

CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	INQUEST INTO THE DEATH OF TERESA ERIKA FOCE
Citation:	[2020] ACTCD 8
Date of Findings:	24 September 2020
Before:	Chief Coroner Walker
Decision:	See [1] – [31]
Catchwords:	CORONIAL LAW – cause and manner of death – cycle paths – whether public hearing necessary – whether matter of public safety arises
Legislation cited:	<i>Coroners Act 1997 (ACT)</i>
File Number:	CD 98 of 2018

Introduction

1. Dr Teresa Erika Foce, a 63 year old woman died on 24 April 2018 at the Canberra Hospital, in the Australian Capital Territory (ACT);
2. The manner and cause of death of Dr Foce are sufficiently disclosed and a hearing is unnecessary;
3. The manner of Dr Foce's death was an accident between a builder's trailer and a bicycle she was riding on 7 April 2018, where neither was at fault. The cause of Dr Foce's death was a head injury caused from that collision; and Pursuant to s 52(4)(a)(i) of the Coroners Act 1997, a matter of public safety has been found to arise in connection with this inquest, which has subsequently been addressed by the ACT Government. I do not consider any further action is required. I do however make a recommendation to ACT Government.

Events leading up to Dr Foce's death

4. While ordinarily employed as a psychiatrist in the ACT and New South Wales, Dr Teresa Foce was also a keen and experienced cyclist. In early 2018, she and her partner, Mr Michael Kearney, were planning to undertake a riding tour together overseas. They commenced preparing for the tour and would often ride together on training rides around the southern part of the ACT from their home in Tuggeranong.

5. At approximately 9 a.m. on 7 April 2018, Dr Foce and Mr Kearney commenced a training ride from their Tuggeranong home. The course of their journey took them south towards Tharwa.
6. At about 9:30. a.m. Dr Foce and Mr Kearney were riding along Tharwa Drive in Conder, initially both in the designated bicycle lane on the side of the roadway.
7. About eighty metres before the roundabout on Tharwa Drive with Mentone View, Dr Foce left the bicycle lane on the roadway and mounted the off-road path that runs beside Tharwa Drive. The bicycle lane on the roadway ends at this point and requires cyclists to exit on to the off-road path. This path was co-shared with pedestrians but is clearly signed as a bicycle path as cyclists exit the bicycle lane on the roadway. It is separated from the roadway by a gutter and grassed median strip. The path has a bitumen coating and a painted line dividing it into two lanes.
8. Mr Kearney continued to ride along Tharwa Drive on the roadway, ahead of Dr Foce.
9. Mr Kearney reached the next roundabout on Woodcock Drive and Box Hill Avenue where he stopped and turned around to see where Dr Foce was. She was not behind him.
10. Mr Kearney backtracked to the roundabout at Tharwa Drive and Mentone View. He found Dr Foce on the road unconscious, with a number of bystanders assisting her. She had collided with a builder's utility and attached trailer. One of the bystanders had contacted the ACT Ambulance Service.
11. Dr Foce was transported by ambulance to the Canberra Hospital. As a result of the collision, Dr Foce sustained significant brain injuries. On 23 April 2018 Dr Foce's family consented to her becoming an organ donor, following the medical opinion of her treating doctors that she had '*a poor prognosis with significant neurological deficits at best. The lack of progress over the past week...clarified this.*'
12. On 24 April 2018, Dr Foce died as a result of her injuries.
13. A postmortem examination of Dr Foce was directed by Coroner Fryar, who originally had carriage of this inquest. Professor Duflou undertook that examination and opined that Dr Foce died as the result of head injuries. Professor Duflou noted that '*[e]xamination of the deceased was limited to an external examination. This revealed healing injuries to the body and evidence of extensive neurosurgical and intensive care intervention. No unexpected injuries were identified.*'¹

Immediate Action taken by ACT Government

14. All road transport accidents in the ACT are reviewed by Transport Canberra, the directorate responsible for road safety. On 30 April 2018, Mr Michael Day, Road Engineer, Transport Canberra, prepared a report relating to the condition of the road and path. He noted that "*there was gravel on the off-road path which appeared to have been washed off the adjacent nature reserve, and also damage to the surface of the path itself around the location that Ms Foce may have lost control*".

¹ Report of Professor Johan Duflou dated 27 April 2018 at page 3.

15. On 2 May 2018, Coroner Fryar wrote to Mr Shane Rattenbury MLA, ACT Minister for Road Safety, to consider immediately addressing the recommendations made in the report prepared by Mr Day. In particular, Coroner Fryar recommended that:

..the path be swept, damage to the path be repaired, and consideration be given to installing some sort of arrangement to prevent further gravel being washed onto the road. I also ask that you consider introducing guard rails or barriers between the path and the roundabout along the south bound approach.

16. On 27 June 2018, Mr Mick Gentleman MLA, then the Acting Minister for Transport and City Services, wrote to Coroner Fryer and advised that the measures recommended by Mr Day had been implemented.

Investigation

17. Police attended and inspected the scene on the morning of the collision. Photographs taken by Senior Constable Smith and Senior Constable Potts shows skid marks in gravel and tyre marks on the offroad bicycle path that I infer were caused by Dr Foce as she tried to brake to avoid colliding with the builder's trailer. It is apparent from those photographs that gravel had fallen on to the bicycle path which impacted on Dr Foce's ability to brake as she tried to cross Mentone View.
18. Mr Kearney told police that the bicycle Dr Foce was riding on 7 April 2018 was a Scott Metrix hybrid bicycle which was designed for road riding. The tyres were hard and he considered that when the tyres hit the gravel, the bicycle would have skidded. Mr Kearney also said that Dr Foce wore prescription photochromatic glasses, which in his view, reduced ability to see contrast. Mr Kearney noted that at the time of the collision, he observed that there was '*relatively good sunlight on the path...and then its deep shadow. It's not entirely clear she would have even seen the gravel...until you're right on it...and even when you're on top of it, because of the photochromatics, they don't change instantly*'².
19. Police also spoke with the driver of the vehicle involved in the collision, Mr Benjamin Crockett, on the day of the collision. Mr Crockett said '*he was heading home... and [saw] there were two cyclists on the road [who were a] great distance apart from each other. The first one went through, I slowed down coming into the roundabout, indicated left, turned left. As I was through the roundabout, she hit the back end of my trailer.*' Mr Crockett noted that at the time of the collision, the back of his trailer was '*sticking out through the roundabout*'. Police determined that Mr Crockett had not committed any criminal offence.
20. Additional information was provided by the Territory on 20 August 2019 which disclosed that on 3 April 2014, a complaint was received from an unknown source that '*the bicycle path at the corner of Tharwa Drive and Mentone View keeps filling*

² See Transcript of Record of Interview between Leading Senior Constable Lutz and Michael Kearney, 6 November 2018, page 17.

up with dirt. This makes it incredibly dangerous on a bicycle, since you come down the hill at speed (off the road or the path) are braking and suddenly hit this corner filled with dirt...Could the dirt please be removed and the issue looked into'. The records indicate that in response to this complaint, the path was cleaned on 15 April 2014.

Submissions by Mr Kearney and response

21. On 4 September 2018, the Coroner's Court received correspondence from Dr Foce's partner, Mr Michael Kearney, who requested that the Coroner:
 - a. investigate the circumstances of the accident; and
 - b. consider the civil design of the on-road cycling/bicycle path at the roundabout/intersection and its impact on cyclist safety;
 - c. if appropriate, explore these issues through a public hearing.
22. The facts surrounding the manner and cause of Dr Foce's death are evident on the information before me. I do not consider a hearing would assist me in finding any additional information about the circumstances of the events that relate to the manner of Dr Foce's death, and specifically, any additional details about the day of the accident.
23. I acknowledge Mr Kearney's concern as to the safety of cyclists using bicycle paths in the ACT, however, the issue of cycling safety generally is too amorphous for the court to consider in the context of this inquest. I note the prompt response to the particular concern raised by Coroner Fryar. I also conclude that it is appropriate for me to make a recommendation to the ACT Government regarding the maintenance of bicycle paths in the Territory.
24. I also note with sadness that the court has recently been informed by lawyers assisting Mr Kearney that he too has since passed away in unrelated circumstances.

Findings

25. I find that Dr Foce died on 24 April 2018 as a result of a head injury sustained from a collision while turning into Mentone View, Conder in the Australian Capital Territory, in which she and her bicycle collided with a builder's trailer being towed by a utility.
26. The accident was not the result of any inappropriate act or omission by Mr Crockett, the utility driver.
27. Given police photographs and the views of Mr Kearney concerning how Dr Foce's bicycle would have handled as it went over the gravel, as well as the glasses Dr Foce was wearing at the time she was riding, I consider these factors, along with the state of the bicycle path, would have contributed to the collision.

28. I am satisfied that since the accident, the steps the Territory has taken to improve public safety on this bicycle path, namely, sweeping the bicycle path shortly after the accident, repairing the path and building a retaining wall, so as to ensure that gravel from the nearby reserve is unlikely to be swept on to the bicycle path again, alleviates any foreseeable future public safety matters arising from this incident. As such, I do not consider there are any other aspects of public safety arise in relation to this matter.
29. However, given this location was previously known to have issues with debris on the path, I recommend that, if no such program presently exists, the ACT Government institute a regular audit program for its off-road bicycle paths to ensure that they are appropriately maintained and there are no obstructions or risk of obstruction from the surrounding environment (such as gravel, dirt or trees). If such a program exists, I recommend it be reviewed to ensure that inspections occur at sufficient frequency so as to minimise the risk that a path becomes and remains obstructed to a level that may be dangerous to persons using the path.
30. I direct that these findings be published on the Coroner's Court website, together with any responses provided by the Territory.
31. I extend my condolences to Dr Focé's family and friends, particularly those further affected by Mr Kearney's passing.

DATED 12 September 2020

**L A Walker
CHIEF CORONER**