



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Aoni Peng
Hearing dates:	22-23 September 2015
Date of findings:	23 September 2015
Place of findings:	State Coroners Court, Glebe
Findings of:	Magistrate Michael Barnes, NSW State Coroner
Catchwords:	CORONIAL LAW – manner and cause of death; motor vehicle running down case; referral to DPP
File number:	2014/79870
Representation:	Senior Sgt Sasha Harding, Counsel Assisting the Coroner. Mr Tim Gartelmann instructed by Mr William O'Brien on behalf of Mr Timotheos Ioannou.
Non publication order:	None

Findings:	<p>The identity of the deceased The person who died was Aoni Peng.</p> <p>Date of death Ms Peng died on 14 March 2014</p> <p>Place of death She died in Westmead, NSW.</p> <p>Cause of death The cause of her death was multiple internal injuries.</p> <p>Manner of death Ms Peng died from injuries she sustained when she was walking across a road near where she was living at Berala on her way to university and she was struck by a car.</p>
Recommendations:	None

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*The Coroners Act in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of **Aoni Peng**.*

Introduction

On Friday the 14 March 2014, Ms Peng was walking from her student accommodation in Berala to the train station to catch a train to Redfern Station near the University of Sydney where she was studying. In order to reach the train station she walked along Woodburn Road and through the intersection of Tilba Street and Woodburn Road. As she crossed Tilba St she was struck by a car turning left at the intersection. No one other than the driver witnessed the crash and he has not been able to explain how it occurred. Ms Peng was rushed to hospital by ambulance but died soon after arriving there.

The inquest has focussed on how the collision between Ms Peng and the car that ran her down occurred.

The evidence

Social history

Aoni PENG, was born on the 3 January 1997 in Hubei, China. She arrived in Australia on the 22 February 2014 on a student visa. Aoni was studying a Bachelor of Science at the University of Sydney. She was 17 years old when she died.

During the short time Aoni had been in Australia, she contacted her family daily, either by phone call or text message. On the day of her death, she texted her mother shortly before 8.00am to tell her that she had arisen. Her parents knew she had a lecture at 10.00am that day.

When she did not contact them at midday as had been her practice since arriving in Australia, they became worried. When they could not make contact with Aoni on her mobile phone they contacted the education agent who had arranged her student visa. That woman told them of her death.

Aoni's parents came to Australia, to identify their daughter's body and to arrange her funeral. The investigating police officers gave them their daughter's personal property found at the scene of the accident and explained as best they could how the crash occurred.

It is obvious that Aoni was part of a loving and supportive family. I offer her parents and siblings my sincere sympathy and condolences for their loss.

The crash

On 14 March 2014, Aoni left her accommodation shortly after 9:00am and began walking south on Woodburn Road, Berala bound for the Berala train station. She was walking on the footpath along the western side of the road. The weather was clear and bright, and no rain had fallen in the relevant period.

Call charge records from her mobile phone indicate that at 9.14.29am she accessed an internet site from the phone. It is impossible to say what site she accessed or how long she was connected to it because there was no further usage recorded on the phone from that point onwards.

Timotheos Ioannou is a 69 year old pensioner who lives in Tilba Street, Berala. On the morning of the crash he drove his silver Toyota Camry from his home to the Woolworths shopping centre in Woodburn Road, adjacent to the train station. After shopping there for a few minutes he began driving back home heading north along Woodburn Road. When he reached the intersection with Tilba Street, he stopped at the round-about to check there was no traffic coming from his right before proceeding to turn left.

He continued; *"As I turned left, I don't know, two, two and half meters in front of me, I saw a girl... in front of me... stuck on the front of the car. I hit the brakes, but it wasn't enough. It, it was... it didn't save her."* When questioned about whether he saw any cars or people when he stopped at the roundabout he said, *"No."* When asked; *"Did you only look to the right?"* he said; *"Usually I look to the right, cause that's where the cars are coming from."* When asked *"Do you remember whether you looked to the left?"* Mr Timotheos said, *"No, when I turned the car to the left, I saw it right on top, when I turned, when I turned the car... I saw it right on top of the.... I mean, I don't know where she came from. I, I don't know. Did she come from the right, did she come from the left? I don't know."*

He was asked; *"When you first saw her, where was she?"* And he answered; *"Ok. She was in front of the car, standing."*

When the investigating officer asked Mr Ioannou where he was looking when he started turning left in Tilba Street he said, *"On, on the street, on Tilba."* The investigator continued; *"So, how far, from the time you put the accelerator down, to, to turn left, how far had you travelled before he saw the girl?"* Mr Ioannou said; *"No even a second."*

When asked which part of Ms Peng's body he saw immediately before he hit her, Mr Ioannou said *"I saw her left side"*, and that *"She was looking at the shops."* This leads me to conclude she was facing south.

Mr Ioannou's version of events is largely corroborated by the only other motorist in the vicinity at the time of the collision. Michael Somerville was driving south on Woodburn Road at the relevant time. As he approached the intersection with Tilba Street he saw a car I accept what that driven by Mr Ioannou. Mr Somerville said that as that car and his approached the roundabout from opposite directions, he noticed the other car had its left hand indicator illuminated. He also said he car was travelling at a safe and steady speed and *"it certainly wasn't speeding."*

As Mr Somerville approached the roundabout he looked to the right and saw no cars or pedestrians. He said his car was exiting the southern side of the roundabout as Mr Ioannou's started to turn left into Tilba Street. Again, it did not appear to be speeding. Almost immediately, Mr Somerville heard a series of thuds that caused him to look in the direction of Mr Ioannou's car. He saw a person on the ground near the car. He realised what had happened and went to help.

At the time of the incident Sarah Ngo was walking east along the southern footpath of Tilba Street approaching the roundabout. She was speaking on her mobile phone to a friend and had earphones in.

She heard a loud bang and looked up to see a girl in contact with a car facing her near the roundabout. In her statement she said the girl was on the windscreen of the car. In evidence she described what she saw and drew a diagram. As it is clear she recalls seeing Ms Peng on the bonnet of Mr Ioannou's car near the windscreen. She heard the girl scream out. She saw her roll off the car onto the ground and the car ran over her, before stopping.

Neither Mr Somerville nor Ms Ngo heard the sound of car brakes being applied or a horn being sounded.

Mr Ioannou got out of the driver's door of his vehicle and he saw that there was a smashed mobile telephone on the road near the open driver's door. He saw Ms Peng was then underneath his car.

Ms Ngo terminated her call and ran towards the crash scene. As she did so she called 000. It took some time for the call to be connected but when it was she spoke to an operator who asked her questions and gave her instructions. Ms Ngo relayed these to Mr Somerville who was in attendance by the time she arrived at the car.

An ambulance arrived on scene at 9.45. After being given emergency treatment Ms Peng was transported to Westmead Hospital. She was admitted to the Emergency Department at 10.10am. Anoi underwent emergency surgery to try and re-start her heart but sadly, this was unsuccessful and she was declared deceased at 11.27 am.

Investigation

Police were quickly on the scene. For reasons not adequately explained during the inquest, officers from the Crash Investigation Unit did not attend. Nevertheless, I am satisfied that matter was effectively investigated by Detective Sergeant Houldin. All relevant witnesses who could be located were interviewed and a plan was prepared of the scene.

An autopsy undertaken by an experienced forensic pathologist found multiple injuries consistent with Ms Peng being struck and run over by a car. The pattern of injuries did not enable a determination of which side of Ms Peng was first impacted by the car.

A mechanical inspection of Mr Ioannou's vehicle revealed no defects that might have contributed to the collision.

From the position of the car after it came to a stop after the collision, it is possible to estimate that it had travelled between 5 and 10 metres from where it was stopped at the roundabout when the collision occurred.

Mr Ioannou denied he had his mobile phone with him at the time of the fatal incident and inspection of its call and text logs indicated it had not been used at the relevant time.

Inspection of the call charge records for Ms Peng's phone showed an internet connection was made at 9.14.29. Inspection of Ms Ngo's phone records showed the 000 call was connected at 9.15.45.

Conclusions

Having considered all of the evidence in the brief and the oral evidence presented to the inquest I am satisfied to the requisite civil standard of proof that the following chain of events led to Aoni Peng's death:

- I. At about 9:15am Mr Ioannou approached the roundabout at the intersection of Woodburn Road and Tilba Street Berala from the south.
- II. He was travelling at or below the speed limit on Woodburn Street as he did so.
- III. Shortly before he stopped at the stop line Mr Ioannou activated his left hand indicator.
- IV. As Mr Ioannou was driving north along Woodburn Road, Ms Peng was walking south on the same road along the western footpath approaching the roundabout.

- V. Mr Ioannou stopped at the stop line for as long as it took for him to be satisfied there was no traffic approaching from his right.
- VI. He turned left onto Tilba Street without looking to his left, his intended path of travel, until after he had set the car in motion and travelled at least 5 metres.
- VII. At about the same time Mr Ioannou arrived at the roundabout, Ms Peng stepped off the northern footpath of Tilba Street.
- VIII. It is unclear why she did not see Mr Ioannou's car and recognise the danger it posed to her. However, it is likely she was using her mobile phone at the time.
- IX. When Mr Ioannou looked down Tilba Street soon after moving off from the roundabout, Ms Peng was directly in front of his car.
- X. Allowing for a normal reaction time, he was not able to brake before he hit her.
- XI. He struck her causing her to come up onto the bonnet of his vehicle.
- XII. He then braked and she fell off the car onto the road.
- XIII. Before the car stopped, the left hand front wheel passed over Aoni's torso.
- XIV. The car stopped with Aoni partially underneath it - she was between the front and back axle and her head was protruding towards the southern side of Tilba Street.
- XV. She was conscious but severely injured.
- XVI. Paramedics were called and arrived reasonably promptly.
- XVII. After attempting to stabilise Ms Peng, she was rushed to Westmead hospital, where, despite appropriate, aggressive treatment, she died at 11.27 am.

In summary, I conclude that the collision between the pedestrian and the motor vehicle occurred because neither the pedestrian nor the car driver was keeping sufficient lookout. Had either been doing so he or she could have taken evasive action and/or sounded a warning that would have alerted the other.

Findings required by s81(1)

As a result of considering all of the documentary evidence and the oral evidence given at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

The identity of the deceased

The person who died was Aoni Peng.

Date of death

Ms Peng died on 14 March 2014

Place of death

She died in Westmead, NSW.

Cause of death

The cause of her death was multiple internal injuries.

Manner of death

Ms Peng died from injuries she sustained when she was walking across a road near where she was living at Berala on her way to university and she was struck by a car.

Referral to the DPP

The Coroners Act provides in s78 that if during an inquest the coroner forms the opinion that the evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence that raises the issue of whether the person caused the death that is being inquired into and there is a reasonable prospect that a jury would convict the person of the offence, the coroner is required to forward the depositions of the inquest to the Director of Public Prosecutions (DPP) to enable him to determine whether criminal proceedings should be commenced against the person.

The facts of this case caused me to consider whether the depositions from this inquest should be forwarded to the DPP to enable him to consider whether Mr Ioannou should be charged with an offence against s52A of the Crimes Act – dangerous driving causing death.

For such a charge to be sustained the Crown would need to prove beyond reasonable doubt that the manner in which Mr Ioannou was driving was dangerous to another person.

The factual conclusions I have made in support of the findings as to the manner of Ms Peng's death are of course made to a lesser civil standard of proof. I am not satisfied that some of the key conclusions concerning her movements and Mr Ioannou's want of care could be made out to the criminal standard.

Further, the quality of the driving needs to be judged objectively and is not determined by the outcome. That means while it is terribly sad that he struck and killed Ms Peng that does not prove the manner of Mr Ioannou's driving was necessarily dangerous. When regard is had to the reasonable speed with which he approached the intersection; his stopping and activation of his turning signal; the scarcity of pedestrian and of vehicular traffic in the vicinity at the time and the uncertainty surrounding Ms Peng's movement's immediately before the collision, I am not satisfied the prosecution could discharge its onus of proof.

Accordingly, I conclude there is no basis on which I could refer the evidence gathered for this inquest to the DPP.

The question whether the summary offence of negligent driving causing death should be preferred is a matter for the police to determine. However, I note that while such a charge only requires the prosecution to prove that the defendant's driving was negligent rather than dangerous, the elements of the offence still need to be proven to the criminal standard and it should not be assumed that the factual findings which I have made would necessarily be made by a magistrate determining a criminal charge.

I close this inquest.

M A Barnes
NSW State Coroner
Glebe