



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2018 5141

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 60(2)

Section 67 of the Coroners Act 2008

Findings of:	CORONER DARREN J BRACKEN
Deceased:	KJE
Date of birth:	25 December 1989
Date of death:	11 October 2018
Cause of death:	Injuries sustained in motorcycle collision (rider)
Place of death:	Elsworth Street West, Mount Pleasant, Victoria 3350

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HIS HONOUR:

BACKGROUND

1. In deference to the deceased's family's request the deceased will be referred to as KJE in this Finding.
2. On 11 October 2018, KJE died from injuries sustained when the motorcycle he was riding collided with a motor car in Elsworth Street West near Flockhart Street in Mount Pleasant, Victoria. Immediately prior to his death, KJE lived with a domestic partner in Belmont.
3. KJE was popular and "...had a huge circle of friends. Everyone knew him and he knew everyone ...motorbike mate [sic] (be it dirt or road) and [sic] the pub as he was always yapping to someone."
4. At the time of his death, KJE was riding a 2005 Yamaha R1 motorcycle (the **Yamaha**) registered to his domestic partner.

THE PURPOSE OF A CORONIAL INVESTIGATION

5. KJE's death constituted a 'reportable death' pursuant to section 4 of the *Coroners Act* (2008) (Vic) ("the Act"), as his death occurred in Victoria was unexpected and resulted, directly or indirectly, from an accident or injury.¹
6. The Act requires a coroner to investigate reportable deaths such as KJE's and, if possible, to find:
 - (a) the identity of the deceased.
 - (b) the cause of death and
 - (c) the circumstances in which death occurred.²
7. For coronial purposes, 'circumstances in which death occurred'³ refers to the context and background the death including the surrounding circumstances. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, required findings in relation to circumstances are limited to those circumstances which are sufficiently proximate to be considered relevant to the death.

¹ Section 4 *Coroners Act 2008*.

² See Preamble and s 67, *Coroners Act* (2008).

³ Section 67(1)(c).

8. The coroner's role is to establish facts, rather than to attribute or apportion blame for the death.⁴ It is not the coroner's role to determine criminal or civil liability,⁵ nor to determine disciplinary matters.
9. One of the broader purposes 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 making recommendations.
10. Coroners are also empowered to:
 - (a) report to the Attorney-General on a death;⁶
 - (b) comment on any matter connected with the death investigated, including matters of public health or safety and the administration of justice;⁷ and
 - (c) 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.⁸
11. Coronial findings must be underpinned by proof of relevant facts on the balance of probabilities.⁹ The strength of evidence necessary to so prove facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.¹⁰
12. Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demand a weight of evidence commensurate with the gravity of the facts sought to be proved.¹¹

⁴ *Keown v Khan* (1999) 1 VR 69.

⁵ Section 69 (1).

⁶ Section 72(1).

⁷ Section 67(3).

⁸ Section 72(2).

⁹ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

¹⁰ *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J but I note that His Honour was referring to the correct approach to the standard of proof in a civil proceeding in a federal court with reference to section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brenna, Deane and Gaudron JJ.

¹¹ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336, referring to *Barten v Williams* (1978) 20 ACTR 10; *Cuming Smith & Co Ltd v Western Farmers Co-operative Ltd* [1979] VR 129; *Mahon v Air New Zealand Ltd* [1984] AC 808 and *Annetts v McCann* (1990) 170 CLR 596.

Facts should not be considered to have been proved on the balance of probabilities by inexact proofs, indefinite testimony, or indirect inferences,¹² rather such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.¹³

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

Identity of the Deceased - Section 67(1)(a) of the Act

13. On 15 October 2018, the deceased's brother identified the deceased.
14. KJE's identity is not in dispute and requires no further investigation.

Cause of death - Section 67(1)(b) of the Act

15. On 18 October 2018, Dr Joanna Glengarry, a Forensic Pathologist practising at the Victorian Institute of Forensic Medicine (VIFM), performed an autopsy upon KJE's body. Dr Glengarry also reviewed the Police Report of Death (Form 83) and provided a written report, dated 24 January 2019, in which she opined that the cause of KJE's death was '*injuries sustained in motorcycle collision (rider)*'. I accept Dr Glengarry's opinion.
16. Dr Glengarry commented that post-mortem examination revealed injuries to KJE's head, torso and limbs that were non-survivable and were consistent with a near-instantaneous death.
17. Dr Glengarry also commented that there was no significant natural disease detected at the post examination.
18. Toxicological analysis of post-mortem samples was negative for common drugs or poisons, including ethanol (alcohol).

Circumstances in which the death occurred - Section 67(1)(c) of the Act

19. On 11 October 2018 at about 4.00pm, KJE left his friend's home on the Yamaha. The friend said that KJE appeared "*fine when he left.*".¹⁴

¹² *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.

¹³ *Briginshaw v Briginshaw* (1938) 60 CLR 336, at pp. 362-3 per Dixon J.; *Cuming Smith & CO Ltd v Western Farmers Co-operative Ltd* [1979] VR 129, at p. 147; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brenna, Deane and Gaudron JJ.

¹⁴ Statement of a friend 11 October 2018; Coronial Brief.

20. That same day at approximately 4.15pm, Craig Plier was driving a 1999 Toyota Prado (**the Toyota**) west along Elsworth Street West approaching the intersection of Flockhart Street when he saw a woman on his left get out of a parked “red twin cab”¹⁵ and walk around the front of the vehicle. Mr Plier said, “I quickly checked my mirror to my left to see where she was.” Mr Plier elaborated:

“I immediately looked back straight and there was the motorbike.”¹⁶

21. Mr Plier was unable to avoid the Yamaha which was travelling on the incorrect side of Elsworth Street West heading towards his vehicle. The Yamaha collided with the Toyota and came to rest on the south side of the road about four metres from the point of impact.

22. Witness Petra O’Donnell said that just after she got out of her car in front of her house at 317 Elsworth Street West she saw the Yamaha on the incorrect side of the road heading towards her. Ms O’Donnell also saw the Toyota drive past her and said, “Before I knew it they hit head on. The motorbike looked like it was flicked off the bonet [sic] of the car.”¹⁷

23. Ms O’Donnell called emergency services. At about the same time, resident Jessica McInnes heard a loud bang and left the nearby house to investigate. Ms McInnes arrived at the scene of the collision apparently shortly after it occurred and saw KJE lying on the road still wearing a helmet, but was unresponsive and not breathing.¹⁸ Leading Senior Constable (LSC) Christopher Barker and Constable Cook of Ballarat Highway Patrol arrived shortly afterward. Ambulance Victoria paramedics were already present and confirmed that KJE was deceased.

COMMENTS PURSUANT TO SECTION 67(3) OF THE ACT

24. Police examined the scene on the day of the incident and noted that KJE was lying on the road approximately five metres south west of the front of the Toyota. The Yamaha was lying on the road adjacent to the gutter on its left side in front of 321 Elsworth Street West. The Toyota was facing west in the west bound lane of Elsworth Street West.

25. Police members located KJE’s wallet containing his driver’s licence. The driver of the Toyota, Mr Plier was uninjured.

¹⁵ Statement of Craig Plier dated 7 November 2018; Coronial Brief.

¹⁶ Ibid.

¹⁷ Statement of Petra O’Donnell dated 11 October 2018; Coronial Brief.

¹⁸ Statement of Jessica McInnes dated 15 October 2018; Coronial Brief.

26. In the vicinity of the collision Elsworth Street West, Mount Pleasant consists of a single lane running east and a single lane west. The east and west bound lanes of Elsworth Street West are divided by a wide grassed median strip. Adjacent to the east and west running lanes is a painted bicycle lane as well as a painted parking lane. The road is constructed of bitumen which was in good condition. The location speed limit is 60 km/h.
27. LSC Barker examined the scene on the day of the incident and noted that immediately before the collision the Yamaha was travelled east in the west bound lane of Elsworth Street West (on the wrong side of the road) towards the west bound Toyota, for about 30 metres¹⁹ before colliding with the Toyota and finally coming to a rest on the road in front of 321 Elsworth Street West. LSC Barker also noted that there were no advisory signs warning road users not to enter the west bound lane. Police observed that at the time of the incident, *“the weather was fine and clear with no adverse conditions contributing to the collision.”*²⁰
28. LSC Barker observed the Yamaha’s rear brake functioned successfully, but the front brakes were unable to be tested as the force of the impact had crushed the lever and cracked the reservoir.²¹ LSC Barker commented that apart from the damage on the day of the collision, *“the bike appeared roadworthy”*.²²
29. LSC Barker also observed that the Toyota sustained extensive damage to the bull bar, and the front left tyre was deflated as a result of the impact with the Yamaha. The pressure of the brake pedal was *“firm with no sag or sponginess.”*²³ As a consequence of Mr Plier’s insurance company having declared the Toyota a ‘write off’ a further mechanical investigation on the vehicle was not conducted.
30. During the course of the investigation, it was revealed that, at the time of the collision, KJE was on the phone via a Bluetooth headset fitted to his helmet. At 4.09pm, KJE initiated a call to his domestic partner which was diverted to her message bank. Shortly afterward, and while listening to the voice message KJE’s partner heard, *“Don’t move him”* and *“call an ambulance.”*²⁴

¹⁹ Statement of Dr Jenelle Hardiman dated 7 December 2018, Coronial Brief.

²⁰ Statement of LSC Barker dated 26 February 2019; Coronial Brief.

²¹ Brake fluid reservoirs are canisters that connect to the brake master cylinder.

²² Statement of LSC Barker dated 26 February 2019; Coronial Brief.

²³ Ibid.

²⁴ Statement of a deceased’s domestic partner dated 15 November 2018, Coronial Brief.

31. Dr Jenelle Hardiman of the Collision Reconstruction and Mechanical Investigation Unit (CRMIU) reconstructed the collision and provided a statement dated 7 December 2018, in which she concluded that when the two vehicles commenced braking, the Yamaha was travelling at a minimum of 75km/h and the Toyota was travelling between 49km/h and 60km/h. The Yamaha was travelling east in the west bound lane of Elsworth Steet, Mount Pleasant when it collided head on with the west bound Toyota. At impact, the Yamaha and KJE were sliding across the road surface into the path of the Toyota.
32. As a consequence of a blood sample from Mr Plier on the day of the incident, Dr Jason Schreiber, a Forensic Physician practising at the Victorian Institute of Forensic Medicine (VIFM) provided a written report, dated 13 December 2018, in which he concluded that:
- a. Mr Plier was driving after having used cannabis.
 - b. Mr Plier had a blood tetrahydrocannabinol (THC) concentration of ~6ng/ml within 2 hours of the collision.
 - c. The blood level of the THC, active ingredient in cannabis may have been the result of consumption in the previous few days.
 - d. An impact on the fitness to drive is possible.
33. On 10 January 2019 at 4.10pm, Mr Plier attended the Ballarat West Police Station and was interviewed in relation to the Dr Schreiber's written report dated 13 December 2018. Mr Plier made admissions to Police of the use of cannabis the night before the collision but said that it did not affect his ability to drive on the day of the incident. According to the coronial investigator, Mr Plier's account and recollection of the incident has not altered from the day of the incident. In addition, Dr Janelle Hardiman calculated that according to the Yamaha specifications, it can accelerate from 0 to 75km/h at a rate of 7.2m/s over 30 metres. This corroborated Mr Plier's recollection of "*a matter of seconds*".²⁵
34. There is evidence before the collision the Yamaha was travelling faster than it should have been and it appears that KJE mistakenly turned right from Flockhart Street into the west-bound lane of Elsworth Street West rather than crossing through gap in the median strip and into the east-bound lanes. It appears then that unbeknownst to him, KJE was on the wrong side of the median strip; the wrong side of the road.

²⁵ Summary of Coronial Brief, Coronial Brief.

There was no sign at the intersection warning those turning right of this potential error such as a “*Wrong Way Go Back*” sign. The Yamaha’s speed and the lack of a warning sign may each have been a cause of the collision and KJE may have been distracted by having been on the telephone.

35. The coronial brief refers to Police having assessed the road environs in the vicinity of KJE’s death and having concluded that a warning sign is warranted. There is a real possibility that those turning right from Flockhart Street into Elsworth Road West may not readily identify the need to pass through the break in the Elsworth Street West median strip to travel east in Elsworth Road West.
36. I am satisfied, having considered all of the available evidence, that no further investigation into KJE’s death is required.

Recommendation

37. I recommend that, VicRoads immediately assess the need for a sign, the nature of which is a matter for VicRoads, to be installed appropriately at or near the intersection of Flockhart Street and Elsworth Street West, Mount Pleasant warning road users turning right from Flockhart Street into Elsworth Street West if they have inadvertently turned into the west-bound lane.²⁶ I further recommend that if such assessment identifies a need for such signage that temporary signage be immediately installed until permanent signage can be erected.

FINDINGS AND CONCLUSION

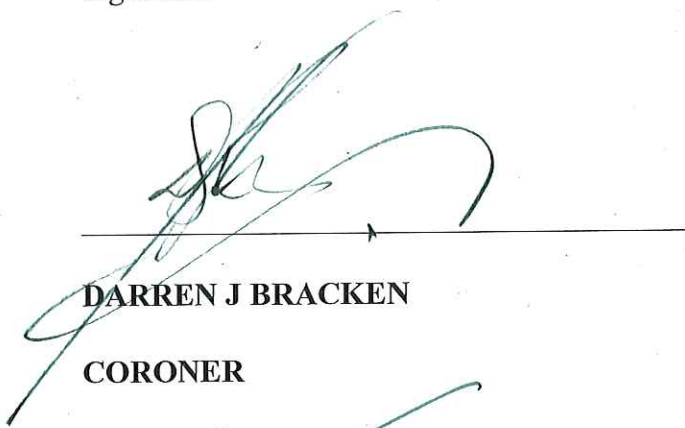
38. Having investigated the death, without holding an inquest, I make the following findings pursuant to section 67(1) of the *Coroners Act 2008*:
 - (a) The identity of the deceased was KJE ;
 - (b) KJE’s death occurred;
 - i. on 11 October 2018 at Elsworth Street West, Mount Pleasant, Victoria 3350;
 - ii. from injuries sustained in motorcycle collision (rider); and
 - iii. in the circumstances described above.

²⁶ Whether that infrastructure consists of signs or warning signals of some kind or something else is a matter for VicRoads.

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

- (a) The deceased's senior next of kin.
- (b) The deceased's mother.
- (c) Mr Paul Younis, Secretary, Department of Transport.
- (d) Leading Senior Constable Christopher Barker, Coroner's Investigator, Victoria Police.

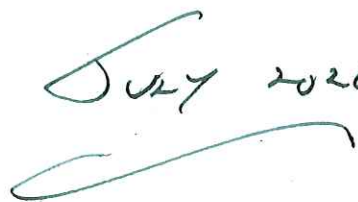
Signature:


A large, stylized handwritten signature in blue ink is written over a horizontal line. The signature appears to be 'D. Bracken'.

DARREN J BRACKEN

CORONER

Date: 28 July 2020.


A large, stylized handwritten flourish or signature in blue ink, located below the date.

