

IN THE CORONERS COURT
AT HASTINGS
(In Chambers)

CSU-2012-PNO-000573

UNDER THE CORONERS ACT 2006

AND

IN THE MATTER of an Inquiry into the death of
Sonny Hone WAIHI

Date of Findings: **07 October 2013**

FINDINGS OF CORONER CJ DEVONPORT

INTRODUCTION

[1] Having given due consideration as to whether an inquest is necessary or desirable in this case, and having complied with the requirements of section 77 of the Coroners Act 2006, I have decided to conclude this inquiry by holding a hearing on the papers and make chambers findings pursuant to that section.

[2] At approximately 11:20 pm on Sunday 23 December 2012 Sonny Hone Waihi, aged 18, was struck by a car while walking on State Highway 56, Rangiotu.

ISSUES

[3] The issues are the cause and circumstances of death, whether intentional or unintentional and date of death.

Issue 1: CIRCUMSTANCES OF DEATH

[4] Mr Waihi boarded at 1108 State Highway 56, Rangiotu with others including Hoani Tamatea and Tehimana Pokaia. After returning from work on 23 December 2012 after 5 pm, Mr Waihi socialised at the Rangiotu address with Mr Tamatea, Mr Pokaia, owner of the property Marie Mitchell, and Hydee Tyson. Later in the evening Mr Waihi received a telephone call and spoke to various people on the other end of the line. He became visibly upset and cried when advised that a friend was in hospital on life support.

[5] Mr Pokaia states that about 9 pm Mr Waihi went over to the school to talk on his cellular phone, to get away from the house. He appeared to be having an argument which he ended with "*fuck you*" and by smashing the phone on the ground. (It has not been able to be established who Mr Waihi was talking with on that call. It appears to have been a different person to that spoken with on the call when Mr Waihi was advised of his friend being on life support as Mr Tamatea states that he finished that call after Mr Waihi handed the phone over. Neither call is reflected in records provided by Network providers but Mr Waihi was known to use more than one cellular phone and for the purposes of my inquiry I accept that calls took place as described by witnesses.)

[6] Mr Pokaia states that Mr Waihi did not discuss the phone call with him and when he asked what was happening Mr Waihi picked up a chair and made to throw it at Mr Pokaia before he walked out the front gate. Mr Pokaia followed Mr Waihi out the gate and onto the road. He states "*he crossed over to the other side of the road. He was on the grass side of the fog line, then he was on it, and then he was on the road side of the fog line. He was walking towards Palmy. I was behind him on the other side of the road. Looking at him at about 45 degrees. I was trying to ask what was going on, and he wasn't replying... He sidestepped into the road a bit more. It was definitely a step sideways onto the roadway more than he already was. He was just left of the middle of the lane. His arms were hanging*

down at his side. I didn't know the car was coming but I think he knew. I looked at him and I saw him look back at the car, and I looked back and saw the car and as I turned back to look at Sonny I heard and saw him get hit."

[7] A truck driver, Anthony Brooks, was driving a Fonterra truck and trailer unit on State Highway 56 having left the Longburn Yard and heading to Himitungi to pick up milk. (Mr Brooks was effectively driving in the opposite direction to which Mr Waihi was walking and therefore towards him.) He noticed a car coming towards him and states that both vehicles flicked their high beams to low at the same time. He estimated he was driving at 90km/h and the speed of the oncoming car appeared normal. *"I suddenly saw a male standing in the middle of the right hand lane. I was probably only about 50 metres from the other car when I saw him. It is hard to judge the distance as we were both closing on each other fairly quickly. I think the guy must have been almost half way between me and the car when I first saw him. It looked like he had his hands up and was facing the car driving towards him. He could have been walking towards me, but I didn't see his face- just his clothing, and I think the back of his head. He didn't have a torch or a hi-viz jacket.... I saw him go on the bonnet when I went past- the initial impact. I heard the bang as well- I would have had my window open at the time. This was pretty much right beside me- beside the cab of my truck. I wasn't aware of anybody else around."*

[8] The driver of the car, Brian Lawton, did not see Mr Waihi. He states *"I came around a slight bend onto a long straight, and noticed a vehicle coming the other way so I dipped my headlights. To me it looked like the vehicle that was coming the other way flashed its lights. I checked my lights to make sure my high beam wasn't on, and wondered why he flashed his lights. The only thing I could think was that there was an accident ahead. As I went passed I realised it was a truck, and didn't see anything. Everything happens in a second. I heard a bang- an impact that disintegrated the left side of my windscreen. Something had hit the left side of the car - I didn't know what I had hit. The truck had only just gone past."*

[9] Senior Constable Les Maddaford of the Central District Serious Crash Unit completed a Crash Investigation. In his report Senior Constable Maddaford notes that Highway 56 is the primary route for traffic travelling east from Himitungi to Palmerston North as is governed to 100km/h. The road is marked with sealed run-off outside the painted fog line. At the time of the crash it was dark and the road was dry. There is no artificial street lighting at the crash location. Mr Lawton's Holden Commodore had a current warrant of fitness and was registered, and a vehicle Inspector found no mechanical faults that in his opinion would have been a contributing factor to the crash and all damage (front, windscreen and roof) was impact related.

[10] Senior Constable Maddaford comments *"Mr Lawton was confronted by a person standing/walking in the middle of his traffic lane. He was not able to avoid striking this*

person as his vehicle lights were dipped (due to the approaching milk tanker) and the pedestrian was wearing dark clothing. On dip beam the minimum headlamp light throw for a warrant of fitness test is 50 metres, if the Holden was travelling at 100km/h, being 27.7 m/s and we assign him a 2 second perception/reaction time (being a rural environment) indicates that even had he seen Mr Waihi, his vehicle would strike him before he could apply his brakes.”

Issue 2: CAUSE OF DEATH

[11] A post mortem examination by Forensic Pathologist Dr Katherine White revealed that Mr Waihi has suffered head, pelvic, chest, liver, upper limb and left ankle injuries. Dr White was of the opinion that the head injury caused his death. Alcohol was detected in Mr Waihi’s femoral blood at a level of 216 milligrams of alcohol per 100 millilitres of blood. (For comparison purposes, the legal blood alcohol level for a driver in New Zealand aged 20 or over is 80 milligrams of alcohol per 100 millilitres of blood.)

[12] Dr White advises me that the injuries sustained by Mr Waihi are not specifically frontal or back injuries. Mr Waihi had fractures of both arms. He had right sided rib fractures which seemed to Dr White to be the only lateralising injury, but Dr White was unable to say if the injury occurred during impact, or secondary on impact with the road after impact with the car.

Issue 3: WHETHER INTENTIONAL OR UNINTENTIONAL

[13] Mr Waihi had been referred to MidCentral Mental Health Services from Probation on 27 September 2012 having reported an attempt to take his life by hanging three weeks prior with the attempt being averted by a cousin. Mr Waihi had reported that was the first time in seven months that he went from thoughts of not wanting to live to doing something after a previous attempt of overdosing resulted in him throwing up. Arrangements were made for organising accommodation, getting a food grant, referral to Youth One Stop Shop and the Maori Mental Health Service.

[14] Dr Gerry Varghese comments that it appears that Mr Waihi was going through a Chronic Adjustment Disorder. During periods of stress, driven by limited support, it reached the critical point of being severe enough to be labelled as Depressive Disorder including symptoms of low mood, and hopelessness lasting for duration of more than two weeks. Appropriate management steps were put in place and Mr Waihi showed clear evidence of improvement in his mental status and his ability to cope making it appropriate for him to be transferred to Primary Mental Health Services through Youth One Stop Shop. Dr Varghese states there was no indication Mr Waihi required antidepressant medication. Mental Health Services received a brief response from Youth One Stop Shop that Mr Waihi was discharged from their services as a consequence of non attendance at appointments and no

response to attempts to contact him. At the time of his death Mr Waihi was not receiving any formal intervention either from Secondary Mental Health or Primary Mental Health Services.

[15] Chiana Phillips, states that Mr Waihi phoned her at about 8:30 pm on 23 December 2012 inquiring where she was. She states that Mr Waihi sounded upset on the phone and *“really drunk.... He said things like he was going to go and get arrested. I thought he was just in a shitty when he phoned. He said that he loved me at the end of the phone call. He had told me heaps of times before that he was going to kill himself. But he didn't say it that night.”* Ms Phillips stated that the last time Mr Waihi spoke of killing himself was in September 2012.

[16] Hydee Tyson states *“Most of the time Sonny was happy but I found there were days when he was quite depressed. I don't know why he was though. He did say to me on two occasions that he wanted to kill himself. He said that he would hang himself”* and these suicidal statements were made several months prior to Mr Waihi's death. She considered that Mr Waihi went out on the road to *“clear his head”* and she did not consider he deliberately stepped in front of the car.

[17] Mr Pokaia states that on the night of 23 December 2012 Mr Waihi did not make any statement about wanting to die, or suicide.

[18] The standard of proof in making a finding of accidental death is proof on the balance of probabilities. To justify a verdict of suicide the act of self-destruction must be shown to have been the deceased's intentional act knowing the probable consequences: re: Sutherland (Deceased) [1994] 2 NZLR 243 at 25, per Barker, ACJ. Proof is required to a high degree of probability: Beckon v Beckon Inquest [Coroner of] (1992) 93 DLR (4th) 161,176. I am mindful of the principle that the graver the allegation the clearer and more cogent and the more exact must be the evidence: Anderson v Blashki [1993] 2 VR 89; the Secretary of the Department of Health and Community Services v Gurrick [1995] 2 VR 69.

[19] It is well established that *“suicide must not be presumed merely because it seems on the face of it to be a likely explanation. Suicide must be proved by evidence, and if it is not proved by evidence it is the duty of the Coroner not to find suicide ...”* R v Coroner for the City of London, ex parte Barber [1975] 1 WLR 1310, 1313.

[20] While it is clear that Mr Waihi was distressed when he left the property to walk along the road, there is no clear evidence of suicide to the required high standard. He did not mention any intention to take his life that night. He had made statements of intention to do so but several months prior. Mr Pokaia, who was walking along the opposite side of the road from Mr Waihi did not hear Mr Lawton's vehicle approaching from behind. It is possible that

the noise of the oncoming truck prevented either Mr Waihi or Mr Pokaia hearing Mr Lawton's vehicle until it was too late.

[21] Mr Pokaia saw Mr Lawton's vehicle only at the last second when he saw Mr Waihi turned to see the vehicle. Mr Lawton had his headlights on dip because of the approaching truck, a factor which may have contributed to neither Mr Waihi nor Mr Pokaia being aware of the vehicle approaching from behind.

[22] While Mr Pokaia describes Mr Waihi as walking along the road with his arms by his side, it is likely that he turned and raised his arms when aware of the vehicle approaching from behind, and that this was the position truck driver Mr Brooks saw Mr Waihi.

[23] Mr Pokaia described Mr Waihi as walking both sides of the fog line, but then side stepping further onto the road than he already was, just left of the middle of the lane. Truck driver Mr Brooks saw Mr Waihi in the middle of Mr Lawton's lane. Both statements are consistent with the left front of Mr Lawton's vehicle hitting Mr Waihi.

[24] I am not satisfied that Mr Waihi intended to end his life. Because of his high alcohol level, I consider he was likely affected by alcohol at the time of the incident, which may not only have affected his judgment in walking on the road lane along the State Highway at night in dark clothing and without any form of illumination, but also likely slowed his reactions when he realised he was about to be hit by a car. Using Senior Constable Maddaford's calculation, if Mr Waihi turned and realised Mr Lawton's car was behind him when it was 50 metres away, he would have had less than 2 seconds to react and move off the roadway.

Issue 4: DATE OF DEATH

[25] It is clear from the evidence that Mr Waihi died on 23 December 2012 when struck by a motor vehicle driven by Mr Lawton.

FORMAL FINDING

[26] I find that Sonny Hone Waihi died outside 1108 Highway 56, Rangiotu on 23 December 2012.

[27] The cause of death was:

Direct cause:	Head injury
Antecedent cause:	Motor vehicle versus pedestrian
Underlying condition:	N/a
Other conditions:	Alcohol (216 milligrams of alcohol per 100 millilitres of blood)

[28] The circumstances of the death are that Sonny Hone Waihi, aged 18, late of 1108 State Highway 56, Rangiotu died on Sunday 23 December 2012 outside that address from a head injury sustained then and there when, while walking in the east bound lane of State Highway 56, he was struck by a motor vehicle being driven in an easterly direction on that road by Brian Lawton of Palmerston North.

Coroner CJ Devonport