

CORONER'S COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Matter Title: Inquest into the deaths of Claire Nu'ulopa Wendy Sankey and Susanna Kopsiewicz

Citation: [2024] ACTCD 5

Decision Date: 12 September 2024

Before: Coroner Archer

Findings: See [17], [21]

Catchwords: **CORONIAL LAW** – manner and cause of death – multiple injuries – single motor-vehicle accident – related indictable offence – culpable driving causing death – failure to render assistance – unaccompanied learner driver

Legislation Cited: *Coroners Act 1997* (ACT) ss 13, 34A, 52, 58, 58A

Case Cited: *DPP v Calhoun (a pseudonym)* [2023] ACTSC 189

File Number: CD 289 and 290 of 2022

CORONER ARCHER:

INTRODUCTION AND SUMMARY

1. Ms Claire Nu’ulopa Wendy Sankey and Ms Susanna Kopsiewicz died in a motor vehicle accident on the Monaro Highway on 9 October 2022. At the time of their deaths, Ms Sankey and Ms Kopsiewicz were 15 and 14 years old respectively. I will, with respect, refer to them as Claire and Susi.
2. Following the accident, the circumstances surrounding Claire and Susi’s deaths became the subject of criminal proceedings in the ACT Supreme Court. As a result, in accordance with s 58(3) of the *Coroners Act 1997* (ACT) (“the Act”), I suspended my inquest on 30 November 2022. The effect of that provision is that an investigation into a death must not, with a limited exception,¹ proceed further until (in cases such as this) criminal proceedings have concluded: s 58A of the Act.
3. The relevant criminal proceedings were finalised on 19 July 2023, when his Honour Justice Mossop relevantly sentenced the offender to 40 months of imprisonment for two counts of culpable driving causing death and one count of failing to render assistance, and imposed a fine of \$200 for being an unaccompanied learner driver.

JURISDICTION

4. Following reports of a motor vehicle accident on the Monaro Highway on 9 October 2022, Claire and Susi’s deaths were reported to the ACT Coroner’s Court on 10 October 2022, as it fell within the terms of s 13(1)(g) of the Act, being that a death “appears to be directly attributable to an accident”.
5. I was required to hold an inquest² into the manner and cause of Claire and Susi’s deaths, and make findings that are required by s 52 of the Act. That section of the Act relevantly provides:

52 Coroner’s findings

- (1) A coroner holding an inquest must find, if possible—
 - (a) the identity of the deceased; and
 - (b) when and where the death happened; and
 - (c) the manner and cause of death; and
 - (d) in the case of the suspected death of a person—that the person has died.

- (4) The coroner, in the coroner’s findings—

¹ The Act permits a coroner to find the identity of the deceased and the date and place of the person’s death. A recommendation has been made to Government that section 58 be amended to give greater flexibility to the Coroner to continue a process of investigation while criminal proceedings are on foot.

² Under the Act, meaning given to the term “inquest” varies. In this context it means a process of investigation. There can be a “hearing” for an inquest.

- (a) must—
 - (i) state whether a matter of public safety is found to arise in connection with the inquest or inquiry; and
 - (ii) if a matter of public safety is found to arise—comment on the matter.
6. A coroner’s ability to make findings as to the “manner”³ of a person’s death after criminal proceedings that are relevant to the death have been conducted is constrained by the operation of s 58A of the Act. Specifically, s 58A(2) of the Act prohibits a coroner from making findings that may be “inconsistent with the judgment or verdict of the court that finally determined the guilt or innocence of the person for the related indictable offence”.

THE CRIMINAL PROCEEDINGS

7. On 10 October 2022, criminal proceedings against Mr Calhoun (a pseudonym), the driver of the vehicle, commenced in the ACT Childrens Court. Mr Calhoun pleaded guilty to a total of seven charges, including:
- (a) two counts of culpable driving causing death, contrary to s 29(2) of the *Crimes Act 1900* (ACT);
 - (b) failure to render assistance, contrary to s 16 of the *Road Transport (Safety and Traffic Management) Act 1999* (ACT);
 - (c) being an unaccompanied learner driver, contrary to s 20(3) of the *Road Transport (Driver Licensing) Regulation 2000* (ACT); and
 - (d) four other unrelated offences.
8. On 11 January 2023, Mr Calhoun was committed to the ACT Supreme Court for sentence. On 17 July 2023, sentencing submissions were heard before his Honour Justice Mossop, who, on 19 July 2023, sentenced Mr Calhoun to a total of 40 months of imprisonment for the two counts of culpable driving causing death and the one count of failing to render assistance, and imposed a fine of \$200 for being an unaccompanied learner driver. Mr Calhoun was sentenced to additional periods of imprisonment for the four other unrelated charges. The total sentence was to be conditionally suspended after Mr Calhoun had served 24 months imprisonment.

³ The meaning of these terms is given in John Abernethy et al, *Waller’s Coronial Law and Practice in New South Wales* (LexisNexis Butterworths Australia, 4th ed, 2010) 215 [81.16]:

Manner and Cause of Death Distinguished: “Manner” is defined in the *Macquarie Online Dictionary* (2009) as, *inter alia*, “way of doing; being done; mode of action”. The same authority also defines “cause” as “that which produces an effect”. The effect under consideration is death, so the inquest must find, if possible, what has produced the death and how the death took place. For example, if one is inquiring into a death following a fall from a height, the cause of death would be the injuries sustained in the fall. the manner of death would be how that fall came about – Did the deceased jump, was he or she pushed or did he or she fall accidentally?

CIRCUMSTANCES SURROUNDING CLAIRE AND SUSI'S DEATHS

9. In accordance with s 58A(1)(b)(iv) of the Act, following the finalisation of the relevant criminal proceedings in the ACT Supreme Court, I resumed the inquest into Claire and Susi's deaths.
10. The offender was under the age of 18 at the time of the accident, and was, therefore, identified by the pseudonym "Micha Calhoun".
11. I am satisfied that his Honour's findings sufficiently describe the circumstances surrounding the deaths, and provide an appropriate basis on which I am to make the findings required by s 52(1) of the Act:

29. During the afternoon and evening of Saturday 8 October 2022, the offender and his friend Mr F were at Mr F's address in Denman Prospect. While at Mr F's address, the offender consumed about 12 x 375 ml stubbies of Carlton Dry beer. At around 8:00pm, the offender and Mr F left the address in an Uber for the offender's mother's address in Dickson. They arrived at some time before 9:00pm. At his mother's residence, the offender and Mr F shared a one litre bottle of Captain Morgan rum. The offender said that he drank approximately half of the bottle. Also at the residence was the offender's mother and two other females, who arrived at about 10:00pm.

30. At about 12:00am on Sunday 9 October 2022, the offender and Mr F decided to leave the offender's mother's residence. The offender took the keys to his mother's vehicle from the bench by the front door. The vehicle was a red 2004 Toyota Camry sedan. The offender drove to Theodore to collect their friend Claire Sankey (15 years old) from her residence. They arrived at Ms Sankey's residence at about 1:00am.

31. The offender held an ACT learner driver licence and was not allowed to drive without a person with a full active licence accompanying him. Mr F was not a full licence holder.

32. After collecting Ms Sankey, the offender continued driving around the Tuggeranong Valley. He attempted to cause the rear of the vehicle to slide out in the wet conditions, while driving through roundabouts. The offender later said that he was driving at about 60 to 70 km/h through the roundabouts, trying to impress Ms Sankey and Mr F.

33. About 45 minutes later, Ms Sankey called her friend, Susi Kopsiewicz ([14] years old). The youths in the vehicle formed a plan to meet up with Ms Kopsiewicz. The offender drove the vehicle to [Denman Prospect] and picked her up. The offender then allowed Mr F to drive, and they drove to a family friend's house in Gowrie. About 30 minutes after arriving at the Gowrie address, all four young people departed in the vehicle. The offender was driving, Ms Sankey was in the front passenger seat, Ms Kopsiewicz was in the rear driver's side seat and Mr F was in the rear passenger side seat.

34. The offender drove around Tuggeranong Valley for a while, and eventually drove onto the Monaro Highway at Hume heading in a northerly direction. Mr F believes they entered the Monaro Highway at the intersection with Isabella Drive. That section of the Monaro Highway has a posted speed limit of 80 km/h.

35. The offender continued driving in a northerly direction along the Monaro Highway. Traffic cameras recorded the vehicle travelling at 200 km/h approximately 12.6 seconds

before the collision. Ms Sankey and Ms Kopsiewicz told the offender to slow down. Shortly before the collision, Mr F noticed the odometer displaying the vehicle's speed at 180 km/h. While driving along the sweeping left-hand bend south of the intersection with Lanyon Drive, the vehicle started shaking and lost traction on the road surface. The road was illuminated by streetlights. The traffic was light.

36. The vehicle slid across lanes one and two and onto the grassed verge and started to spin before crashing through the temporary construction fencing. The vehicle collided with a tree to the rear of the vehicle, with sufficient force to completely sever the tree at the trunk. The vehicle collided with another tree on the passenger side before coming to rest in the grass median facing in a northerly direction.

37. After the vehicle came to a stop, Mr F exited the vehicle and called out to the other passengers. After only hearing a response from the offender, Mr F assisted the offender to exit the vehicle. Both Mr F and the offender ran from the scene and got into a passing Uber. The Uber drove them to the offender's mother's address in Dickson. While inside the Uber, the offender used Mr F's phone to repeatedly call Ms Kopsiewicz. The calls were unanswered. The offender had lost his own phone during the collision.

38. The offender and Mr F arrived at his mother's address and informed her that the offender had crashed the car. The offender used his mother's phone to log into his Snapchat account and tried to call Ms Sankey and Ms Kopsiewicz via Snapchat. The calls were unanswered. The offender told Mr F not to call the police.

39. Police, Ambulance and ACT Fire and Rescue were at the scene of the accident by 8:30am. There was evidence of the vehicle leaving the roadway and sliding along the grass verge approximately 50 m south of the vehicle's location, through the cyclone fencing continuing to its final resting place. There was a section of the fence under the vehicle, with a downed tree to the passenger side of the vehicle.

40. Photographs were tendered showing catastrophic damage to the vehicle, particularly to the rear section.

41. ACT Fire and Rescue extricated a deceased female from the front passenger seat of the vehicle, later identified as Ms Sankey. Another deceased female was observed in the rear of the vehicle, later identified as Ms Kopsiewicz. Due to the collapse of the rear passenger cell of the vehicle, she was unable to be removed from the vehicle without external intervention.

42. The Forensic Medical Officer attended the scene and pronounced both Ms Sankey and Ms Kopsiewicz as life extinct. Autopsy reports revealed that both had survived the collision for a period of time. However, more likely than not, both deceased would have died from their injuries irrespective of whether medical assistance had been provided shortly after the crash. There is no evidence as to whether either deceased was conscious at any time after the accident.

43. The offender was arrested at his mother's house at about 10:30am that morning. He admitted that he was the driver of the vehicle at the time of the collision.

12. His Honour Justice Mossop's decision is available in full on the ACT Supreme Court's website.

DECISION TO DISPENSE WITH A HEARING

13. Having considered the information provided to me by members of the Australian Federal Police and Professor Johan Duflou, forensic pathologist, who performed the necessary post-mortem examinations at my direction, I was satisfied that the manner and cause of Claire and Susi's deaths were sufficiently disclosed, and, as such, a hearing was unnecessary: s 34A of the Act.
14. I communicated my decision not to conduct a hearing and the reasons therefor to Claire's and Susi's families on 17 April 2024 and 5 August 2024 respectively, and to Mr Calhoun's lawyers on 6 May 2024. I provided the interested parties with a copy of my provisional findings. Claire's and Susi's families have each expressed their agreement that a hearing is unnecessary. Mr Calhoun advised that he did not wish to provide comments on or make submissions in relation to those findings.
15. For that reason, in accordance with s 34A(1) of the Act, a hearing was formally dispensed with.

FORMAL FINDINGS AS TO THE MANNER AND CAUSE OF DEATH

16. I have considered:
 - (a) The initial police report prepared by the AFP coronial investigators;
 - (b) The post-mortem reports dated 24 November 2022 prepared by Professor Duflou in relation to the deaths;
 - (c) The mechanical inspection statement prepared by the AFP Vehicle Inspection Team;
 - (d) The assessment report prepared by ACT Transport Canberra and City Services in relation to the road and environmental conditions of the Monaro Highway at the time of the accident;
 - (e) The brief of evidence prepared in respect of the criminal proceedings; and
 - (f) The reasons for sentence of Mossop J in the matter of *DPP v Calhoun (a pseudonym)* [2023] ACTSC 189, dated 19 July 2023.
17. Based on that material, I find:

That Claire Nu'ulopa Wendy Sankey died on 9 October 2022 on the Monaro Highway, south of the intersection with Lanyon Drive, in the Australian Capital Territory, as a result of multiple injuries sustained in a motor vehicle collision;

and

That Susanna Kopsiewicz died on 9 October 2022 on the Monaro Highway, south of the intersection with Lanyon Drive, in the Australian Capital Territory, as a result of multiple injuries sustained in a motor vehicle collision.

FINDINGS IN RESPECT OF MATTERS OF PUBLIC SAFETY

18. On 9 October 2022, following the fatal crash, an ACT Government Fatal Crash Callout Officer attended the scene and assessed the road and environmental conditions.
19. His examination did not suggest that the road conditions at the time would have caused or contributed to the crash. He concluded that while it was likely raining at the time of the crash, given the manner of Mr Calhoun's driving, it could not be said that the environmental conditions had caused or materially contributed to the crash.
20. The car involved in the collision was also examined by a member of the AFP vehicle inspection team. The vehicle was severely damaged. However, the vehicle seemed to have been in good condition, and all systems were likely in proper working order prior to the collision.
21. I do not find any matter of public safety to arise in connection with the inquest into Claire and Susi's deaths.
22. The general issue of dangerous driving has recently been extensively and broadly examined in the political domain: Legislative Assembly for the Australian Capital Territory, *Inquiry into Dangerous Driving* (Report No 16, 20 April 2023). Its recommendations are being considered by the ACT Government. The matters considered in the context of that inquiry and its recommendations fall outside the scope of this inquest, and they go beyond the matters in respect of which a coroner can make recommendations. In particular, penalties that apply to dangerous driving offences are a matter for the Legislative Assembly to determine. Similarly, sentencing outcomes in particular cases in the criminal jurisdiction of the courts in the ACT is ultimately a matter for those courts and appellate courts to determine.

CONDOLENCES

23. I convey my sincere condolences to Claire's and Susi's families. There is no doubt Claire and Susi's deaths have devastated their families and caused them immeasurable grief. I acknowledge that their passing has been a traumatic experience for both families.

I certify that the preceding twenty-three [23] numbered paragraphs are a true copy of the reasons for findings of his Honour Coroner Archer.

Associate: Markus Ching

Date: 12 September 2024