



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

COR 2021 006934

FINDING INTO DEATH FOLLOWING INQUEST

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

Inquest into the Death of Samuel Kenneth Elsom

Delivered On:	26 May 2023
Delivered At:	Coroners Court of Victoria 65 Kavanagh Street, Southbank VIC 3006
Hearing Dates:	26 May 2023
Findings of:	Coroner Paul Lawrie
Representation:	No appearances
Counsel Assisting the Coroner	Lauren Bedgood, Senior Coroners' Solicitor
Keywords	Motor vehicle collision, attempted police intercept

I, Coroner Paul Lawrie, having investigated the death of SAMUEL KENNETH ELSOM and having held an inquest in relation to this death on 26 May 2023 at Southbank,

find that the identity of the deceased was SAMUEL KENNETH ELSOM born on 30 June 1991, aged 30 years, and the death occurred on 26 December 2021 at Chiltern-Rutherglen Road, Cornishtown, from:

1a: MULTIPLE INJURIES SUSTAINED IN A MOTOR VEHICLE INCIDENT

I find, under section 67(1) (c) of the *Coroners Act 2008* ('the Act') that the death occurred in the following circumstances:

On 26 December 2021, Samuel Elsom was the passenger in a vehicle being driven by Sean Scott¹ on Chiltern-Rutherglen Road, Cornishtown when Mr Scott lost control of the vehicle and it collided with a tree. Both occupants of the vehicle died in the collision. Post-mortem toxicology results indicate that Mr Scott had alcohol and cannabis in his system at the time of the collision.

INTRODUCTION

1. On 26 December 2021, Samuel Kenneth Elsom was 30 years old when he died in a motor vehicle collision at Chiltern-Rutherglen Road, Cornishtown.

THE CORONIAL INVESTIGATION

2. Mr Elsom's death 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.
3. 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

¹ COR 2021 6933

purpose of a coronial investigation is to establish the facts, not to cast blame or determine criminal or civil liability.

4. 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.
5. Victoria Police assigned an officer to be the Coroner's Investigator for the investigation of Mr Elsom's death. The Coroner's Investigator conducted inquiries on my behalf, including taking statements from witnesses – such as eyewitnesses, the forensic pathologist, and investigating officers – and submitted a coronial brief of evidence. The coronial brief also contains CCTV recordings which capture the lead up to the accident.
6. This finding draws on the totality of the coronial investigation into the death of Samuel Kenneth Elsom including evidence contained in the coronial brief. The brief will remain on the coronial file, together with the inquest transcript.
7. 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.²

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

Circumstances in which the death occurred

8. On 26 December 2021, Mr Elsom was the passenger in a silver 2010 model Hodel Cruze sedan with the registration number KS1993 (the Holden Cruze). This vehicle was being driven by Sean Scott, age 36, who did not hold a Victorian driver's licence and had never previously been issued with one. Initially they were driving in Mulwala, New South Wales.

² 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.

9. The Holden Cruze had been purchased by Mr Scott on 16 December 2021, but the registration was still in the name of a previous owner of the vehicle, Katelyn Shaw. Mr Elsom was seated in the front passenger seat and a German Sheppard dog was also in the vehicle.
10. Shortly before 8.00pm, Leon Kelly and his wife, Stephanie Kelly, observed the Holden Cruze driving along Spring Drive, Mulwala, New South Wales. Mr and Mrs Kelly were travelling with their children in a vehicle going in the opposite direction.
11. Mr Kelly stated that he was driving and he observed the Holden Cruze travelling at a fast rate of speed which he estimated to be over 100 km/h. The Holden Cruze appeared to lose control and veered into the lane Mr Kelly was driving in. Mr Kelly was forced to take evasive action to avoid a collision. The Holden Cruze also took evasive action but did not stop after this incident.
12. Mr Kelly turned his vehicle around and followed the Holden Cruze as it travelled towards Yarrowonga. He attempted to obtain the vehicle's registration whilst Mrs Kelly called emergency services to report the erratic driving. Whilst they were following the Holden Cruze both Mr and Mrs Kelly observed that it was still being driven erratically. Mr Kelly stated it was 'all over the road' and Mrs Kelly described witnessing another incident in Melbourne Road where the vehicle appeared to lose control again and then nearly hit a pedestrian.
13. Mr and Mrs Kelly stopped following the vehicle after it entered Thorn Street, Yarrowonga.
14. At 8.05pm a vehicle matching the description of the Holden Cruze was recorded on closed-circuit television (**CCTV**) travelling south on Thorn Street, Yarrowonga.
15. At 8.20pm, Leading Senior Constable Nicholas Rae and Senior Constable Kelsey O'Bryan were conducting divisional van patrol duties in Yarrowonga when they received a 'Keep A Look Out For' job for an erratic driver in the Holden Cruze. They patrolled Thorn Street, Yarrowonga and travelled to Bundalong, approximately 15 km east along the Murray Valley Highway, but could not locate the vehicle. LS/C Rae then drove back towards Yarrowonga.
16. At 8.47pm LS/C Rae and S/C O'Bryan were travelling west towards Yarrowonga on the Murray Valley Highway when their mobile radar was activated with a vehicle travelling

towards them at 121 km/h in a 100 km/h zone. At this point they were approximately 6 km east of Yarrawonga.

17. LS/C Rae pulled their vehicle over and activated their blue and red flashing lights to warn the motorist they intended to intercept them. LS/C Rae then observed that the vehicle matched the description in the notification they had received at 8.20pm. After the Holden Cruze passed them, LS/C Rae completed a U turn and followed it, at which point the Holden Cruze started to further increase its speed.
18. LS/C Rae notified police communications that the vehicle was evading them, that it had been travelling at 121 km/h in the 100 km/h zone, and that it was headed towards Bundalong.
19. Immediately after activating the lights on their divisional van, LS/C Rae and S/C O'Bryan observed the Holden Cruze swerve into the opposing lane of the road for no apparent reason. LS/C Rae became concerned for the safety of the occupants of the vehicle and the general public and decided that pursuing the vehicle further would be too high a risk. He switched off the red and blue lights to indicate to the driver that they were no longer in pursuit.
20. LS/C Rae continued to follow the Holden Cruze, whilst remaining at or under the speed limit. During this time, he observed the vehicle swerve into and out of the oncoming lane again and noted it was getting further away. LS/C Rae and S/C O'Bryan followed the Holden Cruze for approximately 6 km before they lost sight of the vehicle. They continued to patrol the area but were unable to locate it.
21. S/C O'Bryan notified police communications that they had lost sight of the Holden Cruze and were no longer following it. She provided the last known location of the vehicle.
22. At 8.56pm a vehicle matching the description of the Holden Cruze was recorded on CCTV in Main Street, Rutherglen, travelling south-east towards the Chiltern-Rutherglen Road.
23. At 9.01pm LS/C Rae and S/C O'Bryan were dispatched to an unrelated job at Woods Street in Yarrawonga. They arrived at this location at 9.22pm.
24. Brock Ornsby was driving at approximately 100 km/h on the Murray Valley Highway between Bundalong and Rutherglen when he observed a silver Holden Cruze approach his vehicle at a

high rate of speed from the rear before it ‘aggressively pulled out to the right and overtook [him]. No indicator, no checking for other traffic...’ Mr Ornsby estimated that the car was travelling up to 160 to 170 km/h. He observed the car to be ‘all over the road, swerving over both lanes and going into the dirt on the left hand side.’

25. Shortly after 9.00pm, Jean Lyons was driving in her vehicle along the Chiltern-Rutherglen Road towards Springhurst at approximately 95 km/h when she observed a vehicle come up close behind her. She initially sped up but then ‘the driver started to move out to overtake me so I decided if he was happy to overtake then I would just let him go and then I went back to my normal driving speed.’
26. Approximately one to two kilometres later, shortly before 9.17pm, Ms Lyons drove around a sweeping right hand bend in the road and came upon an accident in which a vehicle had collided with a tree. She stopped and went up to the wrecked vehicle. She attempted to get a response from the occupants but heard nothing.
27. Ms Lyons contacted emergency services at 9.17pm. Members of Ambulance Victoria, Victoria Police, and the Victorian State Emergency Service (SES) attended a short time later. Mr Scott and Mr Elsom were declared deceased at the scene.
28. Detective Sergeant Jenelle Hardiman from the Major Collision Investigation Unit of Victoria Police attended at the collision scene and conducted an examination and investigation. During this investigation it was noted that both occupants of the vehicle had been wearing seatbelts, no airbags were deployed, and the hand brake in the car was in the up position, meaning it was engaged.
29. Detective Hardiman stated that between 1.5 to 2.5 seconds prior to the collision the Holden Cruze was in fifth gear and travelling at approximately 142 km/h when Mr Scott lost control of the vehicle. The vehicle commenced rotating anticlockwise and continued off the road to the left where it began to roll, sliding on the driver’s side of the car before impacting a tree, roof first, at approximately 128 km/h.
30. Detective Hardiman was unable to determine why Mr Scott lost control of the vehicle. She noted that based on the position of the vehicle at rest, the handbrake could only have been

engaged prior to impact. She stated it was possible the loss of control was as a result of hand brake application whilst travelling at speed, however it was also possible that the hand brake had been applied after the loss of control. She noted that tyre marks visible on the road surface could be consistent with a hand brake application but did not contain enough characteristics to determine this with certainty.

31. Chiltern-Rutherglen Road at Cornishtown is a two-way, two lane, undivided road with a single lane in each direction. The road runs generally north to south between Chiltern and Rutherglen. At the area of the road where the incident occurred, the opposing lanes are divided by double white lines. The outer edges of the travelling lanes are marked by single solid white fog lines that run along the edge of the road, and very narrow bitumen shoulders which vary in width up to 0.6 metres. Travelling south, the road had a gentle right curve prior to a short straight section with a gentle grade down slope. The south bound travelling lane was approximately 3.0 metres wide and the north bound lane was approximately 3.3 metres wide. The speed limit was 100 km/h.
32. The road has a bitumen surface which was in excellent condition. There were no obvious faults or features that could have caused or contributed to the incident. There were no overhead streetlights, and the area would be classified as rural. At the time of the incident, the road was dry and the weather was clear.
33. The vehicle involved in the incident was inspected by Victoria Police mechanic, Senior Constable Brett Gardner, on 18 January 2022. He identified no mechanical fault with the vehicle that would have caused or contributed to the collision.
34. Post-mortem toxicology undertaken with respect to Mr Scott indicated the presence of alcohol (0.20g/100mL) and cannabis (delta-9-tetrahydrocannabinol and 11-nor-delta-9-carboxy-tetrahydrocannabinol).
35. Dr Sanjeev Gaya from the Victorian Institute of Forensic Medicine (**VIFM**) reviewed Mr Scott's toxicology report and noted that the relative risk of a collision is found to rise exponentially as the driver's blood alcohol content (**BAC**) rises. Dr Gaya also noted that cannabis is known to have a profound adverse effect on driving skills. Dr Gaya stated that the

detected concentration of alcohol would have adversely impacted Mr Scott's driving and was at a level where the risk of collision was increased many-fold and where numerous studies have shown significant degradation in critical cognitive skills resulting in impaired driving. With the BAC level identified, Dr Gaya stated that Mr Scott would have been incapable of having proper control of a motor vehicle. Further, if the cannabis had been consumed in the few hours preceding the collision, Dr Gaya noted this would have further compounded the detrimental effect of alcohol on Mr Scott's ability to drive.

Identity of the deceased

36. On 30 December 2021, Samuel Kenneth Elsom, born 30 June 1991, was identified via fingerprint identification.

37. Identity is not in dispute and requires no further investigation.

Medical cause of death

38. Forensic Pathologist Dr Melanie Archer, from VIFM, conducted an examination on 29 December 2021 and completed a written report of her findings on 7 February 2022.

39. Dr Archer stated that examination of the post-mortem CT scan showed extensive comminuted calvarial and facial fractures, fractured right angle of mandible and left fractured coronoid process. There were diffuse subarachnoid haemorrhage and pneumocranium. Fractures of the right clavicle, right scapula and left lateral ribs three to seven were identified. There was bilateral pneumothorax and traumatic pneumatocoeles with bilateral haemothorax.

40. The external examination showed numerous soft tissue injuries, in keeping with the underlying skeletal fractures.

41. Dr Archer noted that the injuries were of a nature that would have caused rapid unconsciousness and death.

42. The post-mortem toxicology results did not identify the presence of alcohol or any common drugs or poisons.

43. Dr Archer provided an opinion that the medical cause of death was 1 (a) MULTIPLE INJURIES SUSTAINED IN A MOTOR VEHICLE INCIDENT.

44. I accept Dr Archer's opinion.

FINDINGS AND CONCLUSION

45. Having held an inquest into the death of Mr Elsom and having applied the appropriate standard to the available evidence, I make the following findings, pursuant to section 67(1) of the *Coroners Act 2008* (Vic):

- a) the identity of the deceased is Samuel Kenneth Elsom, born 30 June 1991;
- b) the death occurred on 26 December 2021 at Chiltern-Rutherglen Road, Cornishtown, from 1(a) multiple injuries sustained in a motor vehicle incident;
- c) the death occurred in the circumstances described above.

46. Having considered the available evidence, including a supplementary statement provided by Detective Senior Constable Samuel Spooner of the Major Collision Investigation Unit, I am satisfied that there was a sufficient gap in time and distance between the attempt to intercept Mr Scott's vehicle by police on the Murray Valley Highway near Yarrawonga and the collision to conclude that the collision did not occur in the context of a police pursuit or an 'extended follow'. I note that the collision occurred approximately 30 minutes after the attempted intercept, at a location approximately 51km away. As such, I find that the actions of the Victoria Police members were not proximate or otherwise causally connected to the collision.

47. Pursuant to section 73(1) of the Act, this finding will be published on the Internet in accordance with the rules.

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

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

Lindsay Elsom, Senior Next of Kin

Marlene Ryan, Senior Next of Kin

Rebekah Elliot, Applicant

Sergeant Cameron Merrett, Coroner's Investigator

Signature:



Coroner Paul Lawrie

Date: 26 May 2023



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 inquest. 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.
