

IN THE CORONERS COURT  
OF VICTORIA  
AT BALLARAT

Court Reference: COR 3657 /2010

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: Simon Richard Gerdes**

Delivered On: 21<sup>st</sup> February, 2014  
Delivered At: Melbourne Coroners Court with video link to Ballarat  
Coroners Court.  
Findings of: Jacinta Heffey, Coroner  
Representation: Nil-Senior Next of kin in person  
Counsel Assisting the Coroner: Tania Cristiano, Police Coronial Support Unit

I, JACINTA HEFFEY, Coroner having investigated the death of SIMON RICHARD GERDES AND having held an inquest in relation to this death on 5<sup>th</sup> February 2014 at the Ballarat Coroners Court find that the identity of the deceased was SIMON RICHARD GERDES born on 21<sup>st</sup> April, 1970 and that his death occurred on 21<sup>st</sup> September 2010 at the Ballarat Base Hospital

**from:**

1(a) Head Injury

Pursuant to section 67(2) of the **Coroners Act 2008**, I make findings with respect to **the following circumstances:**

1. On 5<sup>th</sup> February 2014 a mandatory inquest under section 52(2)(a) of the *Coroners Act 2008* (Vic) (the Act) was held into the death of Simon Richard Gerdes. The inquest was mandatory due to the fact that it was suspected that the death was as a result of a homicide.
2. The coroner's investigator, Detective Senior Constable Brian Malloch gave sworn evidence of his investigation into the death of Mr Gerdes in the presence of Mr Gerdes'; mother and son who were invited to ask any questions or raise any concerns they had.

**BACKGROUND**

3. On the evening of the 19<sup>th</sup> September 2010 the deceased, along with one of his sons, Jacob and his friend Daniel Buckland were drinking at the Hepburn Hotel. The day before, Mr Gerdes' estranged wife, Joanne Gerdes had disclosed to him that she had been having a relationship with one Daryl Williams, who was known to Mr Gerdes, and that she suspected that he, Mr Williams, had slashed her tyres. She had reported this to police. Mr Gerdes decided to pay a visit to Mr Williams after leaving the hotel. According to his son, he was very drunk. Ante-mortem toxicological analysis revealed a blood alcohol concentration of 0.22g/100mml.
4. Upon arrival at Mr Williams' home, which was actually a garage containing tools and other garage type equipment, Mr Gerdes and his son alighted from their car and approached the home. Mr Buckland stayed back. Mr Williams had heard the car arrive and initially did not identify Mr Gerdes or his son. In fear, he dialled 000 and reported that

someone was trying to get into his house and was seeking urgent protection. It was on all accounts very dark. In the ensuing altercation Mr Williams picked up a plastic pick handle and struck the deceased who fell to the ground onto a solid concrete surface. He was apparently immediately unconscious. An ambulance was called and the deceased was taken to Ballarat Base Hospital, where he subsequently died on the 21<sup>st</sup> September without regaining consciousness.

## **THE CORONIAL INVESTIGATION**

5. An autopsy was performed on the body of Mr Gerdes at the Victorian Institute of Forensic Medicine. Forensic Pathologist, Dr Matthew Lynch, stated in his Report that the “significant head injury” that he identified was reflective of non-specific blunt trauma and he was unable to determine whether the blow with the pick handle or the head striking the concrete floor had caused the injury. An incidental finding was that of secondary cancer in the thyroid.
6. Statements were taken from all relevant witnesses. The recorded 000 calls to police and ambulance were also available as was a video tape of the record of interview with Darryl Williams. A Transcript of the interview with Jacob Gerdes also formed part of the Inquest Brief.
7. It is clear, particularly from the 000 call to police made by Mr Williams that he was in considerable fear at the time he made the call. He had not identified who the intruders were at that time. In the course of the call, he recognised and identified Mr Gerdes. He is heard continuously to yell “Get out of my house” to trespassers.
8. Jacob Gerdes’ Record of Interview contains many statements that directly contradict the “real time” evidence contained in the 000 call. Jacob Gerdes states that Mr Williams was on the phone to police “the whole time or nearly the whole time” and yet he attests to incidents that clearly are not heard on the 000 call and which suggest that Mr Williams was the aggressor. At the same time he acknowledges that his father “rushed” Mr Williams and that though their plan was to have a fight outside, they went in “uninvited”. He said that he kept telling his father that they should leave but he did not think his father was listening because he kept yelling. He agreed “Darryl would have been scared as soon as he realised that (the deceased) was out the front”.

9. Both Mr Williams and Jacob Gerdes told police that it was very dark and when asked about where his father was hit, Jacob Gerdes qualifies the answer he gives with “I’m pretty sure, but you know, I can’t see in the dark”. There were no lights on.
10. In his Record of Interview, Jacob Gerdes told police that his father was hit once and was struck down and “ I think he possibly would have been knocked out then, plus he head-butted the ground too.....”. He then went on to say that Mr Williams had continued hitting his father whilst he was on the ground. The post-mortem investigation revealed bruises and abrasions on the chest, back, upper and lower limbs. This is consistent with the “whacking” Jacob Gerdes says that his father endured at the hands of Mr Williams. However, these resulted in bruises and abrasions only. There was no bony injury. (This was not heard on the 000 tape but according to Mr Williams, he had put the phone down at this stage).

#### **FAMILY CONCERNS**

11. Mr Gerdes’ mother told the Inquest that she believed that this latter action on the part of Mr Williams constituted “excessive self-defence”. Excessive self-defence can form the basis of a homicide charge. There is no evidence, however, based on the forensic material, that the death resulted from these actions on the part of Mr Williams. To re-iterate, Mr Gerdes died from a significant blunt injury to the head, which could have been sustained either by being struck by the pick handle or by striking his head on the concrete floor when he lost his balance. According to his son, Jacob, he was unsteady on his feet, “could hardly walk” and that “he would have fallen over by himself if he just moved out of the way”.


Pursuant to section 73(1) of the **Coroners Act 2008**, I order that this Finding be published as part of the Court record.

I direct that a copy of this finding be provided to the following:

Mrs Lynn Joy Gerdes;

Investigating Member, Detective Senior Constable Brian Malloch

Signature:



JACINTA HEFFEY  
CORONER

Date: 21<sup>st</sup> February 2014.

