective Senior Constable Botterill stated the OPP had advised that there was insufficient evidence to charge John Szala with manslaughter by criminal negligence. In view of that advice I determined to progress my investigation and expressed a tentative view that I would proceed to formal inquest. I noted that Mr John Smrdelj, brother of Sonya Szala, had lodged a formal Form 26 Request for Inquest.
17. Mr McGee advised Mr John Szala of my tentative view to proceed to formal inquest. Mr Szala took legal advice and subsequently I received a submission on his behalf dated 23 January 2019 under the hand of Mr James Fitzgerald, Senior Public Defender, Victoria Legal Aid. It was contended that to take the matter to inquest would amount to "unnecessary duplication of inquiries and investigations". I was not persuaded by that submission and decided to take the matter to an open court Mention/Directions hearing.
18. On 8 May 2019 I conducted a Mention/Directions hearing. At that hearing, at which Mr Szala was legally represented, it became clear that police were still very keen to prosecute Mr Szala. I indicated I did not propose to proceed to inquest while there remained a prospect that Mr Szala would be charged with a serious criminal offence. I indicated I did not see it as my role to provide a forum where police may seek to gather further material/information which may bolster their desire to prosecute Mr Szala. I indicated I would again leave the matter in abeyance while police took a decision on prosecution.

19. At the completion of the hearing I made an own motion Interim Suppression Order under the *Open Courts Act 2013*.
20. As I was somewhat frustrated by the lack of progress, I listed the matter for a second Mention/Directions hearing for 3 October 2019. At the hearing, a decision not having been made in relation to the prospect of criminal charges being laid, I enquired of Detective Senior Constable Botterill as to what her position was; she responded “our position has not changed”. I then indicated that from my perspective it was by that time unlikely that charges would be laid.
21. Mr David Gibson, who again represented Mr Szala, advised he did not wish to pursue the submission made at the first mention that I not take the matter to inquest. I indicated it was still my intention to proceed to formal inquest, with my primary, if not sole focus upon the issue of whether, in spite of resistance by Mrs Szala, a position I indicated I accepted, Mr Szala should have intervened and sought medical assistance in light of his wife’s dire condition.
22. Having indicated the scope/parameters of the formal inquest I then settled a list of witnesses. I advised that one of those witnesses would be Dr David Eddey, a senior consultant physician within the Coroners Prevention Unit (CPU), Health and Medical Investigation Team (HMIT). A copy of Dr Eddey’s short statement in the form of a Review Memo was provided to the parties. I extended until further order the own motion suppression order made at the first mention hearing.

APPLICATION FOR SUPPRESSION ORDER

23. The inquest was listed for 14-15 November 2019. Prior to hearing evidence, two matters were addressed. Through Victoria Legal Aid, Mr Szala lodged a formal Notice of Application for Suppression Order dated 24 May 2019. It is to be recalled at the first, and indeed the second Mention hearings I had not ruled on that formal application but made an interim own motion suppression order. At the inquest hearing I entertained the application brought on behalf of Mr Szala. In accordance with the provisions of the *Open Courts Act 2013* media outlets were advised an application for suppression would be entertained on the first morning of the inquest.
24. Mr James Fitzgerald for Mr Szala submitted that the coroners brief contained “significant swathes” of material not germane to my investigation so that I should suppress the entire brief. I advised Mr Fitzgerald that I accepted that much material accumulated by Detective Senior Constable Botterill in her extensive investigation was not pertinent to the focus of my investigation and I did not intend to include it as the balance of the brief that is usually

tendered en bloc at the completion of evidence. I had tentatively decided that the statements of the witnesses to be called would be extracted from the almost 700-page brief and tendered as separate exhibits. The essence of Mr Fitzgerald's submission in support of suppression was that if Mr Szala was charged with a serious criminal offence, the evidence led at the inquest would prejudice a fair trial; he claimed there was "a real prospect of a future trial," suggesting that:

"Ms Botterill and her colleagues are very enthusiastic in relation to the prosecution of Mr Szala."

Mr Fitzgerald quite reasonably conceded that if I concluded there was no, or limited prospect of a future trial it would "limit the weight" that I ought to give to his submission. I commented that in his submission Mr Fitzgerald had alternated between "real prospect" of a future trial to it being a "possibility."

25. Mr Sam White, in house counsel for *The Age* newspaper sought leave to appear. Opposing the making of a broad suppression order, Mr White noted that Mr Fitzgerald had abandoned seeking suppression on the public interest limb of the section but relied solely on the prejudice to a fair trial limb. I digress to say that early on in Mr White's submission, I indicated that whether it was on my own motion, or under Mr Szala's application for suppression, there was graphic, confronting photographic material within the brief that I proposed to suppress in any event. Mr White indicated his client would not oppose suppression of that material. Mr White made a fulsome submission referring to several pertinent authorities in support of his position relating to the issue of prejudice to a fair trial.
26. Mr Corey Janke, Macpherson Kelley Lawyers, representing *The Herald Sun* and Channel 9 also sought leave to address me on the suppression application. Mr Janke indicated he supported the submission made by Mr White. Mr Janke also indicated his client also did not oppose suppression of the graphic photographic material.

INQUEST HEARING – VIVA VOCE EVIDENCE

27. I turn now to viva voce evidence. Mr Szala's position as to giving evidence had been flagged, but I considered it necessary to go through section 57 of the *Coroners Act 2008* process. Mr Szala entered the witness box and was sworn. He stated he objected to giving evidence. I stood him down and invited Mr Fitzgerald to elaborate on the basis of the objection. Although it was patently obvious, he stated the objection was founded on the basic tenant of the protection against possible self-incrimination. I ruled that Mr Szala's objection was valid, enquired as to whether he was prepared to give evidence under the so-called protection of a

section 57 certificate. It was indicated he did not wish to give evidence on that basis and I formally excused him from giving evidence.

28. Dr David Eddey was called and gave viva voce evidence under affirmation. His short “statement” was acknowledged and tendered in evidence as exhibit “A”. Mr Fitzgerald then examined Dr Eddey raising the issue of his expertise to provide an opinion on the primary issue of whether intervention by Mr Szala should have occurred. I ruled that Dr Eddey, a vastly experienced emergency physician, could properly provide an opinion. Dr Eddey gave interesting evidence in relation to the insidious condition of anorexia nervosa stating that even at a relatively late stage had Mrs Szala been hospitalised and appropriately treated, the situation may have been salvageable. Dr Eddey’s evidence on the primary issue of prior intervention was not countered by competing expert opinion; quite frankly I would have been astonished if any reputable expert had proffered a medical opinion to the contrary.
29. I have earlier referred to the evidence of an attending ambulance paramedic, attending police members, particularly Detective Senior Constable Botterill, so I do not at this point propose to elaborate on that evidence; their statements were exhibited and are in evidence.
30. Mrs Szala’s brother Mr John Smrdelj also gave evidence. It was patently obvious that he and Mr Szala had a strained relationship, to say the least. I found it difficult to evaluate Mr Smrdelj’s evidence. Although I am sure he was well-meaning there were glaring inconsistencies particularly in relation to when he last saw his sister and when they last had telephonic communications. He was questioned as to his claim that Mr Szala kept food from his wife. There was clear evidence that when police attended the residence there was an abundance of food both in the refrigerator and stored in another location. Mr Smrdelj’s explanation for his belief, the pavlova episode two years earlier, was not at all compelling! It is clear there was ample food at the house, but in light of her condition Mrs Szala was very obviously not inclined to consume it. I conclude Mr Smrdelj’s evidence was coloured due to the death of his sister in these circumstances, but also due to animosity towards his brother in law.
31. Although Mr Szala did not give viva voce evidence, two statements, the first taken on the night, the second some time later, were tendered in evidence through Detective Senior Constable Botterill and form part of the body of evidence upon which I will make this finding. The primary thrust of his statements was that he considered at various times, particularly proximate to the death, that he should have summoned an ambulance. However, not wanting to risk the wrath of his wife, who he claims was adamant she did not want him to do so, he did not intervene.

32. Associate Professor Morris Odell, Forensic Physician at VIFM, provided a statement in which he addressed the issues surrounding powerful laxative Bisalex which Mr Szala had purchased and provided to his wife. I include in this finding a pertinent excerpt from his statement, Dr Odell wrote:

“Bisacodyl is a powerful laxative that works by directly stimulating the bowel to empty. It is intended to be used as a short term treatment for constipation or for bowel preparation prior to x-ray, colonoscopy, surgery or childbirth. The usual dose is one or two tablets once or twice a day.

Powerful laxatives such as bisacodyl can be abused by patients with eating disorders who take large quantities to try and avoid gaining weight. Abuse of these medications can have serious effects including incontinence and derangements of body chemistry as essential substances are lost in the form of diarrhoea. The bowel may become desensitised to the normal process of elimination with the result that the person becomes dependent on laxatives in order to move their bowels and is chronically constipated if they don't take them.

In this case the abuse of bisacodyl was at an extreme level and Ms Szala would have experienced the effects described above. She would have had faecal incontinence and chronic diarrhoea and the chemical disturbance from this would have contributed to her emaciation from starvation.”

33. In his statement (Exhibit A) Dr Eddey opined:

“...a reasonable lay person of normal mental capacity would recognise that a person in the physical condition seen in the photographs of the deceased requires medical assessment and treatment.”

In viva voce evidence I do not believe Dr Eddey retreated from that opinion. During examination by Mr Fitzgerald Dr Eddey acknowledged that anorexia nervosa is a difficult condition to treat and sufferers are often resistant to treatment. He also agreed it is a chronic relapsing illness. Mr Fitzgerald canvassed with Dr Eddey the issue of at what time intervention and treatment had been provided could Mrs Szala been salvageable. Dr Eddey stated that at some time a patient's condition is “potentially reversible,” but added at some time the body's metabolic derangement is so severe that the patient dies. When asked at what point Mrs Szala could have been treated and saved, Dr Eddey said it was not possible to say.

34. Dr Eddey did, however, indicate that Mrs Szala would have suffered a “*loss of capacity to function in a physical way*” as a result of metabolic derangement, resulting in a loss of muscle mass and an “*inability to care for oneself in a physical capacity*”. According to Dr Eddey, Mrs Szala’s decline in physical capacity would have occurred over a matter of months.
35. As mentioned earlier, there was a great deal of material in Detective Senior Constable Botterill’s comprehensive brief primarily initially prepared for the purposes of prosecution. As stated earlier I indicated what material I would extract from the brief for my coronial purposes. All of the material extracted, upon which I have relied was exhibited. For completeness I list here the entirety of the hard copy material exhibited:

Exhibit A	Statement/review memo of Dr David Eddey
Exhibit B	Statement of ambulance paramedic Ciara Bloomer
Exhibit C	Statement of Detective Senior Constable Stacey Keenan
Exhibit D	First statement of Mr John Smrdelj dated 6 October 2016
Exhibit E	Second statement of Mr John Smrdelj dated 9 October 2016
Exhibit F	First statement of Detective Senior Constable Botterill dated 1 April 2018 with the exception of various proposed exhibits which were redacted and not tendered
Exhibit G	Second statement of Detective Senior Constable Botterill dated 12 April 2018 with the exception of a redaction in paragraph 9
Exhibit H	First statement of Mr John Szala dated 6 October 2016
Exhibit I	Second statement of Mr John Szala dated 4 April 2018
Exhibit J	Table of medications, primarily Bisalax, purchased by Mr Szala from Chemist Warehouse Broadmeadows and Epping
Exhibit K	Statement of Dr Morris Odell of VIFM
Exhibit L	Statement of Dr Muy Lim
Exhibit M	Statement of Isabel Conway, social worker, Northern Health
Exhibit N	Forensic Pathologist of VIFM Dr Paul Bedford’s autopsy report
Exhibit O	Statement of Sergeant Caroline Johnson, Broadmeadows Uniform

DISCUSSION

36. The issues surrounding the laxative Bisalax is pertinent. At his wife's request, over an extended period of time, Mr Szala purchased copious amounts of this over the counter potent laxative which he provided to Mrs Szala. That in effect fuelled her serious psychological condition, ultimately leaving her in the severely emaciated state, graphically demonstrated in the suppressed photographs, both those taken at the scene and those taken in the mortuary at VIFM. In spite of her insistence, observing her obvious deteriorating condition, especially in the weeks, if not months prior to her death, Mr Szala should have refused to purchase and provide this medication to Mrs Szala.
37. In my firm view, in light of Mrs Szala's debilitating psychological and physical condition, a condition which did not occur overnight, Mr Szala should have, indeed was obliged to, seek urgent medical attention for his wife. An issue for me is when was it imperative that he did; if he had done so at what time could the tragic outcome have been different? That is a question in respect of which I am unable to provide a definitive answer, but certainly at least days before her death.

CONCLUSION

38. Dr Eddey's evidence in relation to Mrs Szala's diminished capacity is significant. At the time of her death, Mrs Szala's physical state had deteriorated to a point that she would have been entirely dependent on her husband and as a result, left in an incredibly vulnerable position.
39. As stated earlier, in his statement Mr Szala conceded he should have ignored his wife's protestations and called an ambulance; indeed he should have, days if not weeks before 6 October 2016. The proverb "*a picture tells a thousand words*" is applicable.
40. In summary, reverting to the dichotomy referred to by Callaway JA in Keown v Khan, the continued provision of Bisalax to Mrs Szala, as her condition continued to deteriorate, was not a "background circumstance", but an act that departed from a norm or standard, furthermore, the failure to seek medical attention was a serious omission in breach of an undeniable duty of care. Consequently, on those bases I conclude Mr Szala contributed to the death of his wife.

FINDING

41. I formally find Sonya Szala died at 124 Rokewood Crescent, Meadow Heights on 6 October 2016 due to anorexia.

42. Pursuant to section 73 (1) of the *Coroners Act 2008* I direct that a copy of this finding be published on the Coroners Court of Victoria website.

DISTRIBUTION OF FINDING

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

- Ms Robin Dyall, Senior Lawyer, Victoria Legal Aid, on behalf of Mr John Szala, Senior Next of Kin;
- Mr John Smrdelj; and
- Detective Senior Constable Grace Botterill, Coroner's Investigator, Victoria Police

Signature:



PHILLIP BYRNE
CORONER

Date: 28 November 2019