



NEW SOUTH WALES STATE CORONER

Name of Deceased: Glenn Punch

File Number: 2012 / 330521

Hearing Dates: 8-10 October 2013

Location of Inquest: NSW State Coroner's Court, Glebe

Date of Finding: 29 October 2013

Coroner: NSW State Coroner, Magistrate Jerram

Representations:

- Peter Hamill assisted by Ian Fraser and instructed by Anders Mykkeltvedt of the *Crown Solicitor's Office* appeared to assist the Coroner
- Mr Boulten SC assisted by Ms Kirsten Edwards on behalf of the distributing company and its director
- Mr James SC assisted by Mr Higgins on behalf of Nauti and Nice
- Mr Breeze on behalf of Mr David Ross
- Mr Eaves on behalf of Ms Pauline Wong

FINDING AFTER AN INQUEST INTO THE DEATH OF **GLENN PUNCH** .

Evidence was heard for four days from 8 October 2013 into the death of Glenn Punch (hereafter GP), who died on October 23, 2012 at the Intensive Care Unit of the Prince of Wales Hospital at Randwick, Sydney.

Counsel Assisting the State Coroner was Peter Hamill of Senior Counsel, assisted by Ian Fraser and instructed by Anders Mykkeltvedt of the Crown Solicitors Office. Mr Boulten SC appeared for the distributing company and its director, Mr X with Ms Kirsten Edwards, and Mr James SC for Nauti and Nice, a chain of adult retail stores, and its employees and managers, with Mr Mark Higgins. Mr Breeze of Counsel sought leave on the third day to represent David Ross, solicitor, and Mr Eaves similarly appeared for Ms Pauline Wong.

THE FACTS

Glenn Punch was 44 when he died. He was a long-distance truck driver, who had a relationship with Ms Rachael Hickel who had been driving and living with him. GP used 'recreational' drugs such as amphetamines throughout his last years. He tended to administer drugs intravenously, while Ms Hickel, who was also a recreational user, swallowed them.

The chain of 9 adult stores in the Newcastle area called Nauti and Nice is owned by a Mr Colin Wynn and managed by his son Mathew. At the end of 2011, having been approached by a man named Brett on behalf of a company apparently called "Taking Over the World", Mathew Wynn ordered \$5000.00 worth of 'incense', accepted by all to be a synthetic imitation of cannabis. In 2012, orders were also placed for types of powders of Smokin Slurry, variously called Hoe, or Scrubba and other names, and euphemistically known as 'bath salts'.

All these substances were sold in the nine stores of Nauti and Nice, more or less openly. They had an avid and profitable market. It became well known in the region, through the media and by word of mouth, that they could be bought 'legally' for about \$150.00 per gram. Some stores reaped up to \$7000.00 daily from those sales. According to two witnesses, though not substantiated by any document, the Local

Area Health District pronounced the synthetic drugs as 'legal but lethal'. Furthermore, the retailers held letters signed by an employed solicitor at the law firm Northside Law, asserting that at least Hoe was legal and Nauti and Nice management claimed to have held similar letters in regard to the other substances purchased from the range, although these were not produced to the inquest.

Ms Hickel and GP were told by friends about the synthetic drugs and went to a Nauti and Nice store at Thornton to enquire initially about a reputed \$10 pill. The shop assistant told them that they were all legal products, but 'with the sensation you get from an illegal drug'. The couple said they wanted an effect like 'speed' and were recommended 'Smokin Slurry Scrubba' powder by the shop assistant.

Ms Hickel claims the assistant suggested injecting it and assisted GP in doing so (but this is disputed by the assistant, Cameron McEwen). GP's behaviour after injecting became very strange, and included his taking off all his clothes. Ms Hickel flushed the remainder of the drug because of its effect.

Despite this, they both purchased Smokin' Slurry Scrubba several more times, with the same, and hallucinatory, effects. GP was injecting Ms Hickel as well as himself. Ms Hickel described the results of taking the drug as causing her to feel really hot, right through to the head; heart racing; feeling dehydrated. She also described hallucinations such as seeing people inside the house, with their hands waving, in the bath and under the beds, and said she experienced severe fear and paranoia, lasting for hours. On 19 October 2012, the penultimate occasion on which the couple took 'Smokin' Slurry Scrubba' powder, the couple both injected the drug in a motel room. GP again stripped off his clothing, and from the accounts of Ms Hickel and motel staff, displayed paranoid and bizarre behaviour over the following hours.

On Sunday October 21, 2012, they bought more 'Smokin' Slurry Scrubba' powder, from the Rutherford store of Nauti and Nice. Returning to the truck, GP mixed some of it with water and injected it in each of them. Ms Hickel described this liquid as 'tan' whereas previously it had been clear. She then overbalanced and fell out of the rig, with GP, who had by this time once again taken off all his clothes, falling out after her. They each ran in separate directions, she down the highway with her t-shirt off and yelling, and he yelling, stumbling and 'zigzagging' towards a nearby shipping yard (FORGACS). Ms Hickel was cared for by motorists who called an ambulance. The two did not see each other again.

GP was seen to somehow scale an 8' security fence topped with barbed wire and run about manically inside the yard, before running into an old administration building. The security guard, Vincent Hagens, was called. He called police and went after the man, seeing him bashing the glass exit door with an aluminium ladder. A struggle ensued in which GP had the better of Hagens, as although they were of similar height and weight, GP was displaying extraordinary strength. They fell down a flight of stairs, with GP biting Hagens on the wrist at one point. Luke Riding, an employee at the yards came to assist.

Ultimately, Hagens and Riding managed to hold GP on the ground by his arms and using their knees. GP continued to display 'super strength' and foam at the mouth. After a few minutes (between 5 and 10 on the evidence), GP suddenly stopped struggling. and went limp. His breathing seemed to have stopped. As Riding went for help, the police arrived, and they began CPR, later continued by the paramedics. GP never regained consciousness. Although hospitalized, he died in the Intensive Care Unit of Prince of Wales Hospital, on Tuesday October 23, 2012 after life support was discontinued.

THE ISSUES

- 1) What was the cause of Glenn Punch's death?
- 2) Was the drug 'Smokin' Slurry' Scrubba (its main constituent being Alpha PVP) being sold legally or was it proscribed under the Drug Misuse and Trafficking Act?
- 3) Should there be any consideration of any referral to the Director of Public Prosecutions under s 78 of the Coroners Act 2009?

THE EVIDENCE

As to the first issue, GP's cause of death, Dr Schwartz, pathologist, in her Autopsy report, identified the cause initially as the "complications of drug toxicity, most likely a stimulant of the amphetamine family'. When a supplementary toxicology report was received, Dr Schwartz revised the cause to "Alpha-pyrro-lidino-pentio-phenone Toxicity' (Alpha PVP), the active ingredient in "Smokin Slurrie-Scrubba Scrubba, an opinion confirmed by Dr Betty Chan, an emergency Physician and Toxicologist at Prince of Wales Hospital, and by Dr William Allender, Pharmacologist. Three other experts gave concurrent evidence (known as 'hot-tubbing') with Drs Schwartz and Allender to the inquest: Dr Duflou, the senior forensic Pathologist at Glebe, Professor Alison Jones, Toxicologist, and Professor Iain McGregor, a Neuro-pharmacologist.

Dr Duflou was unable to be certain of the precise cause of death. He agreed that one possible cause was simple overdose of the drug Alpha AVP but points out that it is so uncommon that there is almost no medical literature on its effects, although all agreed that the lack of knowledge may be due to the inability of the DAL to screen for that drug. He raised the possibilities of Serotonin Syndrome, Excited Delirium (based on observed symptoms and behaviour of GP), and Restraint Asphyxia (GP's having been restrained face down with his limbs secured or pinned). As he said, while 'restraint asphyxia' is actually a cardiac arrest as a consequence of being held down, it usually occurs in the presence of other risk factors including drug or alcohol intoxication, obesity or chronic disease. He did state that in all likelihood, had GP not consumed Alpha PVP, he would not have died.

Professor Jones disagreed that positional asphyxia was a possible cause of death, as did Professor McGregor. They summarised that there was no consensus to support that theory. Professor Jones view was, that the fact that GP injected the drug was the most important factor, raising the risk of toxicity hugely as a bigger dose struck the system, leading to a massive outburst of adrenalin, then to cardiac arrhythmia and consequently cerebral oedema. She rejected excited delirium as a diagnosis as such, although she agreed that GP had shown all the signs of major agitation.

Ultimately, there were no strong differences of view amongst the five experts. Positional asphyxia remained the unanswered question, but the formal cause of death which I shall give, was essentially accepted by them all.

I come to the issue of the legality or otherwise of sale of these synthetic drugs. At the time of Mr Punch's death, Alpha-PVP was not specifically listed in Schedule 1 of the Drug Misuse and Trafficking Act. However, in the opinion of Dr Allender, due to its psychotropic qualities and its chemical structure, Alpha-PVP was caught by the "analogue provisions", and was therefore illegal by virtue of it being an analogue of Methcathinone, a substance listed at that time in Schedule 1.

The death of GP and of the teenager who recently jumped off a balcony after consuming a synthetic drug have been of considerable public interest and attention, resulting, very shortly before this inquest commenced, in legislative changes outlawing 'psychoactive substances' and adding Alpha PVP to Schedule 1 of the Drug Misuse and Trafficking Act. In other words, there now is no need for this court to consider making recommendations under s 82 of the Coroners Act relating to these drugs, as they are now very clearly prohibited.

The evidence however, is that the distributors, retailers and consumers of synthetic drugs believed them to be legal in the months leading up to GP's death. There may well have been an element of 'wilful blindness' in the forming of this belief, but it was certainly enhanced, on the part of Nauti and Nice, and the distributing company by letters which have been tendered as evidence during this inquest signed by a solicitor at a firm called Northside Law. Those letters were addressed to the distributor, and provided to retailers by them and state boldly that there is no prohibition on the sale, possession or use of a product called Smoking Slurrie 'Hoe', whose active ingredient is now known to be Alpha PVP.

Mr Wynn, manager of Nauti and Nice asserted that he relied on those letters in selling the drugs. He further maintained that "everybody, even the Police Commissioner and Area Health, were publicly speaking of those drugs as legal, and the media was reporting that".

The Principal solicitor of Northside Law, Mr David Ross, gave very disturbing evidence which strongly suggested that because he had not seen the word Alpha-PVP in the Schedule to the Act, he had assumed it was not proscribed and had directed the letters to be written accordingly. Mr Ross' knowledge and consideration of the analogue provisions appears to have been cursory at best, and he told the inquest that he did not seek the opinion of a chemist or pharmacologist before he wrote the letters. His employed solicitor Ms Wong seems to have relied on the 'Nuremberg defence' that she was just following orders, a worrying position for an admitted practitioner, albeit a relatively junior one, to take.

Consequently the manufacturer and the retailer did hold solicitors' letters clearly stating that "We have researched the law in the Commonwealth and (each) State,. As at 2 October 2012, there is no prohibition on the sale, possession or use of any of those active ingredients in the said State" and relied on those letters to distribute and sell 'Hoe' (of which the mentioned 'ingredient' was Alpha PVP, the same as that of Smokin Slurry Scrubba).

Shop assistants working at the Nauti and Nice shops included Cameron McEwen and Jessica Cox, both of whom gave oral evidence. Both agreed that the packets of drugs were marked 'Not for Human Use' although they knew that they were being bought for exactly that purpose. McEwen admitted that if asked, he would advise "Mix it with water or smoke it". Individual stores were each making up to \$7,000.00 daily at the height of the few months sales. McEwen did recall GP and Ms Hickel's initial visit although he differed with Ms Hickel's recollections of what he said and did in assisting them. These differences overall do not seem to be relevant, as there can be no doubt that GP, having used the drug several times, was continuing to exercise his choice by further ingestion.

McEwen himself openly admitted to having snorted and drunk Scrubba (which, he said, was stronger in effect than Hoe), and also intravenously. He described his reaction to the intravenous use as surprising, with hugely raised energy levels and a general euphoric feeling, stronger than amphetamines, which he had used regularly. He told the court that he had thought "I can't believe this is legal' but had never discussed either the legality or the effects and health risks with his employers, because "I didn't want them to know I was using the product".

Jessica Cox worked for Nauti and Nice for about three years from the time she was 18. She said she herself had never used any of the drugs, but had witnessed the manic behaviour of several customers who did. She described one woman user of Smokin Slurry, asking her if she could 'eat her face' and then going out on to the road and eating from a dead animal. No one in authority had ever asked her to warn or advise customers.

Mathew Wynn, the Manager of the chain Nauti and Nice (and son of the owners) stated that he had withdrawn the sale of all synthetic drugs, both 'incense' and 'bath salts', the latter immediately after Glenn Punch died. He confirmed his belief that the products were totally legal, because not only had a person named Brett, a representative of a distributor, told him so, he had seen the letter from Northside Law stating that Scrubba was not prohibited in any way. That letter was not produced, but apparently was in the same terms as the correspondence (which is in evidence) regarding Hoe. He quoted a statement he had read from the Area Health Service saying that "it was legal but lethal" and admitted that for commercial reasons, he had ignored the second adjective.

Several employees of FORGACS, a large dockyard, gave evidence of GP's last minutes, from his first being seen naked outside the yard's perimeter, his jumping somehow an 8 foot fence topped with barbed wire, and his smashing his way into the administration building, to his ultimately struggling violently with the security officer and his final restraint by that officer and another employee on the floor of the building. The picture presented is of someone who has intruded in to a private area and continued in a rampage through buildings and in acts of extreme aggression to the official who tried to contain him.

Luke Riding went to the aid of the security officer, Vince Hagens. He found the man and Vince (the security officer) on the bottom floor of the building (they had rolled down the stairs), with glass smashed upstairs, and Vince's shirt ripped, with Vince attempting at that stage to get the man on the ground. He described taking the man's left arm by the wrist with his left hand and with his right hand under the man's armpit, helping Vince, who had the man's right arm behind his back, get the man to the ground. GP was face-down the whole time, with Riding continuing to hold his left arm as before, and placing his right knee on top of the left shoulder. GP was 'frothing and gibbering' and showing 'super strength'. Riding denies any strong pressure being used. Just as the police arrived, GP made a clucking noise and stopped

breathing. Vince Hagens described the man flying at him when he first approached, pushing him, Vince, downstairs by holding on to him, thrashing and screaming. Hagens is not a tall or solid man, and it seems Punch overpowered him. Furthermore, Hagens had never before had to use violence or force in his security work. He agreed with Riding's description of their joint hold on GP, and also denied that great force was used by either of them, and that he held his torso across GP's back.

Evidence from police officers and paramedics who attended the scene at that stage was consistent.

Rachel Hickel was Glenn Punch's partner. She was candid about buying the drugs in full belief that it was legal, and in using them, allowing GP to inject her with the Smokin'Slurry. She and GP had used amphetamines recreationally, and had been told by a friend that Nauti and Nice sold legal pills with an amphetamine effect. They initially went to the Thornton store seeking what they believed would be a \$10 pill. She claimed that Cameron McEwen persuaded them to buy the much more expensive Smoking Slurry Scrubba and assisted GP in injecting it as a sample, although McEwen does not agree with this at all. Significantly, she described the colour of the liquid mixed up for the last useage by herself and GP as tan, different from the earlier mixes which were clear.

As the medical experts surmised, it is possible that this product varied from that which they had both used earlier, although it was sold under the same name. She described the effects of the drug from the first use on in a graphic and frightening way. GP emerged 'not him, with his eyes all dilated'. Both of them felt unbearably hot, with racing hearts and delusions of threatening people in the house under the beds and in the bath with their hands reaching out. She was horribly dehydrated, but unable to perform the actions necessary to get a glass of water. GP took off all his clothes and though twitchy, went quiet. On one or two occasions, Ms Hickel rang the police to report strangers in the house or garden (although police records show that these calls occurred before the dates the couple began using the synthetic drugs). Despite these experiences, both she and Glenn Punch continued to buy and use the drugs.

CONCLUSIONS

The answer to the question of whether the drug in fact was being distributed, sold and consumed legally is from all the evidence, no. The constituent Alpha PVP was not at the relevant time proscribed in the Schedule to the Drug Misuse and Trafficking Act under its full name, however on the unchallenged evidence of Dr Allender was caught by the analogue provisions as an analogue of Methcathinone, which did appear on the schedule.

However, I accept that those involved primarily appear to have believed that it was legal, largely because of the incorrect advice given (and set out in writing for that specific purpose) by Northside lawyers that it was not within that schedule and was therefore not an illegal drug. As we have heard, that advice was given without pharmaceutical advice, research or understanding of the meaning of the word 'analogue'.

It seems to have been based upon an extremely sketchy reading of the relevant parts of the Act without proper interpretation or investigation. Mr Breeze submits that Mr Ross was 'honest but naïve'. Clients are entitled to expect a higher standard of accuracy from legal practitioners. Similarly, Mr Eaves argues on Ms Wong's behalf that she was relatively newly admitted as a solicitor and under the direct control of Mr Ross. That may be so, but she put her signature to the letters without apparently any knowledge or research of her own; given the weight of its consequences, it is horrifying to think that members of the legal profession gave such advice without, it seems, due care. I intend to refer both Mr Ross and Ms Wong to the Legal Services Commissioner for investigation in to their conduct.

Ms Edwards asks me to consider whether it was in fact Smokin' Slurry which GP took fatally on the day of his death, as we were told by Ms Hickel of its different colour. Nevertheless, both Ms Hickel and GP's reaction to the final injection was only marginally worse than their previous reactive behaviour as described by Ms Hickel. The drug came from Nauti and Nice, and was marketed under the same name. It was clear from the autopsy that the constituent was Alpha PVP. Furthermore I can not be certain on balance that Mr McEwen gave the advice Ms Hickel claims, as her evidence was obviously not always accurate.

Mr Higgins, submitting for Nauti and Nice on behalf of Mr James, argued that as the Minister for Fair Trading did not ban the substances until June 9, 2013 it would be unreasonable to expect small retailers to make their own pharmaceutical enquiries, particularly in light of the solicitors' letter. He further pointed out that they did not promote the drugs, just sold them, and agrees that there is insufficient evidence for me to find that any advice was given to customers by assistants.

I do not intend to make any referral to the Director for Public Prosecutions under s 78 of the Coroners Act. Whilst the public may look askance at the attitude of the distributing company and Nauti and Nice management, in the circumstances outlined I can not consider that the evidence reaches the standard required under s78 to consider whether an indictable offence related to the cause of Glenn Punch's death was committed by any involved person or persons.

I will make no Recommendations under s 82(2)(a) of the Act, as Parliament has very recently clarified the legal position in respect of Alpha-PVP and similar drugs. Alpha-PVP and similar products are now explicitly proscribed.

Finally, I am comfortably satisfied, on the balance of probabilities, of GP's cause of death.

After hearing the evidence of five highly qualified experts, who did not agree on all points, but who ultimately came to an almost unanimous agreement, it did not seem to me that the issue of positional asphyxia could stand as the primary cause of death. The evidence of Hagens and Riding was convincing, and was confirmed by other witnesses. The autopsy showed clear evidence of the drug. I don't ignore the possibility that the restraint contributed to the death, although in saying that, I must also say that it is impossible to see what else could have been done to prevent GP's manic and violent rampage through the building. Nor did Dr Duflou, in disagreeing to some extent with Professor Jones, ever claim that the restraint asphyxia was the sole cause, and in fact agreed that GP would not have died had he not taken the drug. I accept there were several factors possibly leading to his death.

I therefore intend to make the following formal finding:

FORMAL FINDING

That Glenn Punch died at 8.23 am on October 23, 2012 at Prince of Wales Hospital ,
Randwick, NSW of cardiac arrest and cerebral oedema consequent upon ingestion of
a synthetic drug known as 'Smokin Slurry' or "Scrubba' containing the chemical
Alpha PVP, and possibly associated with his being restrained.

Magistrate Mary Jerram
NSW State Coroner

October 29, 2013
Chambers, Glebe.