



CORONERS COURT OF NEW SOUTH WALES

Inquest:	Inquest into the death of Michael Johnson
Hearing dates:	8,9,10 August 2016
Date of findings:	1 November 2016
Place of findings:	State Coroner's Court
Findings of:	Deputy State Coroner, Magistrate Teresa O'Sullivan
Catchwords:	CORONIAL LAW – Cause and manner of death Person trapped under vehicle. Traumatic asphyxia.
File number:	2014/18937
Representation:	Mr Peter Aitken, Counsel Assisting, instructed by Ms Johanna Geddes, Crown Solicitor's Office Mr Ray Hood for NSW Police Mr Warwick Reynolds for NSW Ambulance Mr Mitchell Davis for Mr Hailey

Findings:	<p>Identity of deceased: The deceased person was Michael Johnson.</p> <p>Date of death: He died on 20 June 2014.</p> <p>Place of death: He died at a 345 Glendonbrook Road, Glendonbrook, NSW.</p> <p>Manner of death: He died after his vehicle rolled and he was trapped beneath it.</p> <p>Cause of death: The medical cause of his death was traumatic asphyxia.</p>
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The Coroners Act 2009 (NSW) 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 the inquest into the death of Michael Johnson.

Introduction:

This inquest has been directed to enquire into the circumstances of the tragic accidental death of a young man, Michael Johnson. Michael died after his vehicle rolled and he was trapped beneath it. The accident happened on a rural property at Glendonbrook shortly after midnight on 19 June, that is, the early hours of Friday 20 June 2014. An inquest was directed to be held following representations to the State Coroner's office in 2015 by Michael's mother, Sue Johnson.

This inquest has considered some of the matters that arose during the events immediately preceding Michael's death because they raise issues about whether there were appropriate responses to the management of the situation by those professionals involved. I hope that this inquest has provided some answers to the many questions that Michael's family had about what happened that night.

Although there does not appear to be any significant conflict as between eyewitnesses as to what was done or not done, there was some conflict as between those accounts and the family's recollection of what they were told by eyewitnesses to the events of that evening the next day and some days following. In fairness to those involved and to Michael's family, evidence was heard regarding these accounts.

The Inquest:

An inquest is different to other types of court hearings. It is neither criminal nor civil in nature and the coroner does not make determinations and orders that are binding on the parties, such as in civil litigation, nor determine whether a person is guilty or not guilty of an offence, such as in criminal proceedings.

The formal findings that need to be made are: who, when, where, how and why a person has died. It is not always possible to definitively answer each of those questions. In this case we know how Michael died and when he died; this inquest focussed in some detail on the cause of Michael's death. In determining the cause of Michael's death I was greatly assisted by hearing the expert medical evidence of Dr Allan Cala, Dr Rexson Tse and Dr Alan Garner. For Michael's family, understanding how he died is important in trying to understand if anything could have been done better or differently.

Michael:

Michael was the middle child of three with an older sister Aimee and younger brother, Ryan. Michael was described by his mother, Sue, as “the perfect child”. He never gave her any trouble, would always help around the house and was popular and made friends easily. Michael excelled at sport, particularly soccer, and motorbike racing, but also applied himself to his work, graduating from an apprenticeship with employment as a plumber.

Although he tragically lost his father in 2011 to cancer, Michael retained a positive outlook, had a steady girlfriend, Georgie, and just prior to his death was talking about getting married and buying a house. He had employment with a close friend, Alex Borg, and was working full-time helping to build an outdoor entertainment area during the days preceding the accident. Alex Borg described Michael as a really nice young man with his head screwed on and his future in front of him.

Michael’s death by any account was and of course continues to be a source of terrible grief to his family, his partner and all of his friends and workmates. His mother, Sue, his Grandfather, Rob Atkins and Sue’s partner, Jim Brown, attended the inquest every day. I appreciate how distressing that must have been at times. I would like to pass on my sincere condolences to Michael’s family and to thank them for their participation in this inquest. I would also like to thank Michael’s sister, Aimee who gave evidence from the United States.

The Evidence:

Before the accident

In the week leading up to 19 June 2014, Michael had been helping Alex Borg and others build an entertainment area at the rural property of the witness, Terry Hailey. The men had driven their work vehicles to the property and Michael had also brought a motorbike for recreational riding. On the Thursday night they decided to have a bonfire to burn wood offcuts and have a BBQ and some drinks, which included beers, and for some, bourbon.

Apart from one drink of bourbon, Mr Hailey did not drink that night as he was also looking after his young sons. Mr Borg was not at the property as the job was almost complete and he had other commitments. The workers who had been involved and who were still present were Michael Johnson, Matthew Coffey and Baden Cowled. Also present was another work friend of Mr Hailey’s, Shaun Battley, who had been installing some air-conditioning.

In the early part of the evening the workers stood around the BBQ area drinking beers. At about 9pm the group decided to have a bonfire in the back paddock. Mr Battley later told investigators that he thought he’d had about 8 stubbies of VB by

this time. Michael had begun to drink bourbon. Over the course of the next couple of hours two vehicles made a trip each to gather wood offcuts for the fire. On the second of such trips, Mr Battley's ute became bogged in a paddock. He and Mr Cowled tried to get it out but were unsuccessful. Mr Cowled recalled Michael and Mr Coffey coming down and Michael offering to help extract it with snatch straps but Mr Battley told him they'd do it in the morning. Mr Hailey left the group at some point to put his elder sons to bed. When the bonfire died down the group moved back to a fire in a 44 gallon drum in Mr Hailey's backyard.

The accident

Mr Cowled returned to the fire in the backyard for about another half hour and had another beer, while speaking to Michael, Mr Cowled and Mr Coffey. At some point while talking to Mr Coffey, Mr Cowled noticed that Michael was near his (Michael's) car. Shortly after he saw Michael driving the car in a showy way, doing what he described as "burnouts". Michael drove out of sight, in the direction of the bogged car. Mr Cowled saw Mr Hailey and Mr Battley walk in the direction of the bogged car, so he decided to drive down, thinking that Michael was going to try and extract the bogged car.

Mr Hailey said he came out of the house and queried what Michael was doing, when he saw Michael's car move towards a dam and then seem to turn over and roll to its left, coming to rest again on the driver's side. Mr Battley also saw the car flip. They raced down and Mr Battley checked Michael for vital signs and found him unconscious with shallow breathing.

The 000 call

Mr Cowled and Mr Coffey drove down in Mr Coffey's Holden Captiva vehicle. They heard a horn blowing and saw Michael's car on its side and heard Mr Battley yelling "he's stuck underneath". Mr Cowled ran back to the house, got the landline phone and rang 000. The operator told him not to lift the car. The call was made at 12:17:47 according to the NSW Ambulance Incident Detail Report.¹ Mr Hailey spoke to 000 after Mr Cowled handed the phone to him.

The 000 recording shows one male voice initially talking to the operator before another one comes on, consistent with this account.

Mr Hailey later told investigators that Mr Coffey and Mr Cowled tried unsuccessfully to lift the vehicle with their own hands and then tied a rope to Michael's car, but he said they were told not to move the vehicle by the 000 operator. The Captiva and another car were brought down to use their headlights for illumination, the Captiva having been driven there at the start after the accident by Mr Coffey (Bektas) and

¹ Tab 37, Exhibit 2, Police Brief of evidence

Mr Cowled. Mr Hailey brought a trolley jack down after police arrived but it wasn't used. Mr Hailey relayed information to and from the 000 operator to Mr Battley, who stayed monitoring Michael's pulse and breathing for what he estimated to be up to 20-30 minutes until police arrived.

Mr Cowled said that the female police officer also told him not to lift the car. He recalled that Michael's breathing was really faint to hear. He then spent a lot of the time trying to hold the car up off Michael.

Mr Battley described the middle pillar of the car as lying across Michael's stomach. The 000 call, which has been transcribed, records various contemporaneous descriptions.² Michael is described as still in the vehicle which is on its side. He is described as breathing. He is described as having his torso and head out of the driver's side window.

Mr Hailey told the operator they can't move the car and don't want to at this stage; the 000 operator agreed and said he could be poisoned if he has compartment syndrome.

The operator then again asked if any part of Michael was trapped physically under the vehicle and he was told "from the waist down". They were again told not to move the car. Later his breathing was described as "very erratic" and the 000 operator asked them to measure the rate of breathing. Michael was described as slightly purple but the described rate of breathing was called an "effective" rate by the operator.

Later still, Michael's colour was described as "good". Mr Hailey describes the part of Michael's body that was trapped as being under the car, not inside the car. During the 000 call Mr Hailey said that Michael's head was in line with the car's roofline and the roof was not touching his torso. Mr Hailey, who was relaying what he was told by Mr Battley, then described the "B" pillar of the car as sitting on Michael's chest. The 000 operator asked them to guess the height from the ground to where the pillar was touching his chest and estimated it at about a foot and that it was touching his chest. The operator was then told that there were 4 people with the patient and that the police had arrived.

At about the same time Michael's breathing was described as still having breath sounds but looking a bit purple. His breathing was then described as consistent. Sean Battley then spoke to the 000 operator while Mr Hailey spoke to police. Mr Battley described Michael as purple on the forehead and a little bit on the lips. The operator told Mr Battley not to move the car as any movement of the car could further injure Michael. A further measurement of breathing rate was carried out,

² Tab 42, Exhibit 2, Police Brief of evidence.

apparently to the operator's satisfaction. The call ended a short time later with the ambulance arriving.

The call's length is not entirely clear as the initial 000 connection and request is not recorded. From what is available, the call appears to run for about 32 minutes 51 seconds, according to the audio recording of the call.³

Police involvement

Senior Constable Lana Mallam and Senior Constable Jonathon Cassidy arrived at about 12:38am. Senior Constable Mallam went to Michael and could observe no signs of life, but Mr Battley, who was nursing Michael's head in his lap, said he could detect breathing. Senior Constable Mallam noticed that the tool box lid on the rear tray appeared to be keeping the vehicle propped slightly off the ground. SC Mallam thought she told radio there may be a faint pulse; the VKG record says "patient not in a good way I think I have a faint pulse", at 12.41am.⁴

Sergeant Sierota arrived at 12.47am. As he was being updated by SC Cassidy the ambulance arrived. It appears that the decision to lift the car was made by the ambulance officer when he arrived. Sergeant Sierota assisted with lifting the vehicle.

SC Cassidy told investigators that he and SC Mallam told the males at the scene not to attempt to lift the vehicle as there were no ambulance officers present. It is unclear whether SC Cassidy conducted any assessment of Michael, although he was aware that SC Mallam had. SC Cassidy said that he was not sure that moving the vehicle could cause further injury, release toxins and be done in a safe manner as far as the lifters were concerned. SC Cassidy then directed his attention to arranging ambulance access. SC Cassidy assisted SC Mallam remove Michael from under the vehicle when it was eventually lifted. Two lifters ended up with their foot and finger stuck respectively during this procedure.

NSW Ambulance

Ambulance records show paramedic David Foote arriving at 12.49 am.⁵ The ambulance crews who did attend had to be contacted at their residences, as there was not an on-site presence at that time of night in Singleton. Rather, the paramedics are on call. Officer Foote met up with two other paramedics at the ambulance station, and then drove separately to the scene while the others came in a rescue truck. When Mr Foote arrived he found Michael unconscious with no pulse or respirations. He asked the bystanders to help lift the vehicle to release the

³ Tab 41, Exhibit 2, Police Brief of evidence

⁴ Tab 34A, Exhibit 2, Police Brief of evidence

⁵ Tab 37, Exhibit 2, Police Brief of evidence

compressive force so that Michael could be removed from under the vehicle. The ambulance protocol that he applied was to extract the patient as rapidly as possible in circumstances where they had not been trapped for an extensive period of time.⁶ CPR was carried out but Michael was unable to be revived.

The Holden Captiva

Michael's family were concerned about some of the things they had heard about the evening.

They believed that Mr Coffey told Aimee Johnson at Michael's wake that the Holden Captiva was used to ram Michael's car, but Michael's car was too heavy.

Mr Hailey is said to have told Aimee and Sue Johnson at various times that they tried to ram Michael's car with the Captiva; Aimee says that she was shown scuff marks on the plastic bumper of the Captiva. The photograph of the Captiva shows possible marks at the front of the bumper; Aimee gave evidence that the scuff marks she saw on the car were on the right hand side of the bumper.⁷ She was mistaken in her recollection of the colour of the vehicle.

On any view, even without expert evidence, there is no evidence of damage to the Captiva consistent with ramming it into another vehicle at any speed. Perhaps the men at the scene thought about using the Captiva but didn't use it in the way that was apparently subsequently described. Perhaps people were telling members of the Johnson family things that they thought should have happened, because they were concerned about whether they had done enough?

The time of the accident

The family was also concerned about the time the accident happened. Mr Hailey is said to have suggested a time an hour earlier than the time the 000 call was made.

These are matters that could not be ignored and required testing on the evidence, traumatic as that obviously was.

There are two comments that might be made about these aspects of the evidence. Firstly, and obviously on any view, everyone was deeply traumatised by the death of Michael, not only Michael's family, but also those who were Michael's workmates and Mr Hailey.

⁶ Tab 19, Exhibit 2, Police Brief of evidence

⁷ Exhibit 9

This may have affected the ability of eyewitnesses to precisely recall details of the night; when accounts are then listened to and interpreted by others who were not witnesses, the possibility of confusion can also creep in. This is not to say that Sue Johnson or Aimee Johnson were inventing their recollections; no one suggested that, rather that just as one might expect several versions of a traumatic event from eyewitnesses, each from their own perspective processing the information as they see it, so the possibility for confusion can creep into people's recollection of what they were told by an eyewitness. Similarly, where an eyewitness may have been asked to tell different people at different times their memory of what happened, it is possible that they could later be confused as to what they told to whom on those different occasions.

It might also be, as a matter of common sense, difficult for anyone to remember precisely who they spoke to, if they were an eyewitness being asked to tell people what had happened, on a number of occasions. In this case Mr Hailey and Mr Battley and Mr Coffey did not recall speaking to Aimee Johnson at the wake.

The second comment to make about the troubling evidence is that ordinary human experience tells us that people may sometimes say things that are inaccurate for any number of reasons. For example, they may have a confused or traumatised recollection and feel the need to fill in gaps in their memory with what must have happened, rather than what they actually remember happening at that point.

In a case like this where any human who witnessed Michael's crash and death might ask themselves "could I have done more?" Even if the answer is no they couldn't, that concern might still lead them to perhaps unconsciously embellish their account. They might even consciously embellish, because they may think, mistakenly, that it might help the listener in dealing with their grief or understanding of the event. Whether there was a degree of embellishment in Mr Hailey's recollection, or whether his recall was accurate, was the subject of some questioning in his oral evidence.

An example of this was when Counsel Assisting proposed to Mr Hailey at the end of his evidence: could things have been said to pacify the family that perhaps were things that could have been done rather than were in fact done, Mr Hailey agreed.

Another example of possible unconscious or even conscious embellishment can be found in the transcript of the 000 call where Mr Hailey refers to himself as an "ex copper".⁸ Sue Johnson thought that she had been told by Mr Hailey that he was an ex-policeman. Mr Hailey had been employed many years ago in the transit police and later in security, but not by the NSW Police Force. In his evidence he sought to justify and relate that reference in the 000 call to that prior employment. In the 000 call, "ex-copper" appears to be Mr Hailey's shorthand way of saying to the operator "I

⁸ Tab 42, Exhibit 2, Police Brief of evidence

understand procedure", but which was also capable of misinterpretation, for obvious reasons.

It is not clear that Aimee Johnson realised that it was Mr Hailey's father's police pin when Mr Hailey handed it over to her at his house; Mr Hailey maintained that he told her that it was his father's pin. If, for example, Aimee had thought that it was his own pin, it would have no doubt reinforced her belief that he described himself as an ex-policeman.

Common sense also tells us that using the Captiva to nudge the other car would not take longer than a minute or two. There is nothing otherwise in the evidence to suggest something amounting to an hour of attempts to free Michael.

The fact of the 000 call, with the panicked initial conversation and the description of the attempt to check Michael, together with the shouts in the background, all point, to the call being made within minutes of the accident, consistent with an immediate seeking of help after Michael was located.

Other possible attempts to free Michael

On the evidence, Mr Hailey only fetched the jack after police arrived and he had a chance to get off the phone and go looking for it. According to the evidence, no tractor was in fact called for, as the owner never received a call about this. Mr Hailey may have recalled thinking of calling for the tractor and told Sue Johnson that and Sue Johnson may have understood him to be saying they actually made the call. The possibility for confusion and misinterpretation is present on the evidence in the circumstances.

Mr Hailey suggests that a rope was tied to the underside of Michael's car. There is no rope present in the photographs taken by the crime scene examiner. Other witnesses do not recall a rope being used.

Eyewitness evidence

Mr Coffey made his statement two years after the accident. He has limited recollection of the accident. He was obviously traumatised. He couldn't recall much detail. This is hardly surprising in the circumstances. He denies saying to Aimee that they had rammed the Ute.

Mr Cowled had no obvious reason to demonstrate allegiance to Mr Hailey. He said he went and got the phone from the house as soon as he heard that Michael was trapped in the car. This is consistent with his voice on the 000 call and the panicked reaction.

Mr Battley, whilst he was an employee of Mr Hailey and therefore had a reason to demonstrate an allegiance to him, presented as a credible and impressive witness. It was obvious that he showed care and devotion in looking after Michael at the scene; when he wasn't sure about something in his recollection he said so in his evidence. He appeared genuinely surprised that Aimee Johnson might know about the Queen song ("Who wants to live together", which had been played at his father's funeral). This suggests that this is an aspect of his memory he simply couldn't recall and also supports the inference that Aimee must have spoken to him to know that detail.

Senior Constable Mallam went to Michael's aid and felt that there was little she could do. She checked for a pulse and said she couldn't find one; she said her reference to a faint pulse on the radio was her shorthand way of saying she accepted Mr Battley's belief that he could detect one. With her limited training and the position of Michael preventing any CPR, it appears there was little she could do to render assistance. Based on the evidence from the Ambulance and medical experts, it seems that there ought to be no criticism of any police advice not to move the car. In the circumstances, without the ambulance emergency responders present, it was appropriate advice.

It was obvious to Senior Constable Mallam that Mr Battley had what appeared to be a close monitoring of Michael's condition, with his fingers held under Michael's nose. Senior Constable Cassidy, whilst he did not also check on Michael's condition, explained why he did not.

The 000 operator

There is no criticism of the approach taken by the operator by the experts, other than a suggestion by Mr McCarthy that obtaining evidence about the situation ('person trapped') as soon as possible is important. But, as he noted, the caller has to get answers to his initial questions and get clarification. The 000 operator did not seek an assessment from the police. In the circumstances, it may have been useful for the 000 operator to receive an objective assessment of the patient's condition from a police officer, who is not intoxicated, not traumatised and who has some basic first aid training. That is certainly an observation made more easily in hindsight.

The experts have not criticised the decision not to move the car. I note that it has been the subject of discussion by the Ambulance Service at an international level on a preliminary basis. Safety is regarded as trumping other possible approaches. I note that Dr Garner agreed with that approach and that he is obviously a very experienced Careflight clinician.

NSW Fire Brigade

Some concern was raised by the family that the New South Wales Fire Brigade truck was called off and stood down. The evidence established that the primary rescue organisation was the Ambulance Service. The secondary rescue organisation was

the Rural Fire Service for that particular area, rather than the New South Wales Fire Brigade. The evidence established that the RFS truck did in fact attend the scene.

CT scan

The family expressed concern that a CT scan was not performed of Michael's skull and that this may have revealed the presence of further injury, consistent with Dr Garner's initial view. I note that Dr Garner now considers that the likely primary cause of death was traumatic asphyxia rather than a head injury. I note that CT scan facilities now exist at the Newcastle Department of Forensic Medicine. I also note the confidence expressed on the part of the pathologists that they had clear evidence of the main cause of death and that the evidence shows that they did investigate Michael's skull by way of x-ray and that there were no obvious signs of significant head trauma on visual examination or x-ray examination.

Cause of death

One of the areas of contention when this inquest commenced was the primary cause of death. Dr Rexson Tse prepared the Autopsy Report and was of the opinion that the cause of Michael's death was traumatic asphyxia.⁹ An expert report prepared by Dr Alan Garner required a thorough exploration of the facts as provided in evidence by the witnesses to determine if Michael may have suffered a head injury that may have been the primary cause of his death. In determining the cause of Michael's death I was greatly assisted by hearing the expert medical evidence of Dr Allan Cala, Dr Rexson Tse and Dr Alan Garner. The doctors gave their evidence at the inquest by way of an expert conclave. It is abundantly clear now that all three doctors agree that the primary cause of death was traumatic asphyxia. There is forensic evidence in support of the proposition and the summary of the oral evidence of each of the eyewitnesses to the effect that a part of the car, whether it be the A pillar or the B pillar, or the roof line, was resting on a diagonal across a part of Michael's chest extending from the upper abdomen to the lower part of the rib cage. The expert evidence of the two pathologists was to the effect that death would have occurred in a matter of several minutes. Dr Garner revised his opinion about cause of death in the light of that evidence. The evidence about the tool box lid not being in the position it had been assumed to be by Dr Garner was a relevant factor.

Mr Battley gave sincere and honest evidence to the effect that he believed he could feel Michael breathing by way of air on his fingers at a regular rate which he could measure and which he relayed to the 000 operator. He thought the breathing was faint and the pulse faint. He did not see Michael's chest rising and falling or note any other signs of life apart from a gurgling noise which the doctors thought might be consistent with agonal respiration. Other eyewitnesses also did not see any signs of life from Michael other than Mr Hailey also hearing a noise at first. Senior Constable Mallam said that she didn't detect a pulse but relied on Mr Battley as he had been with Michael for some time.

There is no obvious explanation for the breathing that Mr Battley believed he detected in circumstances where the experts are confident that death occurred as a result of traumatic asphyxia and within minutes. It appears in the tragic

⁹ Tab 4, Exhibit 2, Police Brief of evidence

circumstances that prevailed that lifting the car off Michael may not have saved him from dying or suffering hypoxia.

On the evidence before me I find that Michael Johnson died primarily as a result of traumatic asphyxia at 345 Glendonbrook Road Glendonbrook on 20 June 2014 some short time after midnight.

Manner of death

The experts, including Dr Garner who had attended at a number of vehicle rollovers, and the pathologists, who had examined people from vehicle rollovers were of the view that the position Michael was found in by the eyewitnesses was consistent with ejection from a vehicle rolling first left and then roof and onto its right side.

I would like to thank Mr Peter Aitkin of counsel for assisting me in this inquest and Ms Johanna Geddes of the Crown Solicitor's Office for her preparation and instruction.

I would also like to thank Detective Sergeant Jeremiah Bowden, the Officer in Charge, for the conduct of the investigation and responding to the concerns raised by the Johnson family.

I wish to again express my condolences to the Johnson family for their tragic loss of Michael.

Findings required by s. 81(1)

As a result of considering all of the documentary evidence and the oral evidence heard 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 deceased person was Michael Johnson.

Date of death

He died on 20 June 2014.

Place of death

He died at a 345 Glendonbrook Road, Glendonbrook, NSW.

Cause of death

The medical cause of his death was traumatic asphyxia.

Manner of death

He died after his vehicle rolled and he was trapped beneath it.

I close this inquest.

Magistrate Teresa O'Sullivan
Deputy State Coroner

1 November 2016