



CORONER'S COURT

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| Inquest: | Jesse SMITH |
| Hearing dates: | 1 and 30 June 2015 |
| Date of findings: | 15 July 2015 |
| Place of findings: | Coroner's Court, Glebe NSW 2037 |
| Findings of: | Paul MacMahon Deputy State Coroner |
| Catchwords: | CORONIAL LAW – Section 81(1) findings, Section 78(1) (b), Motor vehicle collision – identity of driver. |
| File number: | 2013/231773 |
| Representation: | Ms E Mulligan – Coronial Advocate Mr S Boland – Christopher Hocking-Collie |

Non-publication order made pursuant to Section 74(1)(b) Coroners Act 2009:

The publication of the name and address of the person who made the '000' call contained at Exhibit 1, Tab 31 is prohibited.

Findings made in accordance with Section 81(1) Coroners Act 2009:

Jessie Smith (born 17 August 1994) died on 29 July 2013 at Hollingsworth Drive, Marsden Park in the State of New South Wales. The cause of his death was multiple blunt force injuries that he suffered when the motor vehicle in which he was travelling as a passenger collided with a timber telecommunication pole after which he was thrown from the vehicle.

Recommendations made in accordance with Section 82 (1) Coroners Act 2009:

Nil

Paul MacMahon
Deputy State Coroner
15 July 2015

Introduction:

Jessie Smith (Who I will refer to as 'Jessie' in these reasons) was born on 17 August 1994. In July 2013 he resided with his mother at Marsden Park, a suburb in western Sydney.

Although Jessie did not have a drivers licence he had acquired a motor vehicle in July 2013. On 29 July 2013 Jessie's motor vehicle was involved in a single vehicle collision with a timber telecommunications pole in Hollingsworth Drive Marsden Park. Jessie, who was travelling in the vehicle at the time, was thrown from the vehicle. As a result Jessie sustained serious injuries and died at the scene of the collision.

Jessie's death was reported to the Office of the State Coroner on 29 July 2013.

Jurisdiction of Coroner:

The relevant legislation is the Coroners Act 2009. All legislative references will be to that Act.

Section 6 defines a "*reportable death*" as including one where a person died a "*violent or unnatural death*" or under "*suspicious or unusual circumstances*".

Section 35 requires that all *reportable deaths* be reported to a coroner.

Section 18 gives a coroner jurisdiction to hold an inquest where the death, or suspected death, of an individual occurred within New South Wales or the person who has died, or is suspected to have died, was ordinarily a resident of New South Wales.

Section 74 (1) (b) gives a coroner conducting an inquest the discretion to prohibit the publication of any evidence given in the proceedings where he or she considers it in the public interest to do so.

The primary function of the coroner when an inquest is held is to be found in Section 81(1). That section requires that, at the conclusion of an inquest, the coroner is to establish, should sufficient evidence be available, the fact that a person has died, the identity of that person, the date and place of their death and the cause and manner thereof.

Section 78(3) gives a coroner the discretion where the requirements of Section 78(1) (b) have been met to either continue the inquest and make findings in accordance with Section 81(1) or to suspend the inquest

Section 78 (1) (b) deals with the situation where a coroner, having regard to the evidence available, forms the opinion that:

- (i) the evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence, and
- (ii) there is a reasonable prospect that a jury would convict the known person of the indictable offence, and
- (iii) the indictable offence would raise the issue of whether the known person caused the death with which the inquest is concerned.

Section 78(4) provides that where a coroner exercises the discretion to suspend an inquest in accordance with Section 78(3) he or she is required to refer the evidence available to the Director of Public Prosecutions.

In forming an opinion that the requirements of Section 78 (1) (b) have been met the coroner is to have regard to the evidence available that would be admissible at a criminal trial however in respect of all other matters that a coroner is required to determine Section 58(1) provides that he or she is not bound to observe the rules of

procedure and evidence that are applicable in proceedings before a court of law. In respect of such matters, however, a coroner is required to make findings by the application of the civil standard of proof; that is on the balance of probabilities.

Section 82 (1) of the Act provides that a coroner conducting an inquest may also make such recommendations, as he or she considers necessary or desirable, in relation to any matter connected with the death with which the inquest is concerned. The making of recommendations are discretionary and relate usually, but not necessarily only, to matters of public health, public safety or the conduct of services provided by public instrumentalities. In this way coronial proceedings can be forward looking, aiming to prevent future deaths.

Section 81(1) issues:

The identity and date and place of Jessie's death were not matters of contention at the inquest.

Police officers who arrived at the scene of the collision in Hollingsworth Road Marsden Park found the vehicle upturned and Jessie on the ground nearby. Ambulance officers were summoned and declared Jessie deceased. Jessie was subsequently identified by his mother Katherine Bellamy at the Department of Forensic Medicine at Glebe on 31 July 2013. I am satisfied that Jessie Smith died on 29 July 2013 at Hollingsworth Drive Marsden Park in the State of New South Wales.

There was also no controversy as to the cause of Jessie's death. Following him being taken to the Department of Forensic Medicine at Glebe an autopsy was performed by Dr Jennifer Pokorny. Having considered the information provided and her findings on examination Dr Pokorny expressed the opinion that the cause of Jessie's death was *Multiple Blunt Force Injuries*. I accept Dr Pokorny's opinion and on the basis of the evidence available to me I am satisfied that the cause of Jessie's death was multiple blunt force injuries following a motor vehicle collision.

Issues for Inquest:

There were two issues to be determined at the inquest into Jessie's death. They were:

- whether the evidence available was such as to meet the evidentiary requirements of Section 78 (1) (b), and
- What were the circumstances, or manner, of Jessie's death.

Section 78(1) (b):

At the inquest there were no submissions put to me to that suggested that the evidentiary requirements of Section 78(1) (b) had been met in respect of Jessie's death. I agree that this is the case. I am not of the opinion that those requirements have been met.

Manner of Death:

The main issue for determination at inquest was the circumstances in which Jessie came to be thrown from the vehicle in which he was travelling at the time of the collision and, in particular, who was the driver of the vehicle at the time.

To assist me in making my determination I had the assistance of a comprehensive brief of evidence prepared by the officer in charge of the investigation of Jessie's death, Senior Constable Steven Bird, together with oral evidence from Senior Constable Bird, Senior Constable Ryan Edwards, an officer from the NSW Police Crash Investigation Unit, Katherine Bellamy, Jessie's mother, and Hayden Gillett and Norton Clissold, two of the four people who were occupants of the vehicle at the time of the collision.

Senior Constable Edwards gave evidence as to his conclusions as to how the collision came about following his examination of the scene. He stated that the roadway was of bitumen and in reasonable condition for a road that was not used very often. There were no pot holes that would have required a driver to take evasive action. He concluded that the evidence showed that two tyres of the vehicle had left the road onto the grassed area verge and that there was then an attempt by the driver to return then vehicle to the roadway however that attempt resulted in control of the vehicle being lost and the vehicle rotating until it hit the wooden pole and then rolling onto its roof.

Human biological material was subsequently found on an examination of the passenger side 'B' pillar of the vehicle. That biological material was later identified as being from Jessie. It was Senior Constable Edwards conclusion that due to the impact with the pole the vehicle has rolled onto its roof and in the process Jessie has been partially ejected from the vehicle and his head has collided with the passenger side 'B' pillar after which he was ejected from the vehicle landing on the roadway about a metre in front of the vehicle.

The examination of the vehicle following the collision also found that the seat belt in the front passenger seat was defective and the belt could not be secured.

Hayden Gillett gave evidence at the inquest. He also made records of interview on 14 August 2013 and 31 October 2013. In his interviews, and at inquest, he described the events of the day and the circumstances leading up to the collision. I do not need to repeat his evidence in detail other than to note that he stated that during the period before the collision the vehicle had been occupied by Jessie, Norton Clissold, Christopher Hocking-Collie and himself, and that at various times each of them had been driving the vehicle. He also agreed that the drivers were engaged in doing 'burn outs' and other such activities in the area. It was his evidence that at the time of the collision he and Norton Clissold were in occupying the back seats of the

vehicle, Jessie was in the front passenger seat and Christopher Hocking-Collie was driving the vehicle.

The history Mr Gillett gave when taken to Westmead after the collision was consistent with his evidence at the inquest. In the history he gave he said that he was a: *'rear seat passenger in a car roll over'*

Norton Clissold also gave a record of interview on 14 August 2013 and gave evidence at the inquest. He confirmed the evidence of Hayden Gillett as to the occupants of the vehicle at the time of the collision and the activities that had been engaged in prior to the collision.

It was Mr Clissold's evidence that when he first got in the vehicle Jessie was the driver. After a while Hayden Gillett had a go at driving and then he had a turn as well. He said that he then got into the back seat of the vehicle and Christopher Hocking Collie was driving with Jessie in the front passenger seat.

When asked about the collision Mr Clissold said that he *'did not have a clue'*. He said that did not remember it. The first thing he said that he could remember was waking up in the back seat of the vehicle but he could not remember the accident itself. When he woke up he said that both Christopher Hocking and Hayden Gillett were already out of the vehicle. The last thing he remembered before the accident was that he was in the back seat and that Hayden Gillett was beside him. When he got out of the vehicle he saw Jessie on the road. He tried to wake him but realised he was dead.

Mr Clissold was taken to the Children's Hospital at Westmead following the collision. At the hospital he gave a history of the incident as follows:

Car rolled multiple times, significant deformity to car. Deceased passenger x 1 Norton sitting in backseat, not sure where. Self-extricated and walked significant distance to find help for friend

Christopher Hocking-Collie did not give evidence at the inquest however he gave a record of interview on 16 October 2013. In his interview he asserted that at the time of the collision he was not the driver and that Hayden Gillett was. He gave made this assertion on multiple occasions during his interview. Towards the end of his interview the following questions and answers occurred:

Q 664 O.K. You've indicated that Hayden was the driver at the time and I ask you this, you don't have to, but were you the driver at the time?

A. Not at the time but I was ---

Q 665 You've driven earlier in the night.

A. Yeah.

Q 666 But at the time the car got onto the grave and flipped were you the driver?

A. No

Q 667 How can you be sure?

A. Cause know Hayden was driving and I was sitting behind him in the back seat.

Q 668 O.K. Why would other people tell us you were driving?

A. Cause I'm not really friends with Hayden or Norton

The evidence provided by Mr Hocking-Collie in his statement was, however, contrary to what he said on the evening of the collision.

After the collision Constable Ayley Ross attended the scene and had a conversation with Mr Hocking-Collie. The evidence of that conversation provided by Constable Ross includes him saying the following:

I was in the front passenger seat, I remember Jesse was driving, we had a crash, Hayden was screaming so I pulled him out of the car. I saw Jesse on the road, and we run up to Richmond road to get help.

Mr Hocking-Collie was also spoken to at the scene by Constable Andrea Beer. The evidence of the conversation provided by Constable Beer includes the following:

I said to the male's " Who was the driver?" Chris said "He's still in the car." I said "Why didn't he come with you?" Chris said "He wasn't moving."

The suggestion that Jesse was the driver at the time of the collision was also given by Mr Hocking-Collie to staff at the Children' Hospital at Westmead when was taken there following the collision.

The history of the event recorded in the emergency records is as follows:

MVA, deceased driver, patient front passenger, car rolled over multiple times, air bags, travelling > 80k ph. Deployed, self-extricated, climbed behind back window, significant deformity to vehicle.

He gave the triage nurse at the hospital a similar history of the incident which was recorded as follows:

MVA at possibly 80km/hr, car hit pole and rolled 3-5 times. Driver (friend) of car deceased at scene.

He subsequently confirmed this history when spoken to by the treating doctor whose notes include the following:

First thing he can remember was-he was removed for mthe car, as per ambulance crew – the driver passed away (died), and drive is christopher's friend – 18 y old.

Consideration and conclusion:

As previously mentioned the date, place and cause of Jessie's death is not a matter of contention. The issue in dispute is who was the driver of the motor vehicle at the time of the collision that resulted in Jessie's death? There is no doubt as to who were the occupants of the vehicle at the relevant time. Each of the surviving occupants has given a version as to who was the driver – two of them have given sworn evidence at the inquest.

Hayden Gillett has given evidence that at the time of the collision Christopher Hocking-Collie was the driver. Norton Clissold has said that he cannot remember however the last person he remembers driving was Christopher Hocking-Collie and that he remembers Hayden Gillett being beside him in the rear seat of the vehicle.

Christopher Hocking-Collie initially told police and hospital staff that Jessie was the driver at the time of the collision. When subsequently interviewed by police in October 2013 he said that Hayden Gillett was the driver.

There is, however, no doubt that Jessie was not the driver at the time of the collision. The injuries he received and the finding of his biological material on the passenger side 'B' pillar of the vehicle make it clear that at the time of the collision he was seated in the front passenger seat of the vehicle. The fact that the seat belt for the front passenger seat was defective and could not be secured is probably the reason why Jessie was thrown from the vehicle following the collision.

As I am satisfied that Jessie was not the driver at the time of the collision. I am also satisfied that the suggestion made by Mr Hocking-Collie, firstly to the police on the evening of the collision and then to the hospital staff, that Jessie was the driver, was a lie.

Mr Hocking-Collie subsequently asserted, in his interview with police on 16 October 2013, that Hayden Gillett was the driver at the time of the collision. Mr Gillett denies this and says it was in fact Mr Hocking-Collie who was the driver at the time. Mr Clissold's evidence supports Mr Gillette's position. On the evidence available to me I am satisfied it is more likely that in asserting Mr Gillett was the driver Mr Hocking-Collie is once again not telling the truth and, presumably, trying to deflect responsibility for the consequences of the collision away from himself. I am satisfied that at the time of the collision that resulted in Jessie's death Christopher Hocking-Collie was the driver of the vehicle.

Recommendations:

I do not consider that it is necessary or desirable for me to make recommendations in accordance with Section 82 in relation to any matter connected with the death of Jessie Smith.

Non-publication orders:

I consider that it is in the public interest that the non-publication order made during the course of the inquest be continued following the publication of my findings and reasons in this matter.

Paul MacMahon

Deputy State Coroner

16 July 2015