



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

**COR 2019 004229**

**FINDING INTO DEATH WITHOUT INQUEST**

*Form 38 Rule 63(2)*

*Section 67 of the Coroners Act 2008*

Findings of:	AUDREY JAMIESON, Coroner
Deceased:	Shawn James Marion
Date of birth:	6 December 1971
Date of death:	10 August 2019
Cause of death:	1(a) Injuries sustained in a motor vehicle collision (pedestrian)
Place of death:	347-351 Ballarat Road, Braybrook, Victoria, 3019

## INTRODUCTION

1. Shawn James Marion was a Bidjara man and was 47 years old when he passed away. He was a proud Aboriginal man with strong connections to his cultural heritage. Mr Shawn Marion lived with his mother, Aunty Colleen Marion at [REDACTED] Sunshine<sup>1</sup>.
2. Mr Shawn Marion was in good physical and mental health. He was known to only consume alcohol socially.<sup>2</sup>
3. He enjoyed playing golf and football and was a huge supporter of Western Bulldogs.<sup>3</sup>
4. On 10 August 2019, Mr Shawn Marion succumbed to the injuries he sustained from a motor vehicle collision at the three-way intersection (“the T-intersection”) of Ballarat Road and Burke Street in Braybrook.

## THE CORONIAL INVESTIGATION

5. Mr Shawn Marion’s passing was reported to the Coroner as it fell within the definition of a reportable death in the *Coroners Act 2008* (“the Act”). Reportable deaths include deaths that are unexpected, unnatural or violent or result from accident or injury.
6. The role of a coroner is to independently investigate reportable deaths to establish, if possible, identity, medical cause of death, and surrounding circumstances. Surrounding circumstances are limited to events which are sufficiently proximate and causally related to the death. The purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.
7. Under the Act, coroners also have the important functions of helping to prevent deaths and promoting public health and safety and the administration of justice through the making of comments or recommendations in appropriate cases about any matter connected to the death under investigation.
8. Victoria Police assigned Sergeant James Montgomery to be the Coroner’s Investigator for the investigation of Mr Shawn Marion’s passing. Sergeant Montgomery conducted inquiries on my behalf, including taking statements from witnesses – such as family, witnesses, the forensic pathologist and investigating officers – and submitted a coronial brief of evidence.

---

<sup>1</sup> At approximately one kilometre southwest of the three-way intersection of Ballarat Road and Burke Street in Braybrook. The address is redacted to protect Aunty Colleen Marion’s privacy.

<sup>2</sup> Coronal Brief of Evidence (CB), police summary.

<sup>3</sup> Ibid.

9. This finding draws on the totality of the coronial investigation into the passing of Shawn James Marion including evidence contained in the coronial brief. Whilst I have reviewed all the material, I will only refer to that which is directly relevant to my findings or necessary for narrative clarity. In the coronial jurisdiction, facts must be established on the balance of probabilities.<sup>4</sup>

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

### **Circumstances in which the passing occurred**

10. On 10 August 2019 at approximately 10.47pm, a nearby closed-circuit television (CCTV) footage depicted Mr Shawn Marion walking on the footpath of the western side of Burke Street, dressed in a black shirt and dark blue pants.<sup>5</sup>
11. Mr Shawn Marion continued walking in a southerly direction towards Ballarat Road and crossed the eastbound lanes of Ballarat Road.<sup>6</sup> As he was approaching median strip<sup>7</sup> of the T-intersection, he fell on the rightmost<sup>8</sup> westbound lane.
12. A witness, Chris Fawcett, who was walking along Ballarat Road saw Mr Shawn Marion was lying face down on the road near the grass median strip.<sup>9</sup> He did not notice Mr Shawn Marion making any movement and it seemed Mr Shawn Marion had passed out.<sup>10</sup>
13. At that time, a road user, Juliet Spencer, was driving her red Mitsubishi Lancer sedan along the rightmost westbound lane of Ballarat Road, with her passenger Hussein Tursunovic seated in the front passenger seat. As Ms Spencer approached Braybrook Hotel, she saw “something” on the road.<sup>11</sup> She thought “*it did not look...like a human being*” and tried swerving to the right to avoid hitting the “object”, Mr Shawn Marion who was lying on the road.<sup>12</sup>
14. Unfortunately, Ms Spencer did not swerve quickly enough to avoid colliding into Mr Shawn Marion. She immediately stopped her vehicle and went to assist him.

---

<sup>4</sup> Subject to the principles enunciated in *Briginshaw v Briginshaw* (1938) 60 CLR 336. The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals unless the evidence provides a comfortable level of satisfaction as to those matters taking into account the consequences of such findings or comments.

<sup>5</sup> CB, police summary.

<sup>6</sup> Ibid.

<sup>7</sup> Which separates the east and westbound lanes of Ballarat Road.

<sup>8</sup> Looking from the east to west direction.

<sup>9</sup> CB, statement of Chris Fawcett.

<sup>10</sup> Ibid.

<sup>11</sup> CB, statement of Juliet Spencer.

<sup>12</sup> Ibid.

15. Another witness to the collision contacted emergency services. Shortly after, Victoria Police, Metropolitan Fire Brigade followed by Ambulance Victoria attended the scene. Upon attendance, Mr Shawn Marion was found unresponsive and pulseless. It was apparent that he was deceased.<sup>13</sup>

### **Identity of the deceased**

16. On 13 August 2019, Uncle Keith Randall visually identified his nephew, Shawn James Marion, born 6 December 1971.
17. Identity is not in dispute and requires no further investigation.

### **Medical cause of death**

18. On 12 August 2019, Forensic Pathologist Dr Victoria Christabel Mary Francis from the Victorian Institute of Forensic Medicine (**VIFM**), conducted an external examination on the body of Shawn Marion. Dr Francis also referred to the Victoria Police Report of Death (Form 83) and reviewed the post-mortem computed tomography (**CT**) scan. She provided a written report of her findings dated 20 August 2019.
19. The post-mortem examination revealed evidence of significant head injury and multiple bruises and abrasions.
20. The post-mortem CT scan revealed pneumocranium with intracranial haemorrhage and multiple fractures.
21. Toxicological analysis of post-mortem samples identified the presence of ethanol (alcohol), 0.32 g/100mL in blood (blood alcohol concentration, **BAC**) and 0.37 g/100mL in the vitreous humour
22. Dr Francis ascribed the medical cause of death to 1 (a) injuries sustained in a motor vehicle collision (pedestrian).

### **Police investigation**

---

<sup>13</sup> CB, statement of Sergeant James Montgomery.

23. Ballarat Road in Braybrook runs in a west to east direction, consisting of three lanes for eastbound traffic and two lanes for westbound traffic. The speed limit is set at 70km/h. The road is sealed with asphalt and surface is in good condition.
24. There is no street-level pedestrian crossing at the T-intersection. There is a pedestrian overpass at the intersection of Duke Street and Ballarat Road, situated approximately 100 metres from the scene of incident.
25. Upon attending the site of the collision, Victoria Police, including Sergeant Montgomery ascertained that the road was wet. The road is straight without any obstructing vegetation.
26. Sergeant Montgomery observed that the streetlight did not adequately illuminate the T-intersection. There is only one streetlight on the northern side of Ballarat Road which illuminates the eastbound lanes. There is no streetlight on the southern side to illuminate the westbound lanes.
27. In her statement, Ms Spencer noted that it was raining all day on 10 August 2019, the road conditions were wet and dark. She stated that she took extra care and drove at an average speed between 60 to 70 km/h.
28. A nearby CCTV footage depicted that Mr Shawn Marion had only come into Ms Spencer's view at approximately one second prior to colliding into him, even though she had her vehicle's high beam on at the time.<sup>14</sup>
29. Police performed a preliminary breath and oral fluid test upon Ms Spencer at the scene, both returned negative results.<sup>15</sup> Subsequent toxicology analysis of Ms Spencer's blood sample did not detect any alcohol, common drugs or poisons.<sup>16</sup> There were no criminal charges laid against Ms Spencer.
30. At the time of the collision, Ms Spencer held an appropriate driving licence to operate her vehicle to the laws in Victoria. She has only one driving offence of disobeying traffic signal sin 2013.<sup>17</sup>

---

<sup>14</sup> CB, police summary.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

31. Ms Spencer's vehicle was inspected at the scene following the collision and was found to be in a roadworthy condition. There were no faults that would have caused or contributed to the collision.
32. In light of the circumstances of his passing, Sergeant Montgomery requested Dr Doorendranath Sanjeev Gaya, Clinical Forensic Physician from the VFIM to provide an expert opinion as to the effect of alcohol on Mr Shawn Marion. Dr Gaya provided a forensic medicine report of his opinion and findings dated 29 January 2020.
33. With regard to the Mr Shawn Marion's BAC, Dr Gaya provided the following opinion:
- "a BAC of 0.32g/100mL may manifest as any of the many effects associated with 'stupor' stage<sup>18</sup> of alcohol influence...It would have severely and adversely impacted...psychomotor skills. In turn, these would have significantly limited the deceased's [Mr Shawn Marion] ability to perceive and process environmental information and to physically interact with his environment".*
34. Sergeant Montgomery concluded that poor street lighting, lack of visibility and Mr Shawn Marion's high BAC were factors contributory to his passing.<sup>19</sup>

## COMMENTS

Pursuant to section 67(3) of the Act, I make the following comments connected with the passing.

35. Since there is no street-level pedestrian crossing at the T-intersection, Sergeant Montgomery postulated that pedestrians may use the median strip at the T-intersection as a means to cross Ballarat Road to avoid the "inconvenience" of accessing the nearest pedestrian overpass<sup>20</sup>. In combination with inadequate street lighting, I consider these to be a safety concern and as such a recommendation to improve the safety of the T-intersection is necessary.

## RECOMMENDATIONS

---

<sup>18</sup> In Dr Gaya's report, he explained that the clinical signs or symptoms of the stupor stage include general inertia, approaching loss of motor functions, markedly decreased response to stimuli, marked muscular incoordination, inability to stand or walk, vomiting, incontinence of urine and faeces, impaired consciousness, sleep or stupor.

<sup>19</sup> CB, police summary.

<sup>20</sup> That is situated approximately 100 metres east of the T-intersection.

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

1. With the aim of promoting public health and safety and preventing like deaths, I recommend that Maribyrnong City Council consider installing additional street lighting at the location at which the collision occurred.

## **FINDINGS AND CONCLUSION**

1. Pursuant to section 67(1) of the *Coroners Act 2008* I make the following findings:
  - a) the identity of the deceased was Shawn James Marion, born 6 December 1971;
  - b) his passing occurred on 10 August 2019 at 347-351 Ballarat Road, Braybrook, Victoria, 3019;
  - c) I accept and adopt the medical cause of death ascribed by Dr Victoria Christabel Mary Francis and I find that Shawn James Marion passed from injuries sustained as a pedestrian in a collision with a motor vehicle, in circumstances where the driver of the vehicle was unable to see Shawn James Marion lying on the road due to poor weather and street lighting conditions; and
  - d) I also find that Shawn James Marion was unable to remove himself from his fallen position on the road because, in all probability, his psychomotor coordination was comprised by his consumption of alcohol.

I convey my sincere condolences to Mr Shawn Marion's family for their loss.

Pursuant to section 73(1B) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

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

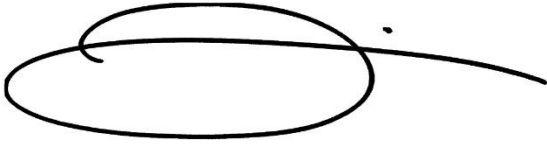
Aunty Colleen Marion

Sergeant James Montgomery, Coroner's Investigator, Victoria Police

Celia Haddock, Chief Executive Officer, Maribyrnong City Council

Transport Accident Commission

Signature:



AUDREY JAMIESON

CORONER

Date: 13 October 2022



---

NOTE: Under section 83 of the ***Coroners Act 2008*** ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.

---