

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2018 4181

FINDING INTO DEATH WITHOUT INQUEST

Form 38 Rule 63(2)

Section 67 of the Coroners Act 2008

Amended pursuant to section 76 of the *Coroners Act 2008* on 9 September 2020

Findings of:

AUDREY JAMIESON, CORONER

Deceased:

**JASON DEVON TREVIN PINTO
JAYAWARDENA**

Date of birth:

26 December 1999

Date of death:

21 August 2018

Cause of death:

**Multiple injuries sustained in a motor vehicle
incident (driver)**

Place of death:

**Bessie Creek Road, Nar Nar Goon North Victoria
3812**

Pursuant to section 67(1) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances**:

1. Jason Devon Trevin Pinto Jayawardena was an 18-year-old man who lived with his parents, Ron and Andrea Pinto Jayawardena, and older sister, Rebecca, at 13 Vantage Drive, Pakenham Victoria 3810 at the time of his death.
2. On 21 August 2018, Mr Pinto Jayawardena was involved in a single vehicle, sole occupant collision along Bessie Creek Road, Nar Nar Goon North Victoria 3812. Mr Pinto Jayawardena sustained fatal injuries and was declared deceased at the scene.
3. Mr Pinto Jayawardena's death was reportable pursuant to section 4 of the *Coroners Act 2008* (Vic) ('the Act'), because it occurred in Victoria, and was considered unexpected, unnatural and to have resulted, directly or indirectly, from an accident or injury.

INVESTIGATIONS

Forensic pathology investigation

4. Dr Heinrich Bouwer, Forensic Pathologist at the Victorian Institute of Forensic Medicine (**VIFM**), performed an autopsy upon the body of Mr Pinto Jayawardena, reviewed a post mortem computed tomography (**CT**) scan and referred to the Victoria Police Report of Death, Form 83.
5. Dr Bouwer commented that at autopsy, there were significant head, neck and chest injuries. There was no significant natural disease detected that may have caused or contributed to the incident.
6. Post mortem toxicological analysis did not detect the presence of alcohol, common drugs or poisons.
7. Dr Bouwer ascribed the cause of death to multiple injuries sustained in a motor vehicle incident (driver).

Police investigation

8. Upon attending the scene of the incident along Bessie Creek Road after Mr Pinto Jayawardena's death, Victoria Police investigating officers noted Mr Pinto Jayawardena was still inside the vehicle and that he had been wearing his seatbelt.
9. There was no evidence to suggest the involvement of another vehicle or person in the incident. A coronial investigation was immediately commenced.
10. Senior Constable (SC) Luke Braun was the nominated Coroner's Investigator.¹ At my direction, SC Braun investigated the circumstances surrounding Mr Pinto Jayawardena's death, including the preparation of the coronial brief. The coronial brief contained, *inter alia*, statements made by family, friends, witnesses and investigating officers.
11. During the investigation, police learned that Mr Pinto Jayawardena was born in Colombo, Sri Lanka and migrated to Australia in the year 2009 with his family. Family statements detail that he was a quiet and well behaved young man who loved playing video games, basketball, rugby and socialising with friends. After his schooling in the year 2016, Mr Pinto Jayawardena commenced a plumbing apprenticeship with a company located in Nar Nar Goon North.
12. Mr Pinto Jayawardena was a provisional plate driver who had obtained his Victorian Driver Licence on 27 December 2017. Family statements detail that after he got his license, Mr Pinto Jayawardena took the opportunity to enjoy four-wheel driving and camping with his father.
13. Mr Pinto Jayawardena's first car was a "Toyota Landcruiser 80 series". He owned this vehicle for approximately six to eight months, before he had an accident at a camping site. Specifically, the vehicle rolled down an embankment due to wet and muddy conditions. The vehicle was "written off by the insurers". His next vehicle was the same make and model.

¹ A Coroner's Investigator is a police officer nominated by the Chief Commissioner of Police or any other person nominated by the Coroner to assist the coroner with his/her investigation into a reportable death. The Coroner's Investigator receives directions from a Coroner and carries out the role subject to those directions.

14. Statements from family and friends detail that they knew Mr Pinto Jayawardena to be a sensible driver. Specifically, he was described as “a good driver 95% of the time. He rarely sped and because he had a 4-wheel drive, he wasn’t your typical ‘P’ plate driver hooning around. The other 5% wasn’t hooning, just common, minor driving mistakes... Jason was a really sensible driver, particularly for blokes our age.” There were no traffic offences listed against Mr Pinto Jayawardena’s name.
15. On 31 July 2018, Mr Pinto Jayawardena purchased a 2001 Holden Commodore VX sedan (**the Holden**) from Ramsdale Wreckers. Upon purchasing the second-hand vehicle, the Holden looked clean both inside and out and came with a VicRoads Certificate of Roadworthiness (**the Certificate**), dated 17 July 2018 provided by mechanic, Brad Warren.
16. The Certificate lists the following defects:
 - a. “WIPER BLADES
 - b. BRAKE FLUID FLUSH
 - c. SECUER AMPT+ WIRES IN BOOT
 - d. SPARE TYRE FLAT
 - e. FRONt+ REAR CASTER BAR BUSH’S
 - f. FRONt LOWER INNER CONTROL ARM BUSH
 - g. CENTER SEATBELT BUCKLE (MISSING)”

The Holden’s service brake test resulted in a 94% rating.

17. The Holden had already travelled a documented 283250 kilometres according to the Certificate.
18. The VicRoads website² details that a Certificate shows that a vehicle is safe enough to be used on public roads. It is not a guarantee that a vehicle is mechanically reliable, just that

² <https://www.vicroads.vic.gov.au/registration/roadworthiness/get-a-certificate-of-roadworthiness> accessed on 18 August 2020.

it is safe enough to be driven by way of the key components “being in good enough condition for safe road use”. The Certificate does not mean that the items checked during the inspection “will continue to function after the inspection, e.g. a brake light can stop functioning at any time after the inspection”.

19. There was no evidence to indicate any error or omission on the Certificate. Mr Pinto Jayawardena was aware of the defects on purchase of the Holden.
20. In the three weeks prior to his death, Mr Pinto Jayawardena used the Holden on a regular basis, driving to and from work every working day. During this period, he did not undertake any modifications to the vehicle.
21. Mr Pinto Jayawardena’s mental health prior to his death was said to have been sound, with him being in his “usual good head space. He was enjoying work, never took a sick day and had his friends and girl-friend. He was not taking any medication and frequently went to the gym”.
22. On 21 August 2018, Mr Pinto Jayawardena was working in Clyde with his friend and colleague, Ricky Ferguson. Mr Pinto Jayawardena and Mr Ferguson arrived back at their work address at approximately 5.15pm. Mr Ferguson stated that it had been a normal working day and that he did not notice anything out of the ordinary. Mr Ferguson further stated that Mr Pinto Jayawardena would have confided in him if anything had been bothering him.
23. Mr Pinto Jayawardena told Mr Ferguson that he was going to sell some car parts. Shortly after packing up, Mr Pinto Jayawardena left work in the Holden and travelled south along Bessie Creek Road in Nar Nar Goon North. This was a road he travelled along regularly to get to and from work.
24. Mr Pinto Jayawardena approached a sweeping bend in the road located outside the addresses of 285 to 295 Bessie Creek Road. This area is a 100 kilometre an hour (**100km/h**) speed zone and has railing on either side of the road as it crosses over a small creek.
25. As Mr Pinto Jayawardena approached the sweeping bend, Jonathon Eerden was out on his property located nearby. Mr Eerden stated that he saw the Holden traveling at a high

speed. Mr Eerden further stated that he did not initially pay much attention because cars “fly around the corner all the time”.

26. At approximately 5.20pm, Cody Andrews was travelling north along Bessie Creek Road, approximately a kilometre past Seymour Road. Mr Andrews stated that he noted a vehicle’s headlights in the distance and that he further observed this vehicle appear to overshoot the corner as it travelled southbound along Bessie Creek Road, just past the railing. Mr Andrews stated that it appeared as though the vehicle drove onto the grass before the driver attempted to correct the vehicle. As the driver did so, they lost control of the vehicle. The vehicle crossed onto the wrong side of the road before sliding sideways, resulting in the driver’s side of the vehicle impacting a large tree on the eastern side of the road.
27. Mr Eerden heard the impact “directly outside his address” and made his way to the scene to assist. Mr Eerden noted that the vehicle involved in the incident was the same vehicle he had just seen driving at a fast speed.
28. Mr Andrews and Mr Eerden both attended the scene, with Mr Andrews calling emergency services.
29. Mr Eerden stated that while Mr Pinto Jayawardena appeared unconscious, he believed that initially he was trying to move and that he heard Mr Pinto Jayawardena take a breath before gurgling sounds. Mr Eerden held Mr Pinto Jayawardena’s neck and head while waiting for emergency services.
30. Ambulance Victoria arrived at 5.33pm but were unable to revive Mr Pinto Jayawardena.

verification of death: no palpable carotid pulse confirmed, no heart sounds heard for 2 mins confirmed, no breath sounds heard for 2 mins confirmed, fixed and dilated pupils confirmed, no response to centralised stimulus confirmed, no resp. or grimace to painful stimulus confirmed, ECG shows asystole for 30 secs all leads confirmed.
31. Mr Pinto Jayawardena was formally declared deceased at the scene at 5.52pm.
32. Subsequent investigations uncovered that the Holden, as a model, was awarded a 1 star out of five for the Driver Protection Rating in the Monash University Accident Research Centre, *Used Car Safety Rating Report*. One star equates to a “Very Poor” rating for driver protection.

33. Investigations did not find any evidence that Mr Pinto Jayawardena was using a mobile phone while driving prior to the incident. It was noted, however, that the majority of Mr Pinto Jayawardena's driving experience had been in four-wheel drive vehicles and that his recent purchase of the Holden was his first rear drive vehicle. His experience in rear drive vehicles was limited and cannot be excluded as having possibly contributed to his loss of control while navigating the sweeping bend.
34. Photographs taken at the scene evidence that the driver's side front airbags deployed but that the vehicle did not come with front or rear side curtain airbags. Investigating officers noted that the Holden did not have electronic stability control.
35. Bessie Creek Road, Nar Nar Goon North runs in a north- south direction between Gembrook Road and Princess Highway. It is an exclusively rural area with large acre properties bordering both sides of the road. The road is a single lane carriageway in both directions. The edging of the bitumen runs to dirt, with a continuous white painted line as a border.
36. At the scene of the incident, the road is a sealed road surface in good condition, with a sign posted speed limit of 100km/h. At the time of the incident, the weather was clear and the road was dry. The road has no provision for street lighting and no defined or concreted footpaths. Large trees and shrubs line the edges of the majority of the road.
37. Based on the physical evidence at the scene and various witness statements, the Victoria Police investigation concluded that Mr Pinto Jayawardena was travelling at a speed that affected his ability to navigate the sweeping bend. As he "overshot the bend", Mr Pinto Jayawardena overcorrected back onto the roadway onto the incorrect side of the roadway, before the vehicle spun in an anti-clockwise direction, impacting a tree on the driver's side, resulting in Mr Pinto Jayawardena sustaining fatal injuries.

COMMENTS

Pursuant to section 67(3) of the *Coroners Act 2008* (Vic), I make the following comments connected with the death:

1. It was noted during the coronial investigation that the Holden did not have electronic stability control (ESC). VicRoads³ details that ESC “helps you remain in control of your vehicle when you skid, swerve suddenly or when road conditions change”. Since January of 2011, it was mandated that all *new* vehicles being registered for the first time in Victoria must be fitted with ESC.

European experts estimate that up to 40% of single vehicle crashes could be avoided if all cars had ESC. In Victoria that means 50 lives a year could be saved.

Australian research indicates that ESC is effective in reducing single vehicle crashes by 29%.

2. Unfortunately, being a second-hand vehicle, the Holden was not fitted with ESC, nor was there a requirement that it was, in order for it to be registered.
3. Had ESC been a feature of the Holden, the outcome would have likely been different. This is not a reflection on Mr Pinto Jayawardena’s decision to purchase a second-hand vehicle. The purchasing of second-hand vehicles is a commonplace occurrence in Victoria and one that should not cease to be facilitated based on the known benefits of ESC, which vehicles manufactured prior to the year 2011 may not have. It is however, important that individuals who choose to purchase second-hand vehicles are aware of ESC and the heightened risk they assume when driving a vehicle without it. This risk is further emphasised when the driver is inexperienced (newly licensed) and driving a vehicle they are unfamiliar with. It is for these reasons that I have chosen to include commentary of ESC in this Finding.
4. I note Mr Pinto Jayawardena’s family have communicated to the Court on several occasions their concerns pertaining to the belief that Victoria Police did not investigate the death of their loved one adequately. Namely, that assumptions were made by

³ <https://www.vicroads.vic.gov.au/safety-and-road-rules/vehicle-safety/buying-a-safe-car/electronic-stability-control> accessed 18 August 2020.

attending officers on the night of the incident and that they “closed the file that night based on” these assumptions.

5. I assure Mr Pinto Jayawardena’s family that this was not the case and that Victoria Police conducted all necessary investigations. I note that not all motor vehicle incidents are referred onto specialist units within Victoria Police for follow-up. I rely on Victoria Police’s assessment upon attending a scene to determine whether a referral to one of their specialist units is warranted.
6. Upon receipt and review of the coronial brief, I directed my Coronial Investigator to follow up a number of matters. These tasks were attended to and I was subsequently provided with additional information to inform my decision making process. It has been with consideration of the entirety of information received throughout the coronial process that I have based this Finding.
7. For the purpose of my investigation, a statistical overview of all collisions on Bessie Creek Road, Nar Nar Goon North Victoria 3812 was obtained. Specifically, I have considered statistics covering the period between January 2016 to February 2020. These statistics indicate nine known/ reported collisions with a “fixed object” and one with “some other object”. I also note the various witness statements that detail wildlife crossing onto the road is common occurrence in the area.

RECOMMENDATIONS

Pursuant to section 72(2) of the *Coroners Act 2008* (Vic), I make the following recommendations:

1. With the aim of promoting public health and safety and preventing like deaths, I recommend that Cardinia Shire Council⁴ erect signage in both directions of Bessie Creek Road, Nar Nar Goon North Victoria 3812⁵ advising of the upcoming sweeping bend and mandating a reduction in speed.
2. With the aim of promoting public health and safety and preventing like deaths, I recommend that Cardinia Shire Council⁶ review the statistical data associated with this stretch of road in light of the death of Jason Devon Trevin Pinto Jayawardena and consider reducing the speed limit along the length of Bessie Creek Road, Nar Nar Goon North Victoria 3812 from 100 km/h to 80km/h.

FINDINGS

1. I find that Jason Devon Trevin Pinto Jayawardena, born 26 December 1999, tragically died on 21 August 2018 along Bessie Creek Road, Nar Nar Goon North Victoria 3812.
2. I accept and adopt the cause of death ascribed by Dr Heinrich Bouwer and I find that the cause of Jason Devon Trevin Pinto Jayawardena's death was multiple injuries sustained in a motor vehicle incident (driver) in circumstances where I find he failed to negotiate the road's sweeping bend whilst driving a vehicle he was unfamiliar with.

Pursuant to section 73(1A) of the *Coroners Act 2008* (Vic), I order that this Finding be published on the internet.

⁴ Corrected from the Department of Transport (VicRoads) to Cardinia Shire Council, as per confirmation received via email from Cardinia Shire Council on 9 September 2020.

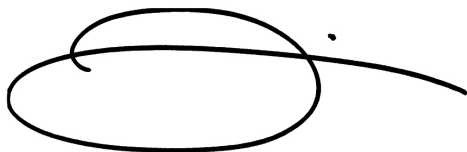
⁵ Located near properties 285 to 295 Bessie Creek Road, Nar Nar Goon North, Victoria 3182.

⁶ Corrected from the Department of Transport (VicRoads) to Cardinia Shire Council, as per confirmation received via email from Cardinia Shire Council on 9 September 2020.

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

Ron & Andrea Pinto Jayawardena
Peter Benazic, Cardinia Shire Council⁷
Nicholas Charrett, Cardinia Shire Council⁸
Karen MacDonald, VicRoads
The Proper Officer, Department of Transport
Clare Rowan, Transport Accident Commission
Amber Salter, Peninsula Health
Senior Constable Luke Braun

Signature:



AUDREY JAMIESON

CORONER

Date: **14 September 2020**

⁷ Cardinia Shire Council contact added, as per confirmation received via email from Cardinia Shire Council on 9 September 2020.

⁸ Ibid.