



CORONERS COURT OF NEW SOUTH WALES

Inquest:	Inquest into the death of Anthony Gilbert
Hearing date:	3 – 6 April 2023
Date of findings:	19 April 2023
Place of findings:	NSW Coroners Court sitting at Newcastle
Findings of:	Magistrate Elizabeth Ryan, Deputy State Coroner
Catchwords:	CORONIAL LAW – death of a man from acute alcohol intoxication – whether police should have detained him as an intoxicated person – whether police acted appropriately when returning him to his home address.
File number:	2019/33159
Representation:	<p>Counsel Assisting the Inquest: J Harris of Counsel i/b the NSW Crown Solicitor.</p> <p>The Commissioner, NSW Police: K Burke of Counsel i/b Office of General Counsel, New South Wales Police Force.</p> <p>Senior Constables A Flannery and J Redman, and Sgt J Holmes: G Doherty i/b Walter Madden Jenkins</p>

<p>Findings</p>	<p>Identity The person who died is Anthony Gilbert.</p> <p>Date of death: Anthony Gilbert died between the night of 29 January 2019 and the morning of 30 January 2019.</p> <p>Place of death: Anthony Gilbert died at 40 Moore Street, Dungog NSW 2420.</p> <p>Cause of death: Anthony Gilbert died from complications of acute alcohol intoxication.</p> <p>Manner of death: Anthony Gilbert died from the complications of an accidental overdose of alcohol. The evidence does not establish that he ingested the alcohol with the intention of ending his life.</p>
<p>Recommendation</p>	<p>To the Commissioner, NSW Police Force:</p> <p>That consideration be given to further training and education as to how police officers are advised to respond to intoxicated people who do not meet the criteria for detention under Part 16 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i>.</p>

Section 81(1) of the *Coroners Act 2009* (NSW) [the Act] 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 Anthony Gilbert.

Introduction

1. On the morning of 30 January 2019 Anthony Gilbert aged 41 years was found by his mother, lying unresponsive on the front steps of their family home in Dungog NSW. Emergency services pronounced him deceased. Forensic pathologist Dr Hannah Elstub performed an autopsy and concluded that he had died as a result of acute alcohol intoxication.
2. For the previous three years Anthony had struggled with alcohol addiction and depression. Throughout this time his loving parents did their best to support him and to get help for him.
3. On the night of 29 January 2019, Maitland police officers drove an intoxicated Anthony to his parents' home in Dungog where he had been living. They left him on the front steps of the house. Kathryn and Peter Gilbert could not get their son into the house, and he died during the night.
4. This inquest examined the events of that night, and whether the actions taken by police in relation to Anthony were appropriate.

Anthony's life

5. Anthony was born on 11 April 1977, the third son of Kathryn and Peter Gilbert. His brothers are Neil and Jamie Gilbert.
6. At the close of the evidence, Neil Gilbert spoke to the court on behalf of the family. He described Anthony as a popular school student and a talented swimmer and golfer. In his teens Anthony developed a passion for cooking, and after his schooling he trained as a chef. He met his wife Lesley in 1997, and the couple married in 2005. They had three children Emily, Cooper and Abbey, whom he adored.
7. Anthony was highly regarded as a chef, and he ran a number of successful businesses. Among these was a café which he and Lesley bought in East Maitland, which they operated until 2011.
8. Around this time Lesley became deeply concerned at the amount of alcohol Anthony was drinking each night. He had been diagnosed with depression the previous year and was prescribed the medication mirtazapine. Despite Lesley's efforts, Anthony's drinking problem worsened to the point where he was consuming up to two litres of wine each night. During this time Anthony's parents and brothers knew little of Anthony's struggles with alcohol and depression.
9. A near fatal incident in September 2016 was the trigger for Lesley to leave Anthony. The family was by then living on a farm in Delegate, near Cooma.

In a state of severe intoxication, Anthony had driven their ute dangerously close to the children, before passing out. Lesley left, taking the children with her.

10. Anthony was deeply distressed by the separation. His parents travelled to Delegate and lived with him for a period of time to support him. During this time Anthony attempted self harm with an overdose of pain medication and suffered injuries while driving a tractor in a state of intoxication. He was periodically depressed and did not consistently take his medication. He commenced a pattern of getting jobs, then losing them due to his drinking.
11. By late 2017 Kathryn and Peter Gilbert could see no alternative but to bring their son back to Dungog to care for him in their home.
12. Over the next fifteen months Anthony was hospitalised on multiple occasions due to being heavily intoxicated. His parents were usually called to collect him from hospital the following day. Kathryn Gilbert has expressed frustration that Anthony did not receive effective care and treatment for his mental health and substance abuse problems. However, it is fair to say that on most occasions Anthony refused the attempts of clinicians to assess him and to accept follow up treatment.
13. Neil Gilbert told the court that Anthony's death has devastated their family and has deprived his children of their much loved father. Anthony's parents, brothers and former wife Lesley were present throughout the inquest, a testament to their enduring love for him.
14. Kathryn and Peter Gilbert provided their son with many years of devoted care. In Anthony's last years there must have been many times when they felt exhausted, fearful and deeply disheartened. In court Kathryn spoke of her deep sadness at seeing her son in this condition, and of her determination to be there for him: '*... I'm his mum, I'm there to support him as long as I can*'.

The events leading up to Anthony's death

15. On the afternoon of 25 January 2019 Kathryn found Anthony in his bedroom, crying. He had a backpack with him, and he told her he had to get away. Anticipating that this was because he wanted to drink, Kathryn begged him to let them get some help, but he replied '*I have to do this on my own*'. He left.
16. That evening Anthony texted his mother that he was in Maitland and would stay there for the night. Maitland is some fifty kilometres from Dungog. After

this Anthony did not respond to his parents' calls, and they did not know where he was.

17. On 27 January 2019 Anthony went to Maitland Hospital, complaining of pain in his right foot. He was given pain relievers. He then booked and paid for two nights in the Imperial Hotel in Maitland.
18. Anthony was due to check out of the hotel at 10.00am on Tuesday 29 January 2019, but he did not do so. Earlier that morning he had been seen leaving the hotel carrying a backpack and returning forty minutes later. It is likely that during this time he bought alcohol, which included a 750ml bottle of vodka and a bottle of red wine. A cleaner saw him going into his hotel room, staggering and seemingly in pain.
19. On a number of occasions throughout the day the hotel manager spoke to Anthony through his hotel door. Anthony said he would come out shortly, but he did not. Finally at 5.30pm the manager and the afternoon supervisor entered Anthony's room, to find him lying on his bed. He complained of pain in his ribs and foot, and he was clearly intoxicated. The manager called '000'.

The ambulance officers' response

20. Ambulance paramedics Kerrie Dixon and Alan Murphy arrived at the hotel at about 6.29pm and went upstairs to Anthony's room. They judged him to be intoxicated, but he refused to be taken to hospital. Ms Dixon told him that if he did not come with them, they would have to call the police.
21. In response Anthony slowly got up. He walked out of the room and down the three flights of stairs to the ground level. Ms Dixon told the court that he managed this unassisted but was moving unsteadily.
22. Ms Dixon picked up Anthony's backpack and took a quick glance inside it. The evidence is unclear as to what exactly she saw. In her statement dated 23 May 2019 she said that the backpack contained two bottles of alcohol, both of which were almost full. However, she was less certain of this in her oral evidence, stating that it was possible only one of the two bottles was almost full. The significance of this will be discussed later in these findings.
23. When he got outside Anthony again refused to be medically assessed and walked a short distance away to sit on a bench. It was a very warm evening, and the two paramedics debated what to do with him. They had already ascertained that Anthony lived in Dungog, and that the next train did not leave for another ten hours.

24. In his statement, Mr Murphy said that he did not consider that Anthony was unable to look after himself. He was intoxicated, but not to the point where his airway was compromised. He was able to walk and talk. Nevertheless, Mr Murphy felt concerned '*... that he was going to be left on the street and there was no public transport back to Dungog to get him home.*'
25. Paramedic Dixon considered Anthony to have been '*moderately to heavily intoxicated*'. She observed that he was able to understand what they were saying and to follow their instructions. Like her colleague however, she did not want to leave him without any assistance. As she explained to the court, he had no plans, no accommodation, and no transport home. She told the court that she and Mr Murphy decided that he was not safe to be left alone.
26. The paramedics decided to contact Maitland Police Station and ask police to attend. Ms Dixon said that she did not expect the police to take care of Anthony, but she believed they would be better placed to identify family members who would be able to do this.

Anthony is taken to the police station

27. About ten minutes later, Senior Constable Alicia Flannery and Senior Constable Jade Redman arrived at the scene. Both are experienced officers who have had extensive interaction with intoxicated people in the course of their work.
28. The two police officers saw that Anthony was sitting quietly on a bench near the hotel. SC Redman observed that he was leaning towards his left side. The officers had a conversation with the ambulance paramedics, in which they were advised:
 - that Anthony had a sore toe for which he had visited hospital the previous day
 - he was intoxicated but was refusing to go to hospital
 - he had nowhere to stay in Maitland
 - he lived in Dungog but the next train was not due for another ten hours.
29. In her statement and evidence, Ms Dixon also said she told police that she and her colleague believed Anthony could not be left alone. The two police officers do not recall that this was said.
30. SC Redman then spoke with Anthony. Although she considered he was '*well affected by alcohol*', she noted he was not disruptive or in any way

violent. She saw that his eyes were bloodshot, and his speech was slurred. SC Flannery made similar observations.

31. After conducting some checks SC Flannery located a phone number for Anthony's father Peter Gilbert. Kathryn Gilbert answered the phone. Informing her that Anthony was intoxicated, SC Flannery asked if Kathryn could come to collect him. Kathryn replied that she would, but it would be at least an hour as they lived in Dungog. SC Flannery told her that they would take Anthony out of the heat to the police station, where they would await her arrival.
32. The two police officers helped Anthony to his feet and he walked to their police vehicle, with each officer holding one of his arms. They assisted him into the pod of the police vehicle, then drove the short distance to Maitland Police Station.
33. At the inquest, the court viewed video footage of Anthony getting out of the police vehicle and moving into the police station. His gait is slow and shuffling. At one point his trousers fall down to his knees, and he appears to take some time to realise this and to pull them up again. In their evidence both police officers agreed that Anthony had been moving slowly and unsteadily, but they said they were unsure if this was due to his intoxication or his sore foot, or both.

At the police station

34. The police officers led Anthony into the public foyer of the police station, where he lay down on a bench and appeared to fall asleep. He remained in that position for most of the fifty five minutes he spent at the police station, until shortly after 8.00pm he roused from sleep and sat up on the bench.
35. As Anthony was not a person in custody or detention, Senior Constables Redman and Flannery did not introduce him to Sergeant Janet Holmes who was the Custody Manager on duty that evening, however Sgt Holmes did walk out into the public foyer and saw Anthony there. She was told by Senior Constable Matthew Nicholson that he had been brought into the station to await the arrival of his parents.
36. Sgt Holmes did not have any interaction with Anthony. However, she was not surprised to see someone in this position: it was not uncommon, she said, for people to spend time in the police station foyer while waiting for a train, especially at night. She regarded the availability of this space for people in this situation to be part of community policing.

37. Meanwhile Kathryn and Peter Gilbert had decided they would not drive into Dungog to collect Anthony. In his statement, Peter Gilbert said that he and his wife had been in this situation *'many times over'*. In Anthony's state of intoxication, they would be unable to get him up if he fell over. Furthermore, they did not feel comfortable driving that distance at night. Peter Gilbert also thought that a night spent in a police cell might give Anthony a *'wake up call'*.
38. Kathryn called Anthony's brother Neil Gilbert, who is and was at that time a former police detective, to tell him what had happened. He told his mother he would speak to the Maitland police officers. This he did at 7.25pm.
39. In this phone call Neil Gilbert spoke with SC Nicholson, asking him if his brother could be detained overnight at the police station as an intoxicated person. (This police power of detention is explained below). SC Nicholson said Anthony could not, as this action should only be taken as a *'last resort'*. Neil replied that he would come to Dungog to collect his brother. But when he discussed this plan with his wife, they decided they did not want to have the intoxicated Anthony in their home with their children.
40. Then followed a series of phone calls.
41. At 7.39pm Neil spoke again with SC Nicholson, telling him that *'Anthony is not welcome at my mother's place or mine in his condition'*. According to Neil, SC Nicholson replied: *'Leave it with us, we will have to do something to make sure that he is safe'*.
42. When SC Redman was made aware of this, she rang Anthony's father Peter. Peter Gilbert told her they would not be collecting Anthony: it was too dark for them to drive, and they found him difficult to deal with. In his statement, Peter said he also told SC Redman that if Anthony fell over, they would be unable to get him up. SC Redman replied that detaining Anthony was a last resort, to which Peter responded: *'He is your problem now, you can look after him'*.

The discussion with Sergeant Holmes

43. The Maitland police officers now had to make a decision what to do with Anthony.
44. SC Nicholson had reported to Sgt Holmes that Neil Gilbert wanted his brother to be detained overnight as an intoxicated person, in order to *'teach him a lesson'*. But Sgt Holmes did not think this was appropriate. She then learned from SC Redman that Peter Gilbert had told her that Anthony was *'your problem now and you can look after him'*.

45. Sgt Holmes discussed the situation with Senior Constables Redman and Flannery. As will be seen, this led to a decision that it would be best if they drove Anthony home to Dungog themselves.
46. Each of the three officers told the court they did not understand Peter Gilbert's words to be an assertion that Anthony's family were not willing to look after him. Sgt Holmes and SC Flannery said they took his comment to mean that the family was not willing to collect him. For her part, SC Redman said she believed that if they took Anthony home to his parents, they would be willing to care for him. She agreed in evidence this was really more in the nature of a hope than a belief.
47. However, when one considers the natural meaning of the words used by Peter, it appears to me that he was expressing with reasonable clarity a position that went beyond an unwillingness simply to drive in to collect Anthony. Peter was conveying that Anthony's family was refusing to undertake his care that night. There does not appear to be any reasonable basis for the involved officers to conclude that Anthony's family was simply unwilling to come and get him.
48. This being so, ought the officers to have given explicit consideration to whether they were obliged to detain Anthony that night? I will now turn to consider this police power.

Part 16 of the *Law Enforcement (Powers and Responsibilities) Act 2002*

49. Part 16 of the *Law Enforcement (Powers and Responsibilities) Act 2002* [LEPRA] contains provisions for police to detain persons who are intoxicated, defined as persons who appear to be seriously affected by alcohol, or another drug, or combination of drugs.
50. Relevantly, subsection 206(1)(b) LEPRA provides that a police officer may detain an intoxicated person found in a public place who is '*in need of physical protection because the person is intoxicated*'. The first step therefore is for the police officer to assess whether a person meets the definition of someone who is '*seriously affected by alcohol*'.
51. Once detained, the person is to be taken to, and released into the care of, '*a responsible person willing immediately*' to undertake their care.
52. Part 16 makes provision for circumstances where such a person cannot readily be found. Subsection 206(4) permits the person to be detained in an authorised place of detention if, among other circumstances:

- it is necessary to do so temporarily for the purpose of finding a responsible person willing to undertake the care of the intoxicated person, or
 - a responsible person cannot be found to take care of the intoxicated person, or
 - the intoxicated person is behaving so violently that a responsible person would not be capable of taking care of and controlling the intoxicated person.
53. All police officers receive training in the exercise of section 206. Notably the NSW Police Force Handbook refers to it as a course of *'last resort'*. This instruction was reflected in the evidence of the involved police officers in this case, who were unanimous that in the event they assessed someone to be an intoxicated person, they would make strenuous efforts to find a responsible person to care for them.
54. At the inquest the court heard further evidence about the practical operation of this section from Superintendent Matthew Scott. Superintendent Scott is presently Commander of Kuring Gai Police Command but was formerly a Professional Standards Manager. His evidence is further discussed later in these findings.

The police officers' assessment of Anthony

55. In their evidence at the inquest, each of the three officers stated that their discussion that night did not involve any explicit consideration of whether Anthony ought to be detained pursuant to Part 16 of *LEPRA*.
56. Nevertheless, whether within the context of Part 16 or not, it was clear that SC Redman and SC Flannery had formed similar opinions as to his level of intoxication. This, as noted, was that it was not such as to render him *'seriously affected by alcohol'*. SC Redman and SC Flannery had assessed him to be *'well intoxicated'* and *'moderately intoxicated'*, but not seriously so. SC Redman said that in her experience, a person who was seriously intoxicated would generally be vomiting or would have passed out. During their interactions with Anthony however he was conscious, appeared to be able to understand them, and was able to walk with assistance.
57. Since she had not had any interaction with Anthony, Sgt Holmes relied upon her officers' assessment of Anthony's level of intoxication.
58. For similar reasons the two officers said they did not consider that Anthony was in need of physical protection because of his intoxication. In their opinion he was unlikely to cause injury to himself or to anyone else. They

agreed they did not feel comfortable about leaving him on his own. They said however that their discomfort about this was not because he needed protection, but because of the heat of the evening and the long wait he would have until he could get a train home. As they saw the matter, Anthony's situation prompted a concern for his welfare, rather than an exercise of their powers under section 206 of *LEPRA*.

Anthony is returned home

59. As mentioned, Sgt Holmes, SC Redman and SC Flannery decided that since Anthony's family was not willing to come and get him, the best course was to drive him to his home. They did not make a phone call to Kathryn and Peter Gilbert to advise them of this decision.
60. With the assistance of other police officers, at 8.17pm officers Redman and Flannery walked Anthony to the rear of their police vehicle. He was complaining that his foot was sore, and he had to be helped up into the pod. His backpack was placed in the back seat of the vehicle and was not accessible to him during the journey to Dungog.
61. It was dark by the time they neared Dungog. As they approached the town, Senior Constable Flannery noticed that she could not observe Anthony in the pod. They stopped the vehicle and checked, to find that he was now lying down on his side. She said: '*Anthony we are nearly home, are you good?*', to which he nodded.
62. When the officers opened the police vehicle pod, Anthony got out slowly and sat on the grass at the front of the Gilbert's house. When they suggested that he go inside, he asked them not to get his parents. He then went to sit on the lowest of the ten steps leading to the front patio of the house. The officers placed his backpack nearby, then returned to their vehicle.
63. According to the two officers, at this point a person came to the front door of the house, then withdrew and closed the door. The officers did not make any attempt to speak to Anthony's parents, but drove back to Maitland Police Station.
64. Kathryn Gilbert's evidence is that she and her husband only became aware that the police had been there when they saw their vehicle driving off. It was then that they opened the front door, to see Anthony sitting on the bottom step. They were surprised and annoyed that no one had advised them that this would be happening.

65. Anthony's parents tried to lift him up the steps, but they lacked the strength to do so. Kathryn said Anthony was *'very intoxicated'* and couldn't really talk. For his part, in his statement Peter said he believed that Anthony could hear what they were saying, but due to embarrassment and intoxication he had *'shut down'* and was ignoring them. Kathryn and Peter went back inside.
66. Kathryn had noticed Anthony's backpack on the grass and she took it with her, as she didn't want him to have his car keys. Inside the backpack she found *'an empty bottle of red wine and also a large bottle of vodka which had about a quarter of the vodka missing'*. She poured the vodka down the sink.
67. Kathryn then rang Neil to tell him the police had *'dropped [Anthony] out the front and didn't even let us know anything'*. Neil then rang Sgt Holmes and had what was by all accounts an agitated conversation with her. He called his mother back to say he wanted to speak with Anthony. She put her phone next to Anthony's ear and heard Neil say to him: *'Go and get into bed and sleep. In the morning get your stuff and go. We all can't take any more of this.'*
68. According to Kathryn, she heard Anthony reply: *'Yeah there's only one way out'*; however, on Neil's account Anthony did not make any response.
69. It was by now about 9.30pm. Kathryn noticed that Anthony had moved his position slightly and was now lying on the steps with his head tilted back, *'just totally out of it'*. Both Kathryn and Peter looked out the front door at 11.00pm, to see that Anthony was still in this position. This was also the case when Kathryn looked out again at 1.00am. She did not go out and speak to Anthony, as he had previously spent nights out on the patio and she assumed he would come in when he had sobered up.
70. When Kathryn went outside again at 7.00 the next morning, Anthony was in the same position. Tragically, he had died during the night.
71. I turn now to consider the issues examined at the inquest.

The cause of Anthony's death

72. An autopsy was performed by forensic pathologist Dr Hannah Elstub.
73. Anthony's liver showed a build up of fat, a feature associated with excessive alcohol consumption. In addition, the right and left ventricles of his heart were mildly dilated. Dr Elstub did not find any recent significant injuries.

74. Anthony's post mortem blood sample showed a high level of alcohol, at 0.271 g/100mL. The concentration of alcohol in his urine was higher, at 0.45 g/100mL. Low levels of benzodiazepine medications were also detected. In her report Dr Elstub commented that these medications have a similar depressant effect on the central nervous and respiratory systems as does alcohol.
75. A further feature of note was an elevated level of the ketone beta-hydroxybutyrate. This indicated the process of ketoacidosis, which is associated with alcoholism. Dr Elstub considered it possible that this process had contributed to Anthony's death.
76. Dr Elstub concluded that the cause of Anthony's death was acute alcohol intoxication. A significant contributing condition was benzodiazepine use.

The evidence of Dr Farrar and Associate Professor Gunja

77. On the question of the cause of Anthony's death, the court was also assisted with expert reports and evidence from the following specialists:
 - Dr John Farrar, consultant forensic pharmacologist employed under contract by the NSW Police Force
 - Associate Professor Naren Gunja, specialist in clinical toxicology and emergency medicine.
78. These witnesses described alcohol as a psychoactive substance which causes central nervous system depression. Consumed in large quantities, its effects include sedation, nausea and emesis, decreased psychomotor function, and impaired cognition, judgement and decision-making capacity. Alcohol-induced death can be brought about by, among other things, depression of the respiratory rate leading to deep coma.
79. Dr Farrar outlined the way in which alcohol is metabolised in the human body. The first phase, he said, was the absorption phase during which alcohol entered the liver and then passed into the blood stream. By this means, consumed alcohol was distributed throughout the watery compartments of the body. The final phase was the elimination phase, whereby alcohol was eliminated from the body through oxidation by liver enzymes.
80. At the inquest Dr Farrar and A/Professor Gunja were asked what blood alcohol concentrations would give rise to death *solely* as a result of alcohol consumption. They agreed that the range was very wide, due to many factors. A '*major determinant*' was the extent to which the individual had

developed tolerance to the toxicity of alcohol, due to frequent consumption. A person who was tolerant as a result of chronic alcoholism would metabolise alcohol at a faster rate than those who were not alcohol-dependent. Anthony was likely to be among these individuals.

81. Dr Farrar and A/Professor Gunja were also asked if it was possible to calculate what Anthony's blood alcohol concentration was likely to have been during his interactions with police that night. Among other materials, each had reviewed the video footage of Anthony moving from the police vehicle to the police station at around 7.20pm.
82. In their responses, both specialists took into account that as a regular heavy drinker, Anthony had probably developed neuronal and behavioural tolerance to the effects of alcohol. This describes a significant feature of frequent heavy drinking: the tendency of such individuals to be able to mask high levels of alcohol intoxication. As A/Professor Gunja commented, chronic alcoholics can appear more sober to observers and to themselves. This could present a problem for the non medical observer tasked with assessing a person's level of intoxication.
83. By way of example, in his first report Dr Farrar cited research involving a number of hospital patients who had been clinically assessed as '*non-intoxicated*'. A number were subsequently found to have blood alcohol concentrations exceeding 0.3 g/100mL, leading to the conclusion that the patients were tolerant to the effects of alcohol. As Dr Farrar observed:

'The presence of behavioural tolerance in particular may therefore mask the signs and symptoms of substantial, if not profound, intoxication.'
84. A/Professor Gunja concurred, adding that many chronic alcoholics also have the ability to '*awaken and return to their usual behaviour*' despite having '*subtle psychomotor and cognitive impairment that may not be as evident as in naïve drinkers*'.
85. Nevertheless both expert witnesses considered that in the video Anthony was displaying substantial deficits in gross psychomotor performance. In Dr Farrar's opinion, the video images of Anthony at 7.20pm indicated '*pronounced impairment of gross psychomotor function*', consistent with '*substantial alcohol-induced intoxication*'. A/Professor Gunja agreed that on the evidence of the video, Anthony was '*profoundly impaired*' by alcohol at this stage.
86. Dr Farrar considered that Anthony's behaviour at that time was '*indicative of a blood-alcohol concentration exceeding 0.3 g/100mL*'. But A/Professor

Gunja did not consider it possible to be this definitive, stating that his likely blood alcohol concentration was within a range of 0.1 to 0.4 g/100mL.

87. Significantly, both specialists thought it was unlikely Anthony would have died that night from alcohol toxicity alone, unless he had managed to consume further amounts of alcohol. They based this conclusion on the above video evidence, as well as CCTV footage from the police station foyer showing that soon after 8.00pm Anthony had roused from his period of sleep and sat up. This behaviour was not consistent with '*subsequent death due to uncomplicated acute alcohol toxicity*'. Such a finding was only possible if he had managed to drink more alcohol after this period.
88. A/Professor Gunja proposed a second scenario which he considered was available on the evidence, and which could explain Anthony's fatal outcome if it were the case that he had not accessed further alcohol after 8.00pm.
89. He cited a number of conditions which could have been precipitated by Anthony's consumption of alcohol. These included ketoacidosis (noting the indications of this condition in the autopsy's biochemical testing of Anthony's blood), cardiac arrhythmia (again noting the mildly dilated ventricles identified at autopsy); and positional asphyxia, whereby Anthony's airways may have become occluded because of the backward angle of his head and neck while lying asleep or unconscious on the patio steps.
90. A/Professor Gunja considered that Anthony's heavy consumption of alcohol that night may have precipitated a combination of the above three mechanisms, which may well have contributed to his death.
91. Dr Farrar did not consider himself qualified to express an opinion on this. He did however opine that the very small concentrations of benzodiazepine detected in Anthony's post mortem blood would not have had any effect on his sobriety; nor would they have contributed to his death. A/Professor Gunja agreed.

Conclusion regarding the cause of Anthony's death

92. The expert evidence therefore is that a finding that Anthony died solely as a result of acute alcohol toxicity relies upon acceptance that he drank a quantity of alcohol after the intervention of the police officers.
93. But the evidence establishes that this is unlikely to have occurred. During most of the period within which the ambulance and police officers were involved with him (that is, from approximately 6.30pm to 9.00pm), his backpack was in the possession of the police.

94. Furthermore, Kathryn Gilbert's evidence is that almost immediately after Anthony's arrival at their home, she located a bottle of vodka in his backpack and poured its contents down the sink. The only other bottle inside the backpack was an empty red wine bottle. She stated further that she and her husband did not keep alcohol inside their house, apart from one or two cans of beer. There is no reason to disbelieve her evidence on both these matters.
95. Therefore, if Anthony did have more alcohol in his backpack that evening, it is unlikely he accessed it. Nor does it appear that he accessed alcohol from his parents' house. Taking into account the expert evidence referred to in paragraph [87] above, the evidence as a whole does not support the conclusion that Anthony's death was due solely to acute alcohol intoxication.
96. I accept the submission of Counsel Assisting that on the balance of probabilities Anthony's death was the result of complications of acute alcohol toxicity. The complications were likely to have been any one of, or a combination of, the conditions identified by A/Professor Gunja.
97. The time of Anthony's death cannot accurately be established, except to say that it occurred sometime between 9.30pm on the evening of 29 January 2019 and 7.00am on the morning of 30 January 2019.

Should the police officers have detained Anthony pursuant to section 206?

98. In his evidence at the inquest, Superintendent Matthew Scott acknowledged that determining whether a person was '*seriously affected by alcohol*' and in need of physical protection could be a difficult task for police officers. The assessment was essentially a subjective one.
99. On this basis, Superintendent Scott did not feel himself to be in a position to judge whether the officers' assessment of Anthony's level of intoxication was correct. Nevertheless, he considered that once it had become apparent that Anthony's family was not willing to care for him that night, it would have been reasonable for the officers to reconsider whether section 206 was enlivened.
100. In closing submissions, it was put by Counsel Assisting that had the police officers specifically turned their minds to this assessment, it would have been *open* for them to have found that Anthony was in fact '*seriously affected by alcohol*' and in need of physical protection. The evidence of the video footage indicates that his psychomotor function was significantly impaired. This combines with the observations of the ambulance and police officers that his speech was mumbling, slurred and incoherent.

101. This is not to say however that the evidence compels the conclusion that Anthony was '*seriously affected by alcohol*'. I accept that the assessment to be undertaken by police officers is a subjective one. I also bear in mind the evidence given by Dr Farrar and A/Professor Gunja, that chronic alcoholics are able to mask the effects on their body and mind of high levels of alcohol intoxication, and the difficulties that this can pose in assessing their sobriety.
102. It is true that both experts assessed Anthony to have been substantially affected by alcohol intoxication. This however was the opinion of clinical toxicologists with specialist knowledge of the physical and cognitive effects of alcohol consumption. It would not be appropriate to expect police officers, however experienced, to possess a similar level of expertise.
103. I conclude that in their discussion on the night of 29 January 2019, the three police officers ought to have given specific consideration to whether Anthony's condition and situation enlivened their power under section 206 to detain him as an intoxicated person.
104. I further find that had they done so, on the basis of what they knew and observed it would have been open for them to have found that Anthony did meet the definition of an intoxicated person who was in need of physical protection. I accept however that the assessment is a subjective one and that the information available to them did not compel that conclusion.

Did the police officers act appropriately in returning Anthony home?

105. The night of 29 January 2019 was a traumatic one for Anthony's parents. In the midst of their grief at the loss of Anthony, they were distressed by the manner in which he had been returned to their home. No one from Maitland Police Station notified them that they were bringing him back that night; nor did officers Redman or Flannery make any attempt to speak to them when they dropped him off.
106. In his evidence, Superintendent Scott thought it would have been reasonable and appropriate for the two officers to have made Kathryn and Peter Gilbert aware that they were bringing Anthony home, and to have spoken with them when they arrived.
107. At the inquest, both police officers expressed regret that they had not spoken with Kathryn and Peter when they brought Anthony home. They readily agreed this would have been appropriate, to ensure among other things that Kathryn and Peter were able to get him inside without their help. They

apologised for not having done so. They were also regretful that they had not rung Kathryn and Peter beforehand, to allow them to expect Anthony.

108. At the inquest, Superintendent Scott was asked if he considered that further guidance to police officers about how they should approach such situations would be helpful. He thought it would not. He pointed out that the community policing role is a very broad one which involves officers in a range of activities to assist people, many of which are not covered by specific instructions or policies. By way of example, he pointed out that other options which might have been considered by officers who found themselves in this situation could include to allow the person to remain for a period in the police station foyer, provided they were not violent or disruptive; or to explore whether a night's accommodation might be found. It was also the case that the options for police would vary depending on the location and the community resources which were available.
109. There is no doubt that community policing is increasingly seen as an important element of the work and the training of police officers. It is a very worthwhile part of police work to develop positive contact with community members, and to have a focus on their welfare which goes beyond law enforcement.
110. In the present case the involved officers, rightly I believe, perceived that Anthony's state of intoxication had put him in a vulnerable position. It is to their credit that they felt a concern for him which disposed them against leaving him in the street. Therefore, in finding that there were shortcomings in some of the decisions they made that night, I acknowledge the concern they had for Anthony and I would not wish to discourage any other officer from acting on opportunities to help people who are in a similar position.

The question of recommendations

111. I accept the opinion of Superintendent Scott that it would not be useful or feasible to recommend further specific guidance and training for police officers in relation to intoxicated persons. It is evident that police officers do receive education in the exercise of their powers under section 206 of *LEPRA*. Superintendent Scott noted however that there was no general guidance regarding the response to a person who, in the opinion of the police officer, did *not* meet the criterion of an intoxicated person under *LEPRA*. He noted further that 'scenario training' can be a valuable exercise, as police officers learn in different ways.
112. With that in mind, Counsel Assisting proposed a recommendation for the Commissioner to consider further training and education in relation to how

police officers are advised to respond to intoxicated people who do not meet the criteria for detention under Part 16 of *LEPRA*. On behalf of the Commissioner, Ms Burke told the Court that the Commissioner did not oppose this recommendation.

113. It appears to me that there would be value in making this recommendation. Were it to be accepted, it would of course be a matter for those responsible for police training to determine the form and content of the guidance.

Conclusion

114. This inquest was a painful experience for Anthony's family, who relived the sadness of his last days and hours. I offer them sincere sympathy for the loss of their son, brother, husband and father. On behalf of the Commissioner, Ms Burke also conveyed to Anthony's family her condolences for the loss of Anthony.

115. I wish to thank the excellent assistance provided to me by the Assisting team, and my appreciation to the Officer in Charge Detective Sergeant Wheatley for his conduct of the coronial investigation.

Findings pursuant to section 81 of the Act

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.

Identity

The person who died is Anthony Gilbert.

Date of death

Anthony Gilbert died between the night of 29 January 2019 and the morning of 30 January 2019.

Place of death

Anthony Gilbert died at 40 Moore Street, Dungog NSW 2420.

Cause of death

Anthony Gilbert died from complications of acute alcohol intoxication.

Manner of death

Anthony Gilbert died from the complications of an accidental overdose of alcohol. The evidence does not establish that he ingested the alcohol with the intention of ending his life.

Recommendation pursuant to section 82 of the Act

To the Commissioner, NSW Police Force:

That consideration be given to further training and education as to how police officers are advised to respond to intoxicated people who do not meet the criteria for detention under Part 16 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

I close this inquest.

Magistrate E Ryan
Deputy State Coroner
Lidcombe
19 April 2023