



# **CORONERS COURT OF QUEENSLAND**

## **FINDINGS OF INQUEST**

**CITATION:** Inquest into the death of David Michael Clarke

**TITLE OF COURT:** Coroners Court

**JURISDICTION:** Southport

**FILE NO(s):** 2010/369

**DELIVERED ON:** 4 August 2016

**DELIVERED AT:** Southport

**HEARING DATE(s):** 7 December 2015 to 10 December 2015

**FINDINGS OF:** James McDougall, Coroner

**CATCHWORDS:** CORONERS: birthday celebrations, altercation, kick, home invasion, hospitalisation, systemic issues

REPRESENTATION:

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(instructed by GCHHS & QH)

Queensland Police Service: Mr Craig Capper (Public Safety  
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## Introduction

1. David Michael Clarke was born on 26.01.1954. He spent most of his working life as a statistician working for the Australian Bureau of Statistics in the Northern Territory. He later graduated in psychology at Griffith University and worked as a psychologist specialising in rehabilitation of people with alcohol and substance abuse problems at the Gold Coast. He also worked as a psychologist with Centrelink and as the Drug Court Coordinator for the Gold Coast Drug Council. The emotional toll of his work led Mr Clarke to become an alcoholic and he moved to Palm Beach withdrawing from friends and family and retreating to a life with little money or support. He was living in low cost accommodation at 1488 Gold Coast Highway as at 26 and 27 January 2010 and drinking heavily over that period to celebrate his birthday.
2. Mr David Clarke died on 30 January 2010. A police investigation into his death concluded with Mr Jeffrey Walter Zinn being charged with manslaughter and other offences. On 13 September 2010, those charges were struck out in the Southport Magistrates Court. A subsequent review by police determined insufficient evidence to re-charge Mr Zinn.
3. Pre-inquest conferences were held on 12 August and 24 November 2015, in advance of the inquest which proceeded over four days from 7–10 December 2015. The issues identified for examination at the inquest –
  - (i) The findings required by s. 45(2) of the *Coroners Act 2003*; namely the identity of the deceased person, when, where and how he died and what caused his death;
  - (ii) The specific circumstances surrounding Mr Clarke's death, including the mechanism of and relevance of any assaults committed upon him from 26 January 2010, until his death;
  - (iii) The adequacy and appropriateness of the interactions with Mr Clarke by responding police, emergency communications staff and hospital staff leading up to his admission to hospital, and subsequent death;
  - (iv) Whether the police investigation into the assaults upon Mr Clarke ought to have been commenced earlier; and
  - (v) Whether any change to the existing arrangements for reporting assaults by hospital staff committed upon patients prior to their arrival at the hospital, with or without the consent of the patient, are necessary and appropriate.

## **The inquest**

4. At the inquest I received evidence in the form of a large number of exhibits, including a post-mortem report, statements of witnesses, transcripts of interviews, recordings of triple-0 calls and re-enactments of the events of 26 and 27 January 2010. Oral evidence was given in the inquest by 18 witnesses. Subsection 45(2) of the *Coroners Act 2003* requires a coroner investigating a death to, if possible, find –
  - (a) who the deceased person is; and
  - (b) how the person died; and
  - (c) where the person died; and
  - (d) what caused the person to die?

## **Summary of facts**

5. Mr Clarke died in the Intensive Care Unit of the Gold Coast Hospital at Southport, Queensland at 3.50am on 30 January 2010. The cause of Mr Clarke's death was intra-abdominal haemorrhage due to or as a consequence of splenic laceration, due to or as a consequence of blunt force injury to the back. The other significant condition noted by the pathologist, Dr Little, was complications of chronic liver disease.
6. The real area of controversy in the inquest was how Mr Clarke died – in particular, what caused the fatal injury to the spleen.

## **Evidence as to the circumstances of Mr Clarke's death**

7. Detective Sergeant Blanch became involved in the investigation into Mr Clarke's death on 30 January 2010. At that time he was not the lead investigator, but took on that role for the purpose of reporting to the Coroner. Detective Sergeant Blanch has prepared a detailed and lengthy report, which summarises the evidence gathered by police during the course of the investigation. The relevant events took place on the night of 26 January 2010 and the early hours of 27 January 2010. The various relevant events took place at and in the vicinity of 1488 Gold Coast Highway where there was a complex of units. Mr Clarke lived at unit 11.

## **Birthday celebrations commence**

8. On 26 January 2010 (Australia Day and Mr Clarke's birthday), Mr Clarke started drinking at about 8.00am. He was joined by his friend Terry Davies, who said that there were two other people drinking with Mr Clarke that morning. Those people were Matthew Sokol and Mr Sokol's flatmate, Robbie Floyd. Mr Davies said that Mr Clarke told him that he had been up all night the night before drinking with Robbie and Matthew, although Mr Sokol couldn't be sure of that. Mr Clarke was described as "*merry*" at that time. At about 10.00am that group went to Swells Tavern, either on foot or by taxi. Detective Sergeant Blanch's report mentions CCTV footage which was obtained and shows the group drinking heavily at Swells Tavern. The detective notes that there were no incidents of violence observed

involving any members of the group while they were at the tavern. The CCTV footage further shows that the group left the tavern at mid-day, all unsteady on their feet and apparently considerably intoxicated. Records show that Mr Clarke used his mobile phone to call a taxi and they returned to 1488 Gold Coast Highway where they continued drinking. The party continued throughout the course of the afternoon. At about 3.30pm Matthew Peck arrived at Mr Clarke's place to join in the birthday celebrations. He arrived with two cartons of beer.

9. At about 5.00pm, Mr Clarke, Matthew Sokol and Matthew Peck walked to the Tallebudgera Surf Life Saving Club. CCTV footage shows the group leaving the premises after Mr Clarke and Mr Sokol had been refused entry on account of their state of intoxication.
10. Around 6.30 to 6.45pm, a man called David Anderson arrived at Mr Clarke's residence, having been invited there for the birthday celebrations. He estimates that there were about fifteen people there when he arrived. The group included Matthew Peck, Summer Harris, Terry Davies and Matthew Sokol. Mr Anderson brought with him a bottle of whiskey, although he does not drink himself. He observed that "*everyone seemed to be drunk*" with shots of Tequila and Southern Comfort being consumed. There is conflicting evidence about whether Mr Clarke made a trip to the bottle shop at about 9.30pm. It is not necessary to resolve that conflict.

### **Altercation between Matthew Sokol and Matthew Peck**

11. At about 10.00pm the first significant incident took place in front of Mr Clarke's residence. This was a fight that started with a verbal argument between Matthew Peck and Matthew Sokol. The common thread in the evidence is that Matthew Sokol was causing trouble and Mr Clarke, with Mr Peck, attempted to evict him from the party. There was a struggle between the three men and the police were called.
12. There is conflicting evidence about whether Mr Clarke was assaulted during the course of that struggle. Mr Davies told police that he did not see any kicks or punches land on Mr Clarke's body. In the Inquest he was less certain about that, saying that "*a couple of little karate kicks*" were delivered. Mr Davies also gave evidence that "*someone was kicking Dave, I know that*". When reminded of the account that he gave to police, Mr Davies confirmed that he did not in fact see any kicks or punches at that time. But again, under cross-examination, Mr Davies reiterated that he had seen somebody kicking Mr Clarke using "*little karate kicks*" but he did not see where those kicks landed.
13. Mr Anderson, on the other hand, saw Mr Sokol punch Mr Clarke in the right side of his head during that altercation. According to him, Mr Clarke fought back

punching Mr Sokol in the head. Mr Peck told police that Mr Sokol was swinging punches at Dave, but did not recall Mr Clarke being injured at that time. The protagonist, Matthew Sokol, admitted to the police and in evidence in the Inquest that he had gone back to his unit to get a knife during the course of this altercation. Mr Sokol's evidence was that he was very intoxicated at the time, he does not recall being asked to leave the party, and only recalls being in a physical altercation with Mr Peck. Despite his intoxication, and the passage of time, Mr Sokol positively states that he did not throw any punches or kicks at Mr Clarke.

14. At about 11.00 o'clock pm, Constables Young and Jarman arrived at 1488 Gold Coast Highway in response to a call regarding a male person with a knife. The officers observed Mr Sokol to be bleeding on his face and extremely affected by alcohol. He was ultimately taken to the watch house. Constable Jarman observed that Mr Clarke was also heavily intoxicated and "*wobbled on his feet*". He and Constable Young observed blood coming from his wrist but when they offered Mr Clarke medical assistance with an offer to call an ambulance, Mr Clarke replied "*No I don't need help. It is nothing.*" Dr Little who performed the post mortem examination did not see any lacerations consistent with such an injury.

### **Incidents involving Matthew Peck and Jeffrey Zinn**

15. After the police left, Mr Peck decided to go to Summer Harris' unit in the same complex where, he said Jeffrey Zinn opened the door and told him to "*fuck off*". According to Mr Peck, an altercation then broke out between him and Mr Zinn which extended out onto the highway. Mr Peck describes that incident as being short lived and involving hits delivered to Mr Zinn and threats made to him by Mr Zinn. Mr Zinn does not remember that incident, although he made mention of an incident occurring at Ms Harris' unit when Mr Peck came over to have some cannabis chopped up.
16. The next incident of significance occurred when Mr Clarke and Mr Peck went to Mr Zinn's unit. According to Mr Peck, "*Dave just wanted to sort it out and make sure everything was alright between us*".
17. Quite the opposite transpired. Mr Zinn's account is that while Mr Clarke stood at the doorway, Mr Peck came into his unit and started to throw punches to his head. Mr Zinn was sitting on a couch inside the unit with his girlfriend Alexandra Stanley. As Mr Peck was punching him, Mr Zinn described (and demonstrated) falling into Ms Stanley, which caused her to become a target of Mr Peck's blows. Mr Zinn thought that Mr Peck had punched his girlfriend in the face during the course of trying to punch him – a kind of collateral damage in the attack. That made Mr Zinn angry and he picked up a crowbar and chased Mr Peck out onto the Gold Coast Highway.

18. Mr Zinn gave an apparently frank account to the police about that incident during the re-enactment. It is evident that Mr Zinn remained very angry with Mr Peck and used the crowbar to assault Mr Peck. Mr Peck recalled being hit on the left hand side of his head about three times and to the body a couple of times. Mr Zinn was eventually disarmed and he returned to his unit at 1488 Gold Coast Highway.
19. A passing motorist, Gareth Bradden, stopped to assist Mr Peck who was lying on the road and in danger of being hit by traffic. Mr Bradden pointed out on an aerial photograph that he found Mr Peck on the Gold Coast Highway opposite the intersection of 28<sup>th</sup> Avenue and the Gold Coast Highway. He later corrected that, indicating a position further south. He described Mr Peck as making noises indicating pain but he did not see any injuries. Importantly, Mr Bradden described seeing a group of three men in their 20s approaching from the other side of the highway. Mr Bradden made his way back to his car and Mr Peck tried to get in with him. Mr Bradden prevented that and drove away. Mr Bradden estimates that those events took place from about 12.45 to 12.50am.
20. Although Mr Bradden described three men crossing the road, other evidence suggests only two men having done so. Mr Bradden said that two of the men he saw were not wearing shirts.
21. Mr Zinn said that having returned to 1488 Gold Coast Highway, he saw that his girlfriend, Ms Stanley, had been injured and he thought that Mr Peck was responsible. He recruited Mr Malm to head off in search of Mr Peck. Mr Zinn maintains that his motivation was to have Mr Peck apologise for assaulting his girlfriend. It is clear from the re-enactments of Mr Zinn and Mr Malm that once they located Mr Peck on the other side of the highway, they forcefully escorted him back to the western side. Matthew Davis gave independent evidence about that.
22. Mr Davis lived at 1/1474 Gold Coast Highway, between 27<sup>th</sup> and 28<sup>th</sup> Avenues on the western side of the highway. He told police and the inquest that he came to watch events unfold after hearing a noise out the front of his home at about 12.50am. He was up at that hour having woken with a headache and had not been drinking during the day.
23. Mr Davis said he saw three men and heard more than one of them yelling aggressively. The tallest of the three men was being restrained by the other two, who were on either side of him. They were moving from the eastern side of the highway across the median strip at a point where the barrier ends.
24. There appears to be no doubt that on all of the evidence, the men were Mr Zinn and Mr Malm and they were restraining Mr Peck. Mr Davis said that the men now known to be Zinn and Malm were shirtless (consistent with Mr Bradden's



description of two of the three males he saw approaching Mr Peck a little earlier), had tattoos and similar haircuts. The latter description is at odds with photographs which show that Mr Zinn had lighter coloured hair, whereas Mr Malm had short, cropped dark hair at the time.

25. Mr Davis notices that one of the men restraining Mr Peck was shorter than the other. He said that the shorter man was on Mr Peck's left side and that that person punched Mr Peck in the head with his right hand. Mr Davis went outside at that point and tried to intervene by yelling out that he had called the police. He heard the following exchange between the shorter man and Mr Peck:

Shorter male:        *You punched my girlfriend*  
Mr Peck:             *what are you talking about?*  
Shorter male:        *You did. You punched her you prick*  
Mr Peck:             *What?*  
Shorter male:        *You walked straight in to my house and punched me in the head for no reason*  
Mr Peck:             *No, I didn't*

26. That makes it clear that the person described by Mr Davis as the shorter male was Mr Zinn. It was clear to Mr Davis at the time that Mr Peck had no idea what Mr Zinn was talking about.
27. At about 12.50am, fearing that the situation would escalate, Mr Davis phoned triple-0. He saw that the men had moved down past the bus stop (between his address and 28<sup>th</sup> Avenue). Once they had moved down to the corner of 28<sup>th</sup> Avenue Mr Davis used the bus stop as a shelter while he continued to watch what was going on.

### **Mr Zinn kicks Mr Clarke**

28. Mr Davis saw another group of three people walking from 1488 Gold Coast Highway towards 28<sup>th</sup> Avenue. There were two females (both with long mousy-brown/blonde hair, slight builds and in their 20s) and a male (taller than the group of three – perhaps 5'9 or 5'10). Mr Davis saw the two groups conversing for a couple of minutes, although he was too far away to hear clearly what was being said.
29. Mr Davis said he saw the shorter man (who must be Mr Zinn) kick hit the same person he had assaulted earlier (Mr Peck). The blow was described as vicious and victim fell to the ground. One of the females (who was more vocal than the other) was hysterical at that point – screaming out "*No. No. Stop*" and "*What have you done?*" As the evidence later reveals, that person must be Summer (Michelle) Harris.

30. Once the man was on the ground, Mr Zinn kicked him. Mr Davis described the kick this way: –
- It reminded me of a kind of kick that you would place a soccer ball in the goal. He had taken at least two running steps and put all of this weight behind his right foot and kicked the man.*
31. Mr Davis could not see what part of the man’s body the kick connected with but he could tell it connected. After that, Mr Zinn walked back towards 1488 Gold Coast Highway with everyone other than Summer Harris, who was observed consoling the man on the ground. Mr Davis said that he then saw the female help the man to walk back to the same address.
32. Mr Davis’ evidence should be treated with some care given obvious inaccuracies and his demonstrated desire to be helpful to authorities (for example, by storing the pry bar that he had located on the night). On all of the evidence he must be wrong in saying that the person who was punched and kicked by Mr Zinn at 28<sup>th</sup> Avenue was the same person who was escorted across the highway earlier-
- Mr Zinn and Mr Malm admit escorting Mr Peck across the highway;
  - Mr Zinn admits to police kicking Mr Clarke at the corner of 28<sup>th</sup> Avenue;
  - Summer Harris said she tended to Mr Clarke after he had been hurt on the corner of 28<sup>th</sup> Avenue;
  - Cheree Monger went to the aid of an older gentlemen in his late fifties (clearly Mr Clarke);
  - Mr Davis first gave evidence that the person escorted across the road and the man who was kicked later on, was older than the other males during the inquest.
33. Mr Zinn participated in a record of interview with police and a re-enactment of the relevant events. He admitted that he threw Mr Clarke to the ground and then kicked him while he was on the ground. Mr Zinn accepted that there was no reason, insofar as his personal safety was concerned, to kick Mr Clarke while he was on the ground. He was angry and intoxicated.
34. In the record of interview, Mr Zinn was asked to demonstrate the force of the kick using a chair to represent Mr Clarke. In the re-enactment, Detective Buchanan lay down on the roadway for the demonstration. In neither case can the conditions be said to closely replicate those that existed at the relevant time and they are of limited value in determining questions of force and position. While Mr Zinn said in evidence that the force used to kick the chair was “*probably about the same*”, I find that is unlikely given that at the time of the demonstration at the police station he was not enraged as he says he was on the night and was targeting a rigid object in a police station. During the re-enactment, the position of Detective Buchanan was an estimation of Mr Clarke’s position where it is very unlikely that Mr Zinn was

paying particular attention to that detail in his enraged and intoxicated state at the relevant time. Further, Detective Buchanan remained still during the demonstration when, as a matter of common sense, Mr Clarke might have been trying to protect himself or get to his feet as the kick was delivered.

35. As to a possible motive, Mr Malm added in evidence that he had been told by Mr Zinn that Mr Peck and Mr Clarke had assaulted him and his girlfriend, although that is inconsistent with other evidence. Mr Zinn's evidence, supported by the pursuit of Mr Peck and the exchange heard by Mr Davis, is that Mr Clarke "*shaped up*" to him as he was escorting Mr Peck back to make an apology and he (Zinn) threw him to the ground and then kicked him.
36. Mr Malm said that he did not see the kick delivered by Mr Zinn but it was obvious to him that there had been an altercation between the two men. He stayed with Summer Harris to help Mr Clarke and noticed that it seemed as if he were in pain. Curiously, Mr Malm said in evidence that it was "*as if when he fell over – no, his elbow was in his ribs, so the way he's fallen, I don't know, just – it just didn't – it didn't look comfortable*".
37. Cheree Monger noticed what appeared to her to be an injury to Mr Clarke's ribs. Ms Monger lived in a house on 28<sup>th</sup> Avenue and, at about 1.00am on 27 January 2010, was woken by the sound of a female screaming. Ms Monger went to a front window and saw a younger male and female "*and then an elder person sort of staggering behind*" - "*like limping*". The younger pair were both of thin build and walking quickly in a northerly direction. The female had dark hair and a tattoo of a star on her left shoulder. The younger man had "*lots of hair, it reminded me of a golly wog*" and a tattoo on the right leg that covered the leg from the knee to the ankle. That seems likely to be a description of Mr Zinn, rather than Mr Malm.
38. Ms Monger said that Mr Clarke told her that he had been bashed and needed to go to hospital. She noticed that Mr Clarke was "*in obvious pain and had a mark "to the lower rib area"*". He- "*appeared to have an injury to his ribs*" and was favouring the same side as the mark, although Ms Monger cannot recall which side.
39. The confusing aspect of Ms Monger's evidence is the identity of the male person she initially saw from the window. Ms Monger came across the female person (Summer Harris) as she was assisting Mr Clarke to his home. Significantly, Ms Harris told Ms Monger that her boyfriend has assaulted Mr Clarke but her boyfriend at the time was Damion Malm. Ms Monger said that the person she assumed to be the woman's boyfriend then came out of the units at 1488 Gold Coast Highway. The man had a bleeding graze to one of his knuckles and seemed agitated – "*this fellow came out, still hyped up, ranting and raving about having another go at someone*". In light of the other evidence, it is much more likely that that was Mr

Zinn. After all, Mr Zinn has admitted that it was him who threw Mr Clarke to the ground and kicked him.

40. Ms Harris said in evidence that it was not her boyfriend who had assaulted Mr Clarke. She explained that she was “*so heightened*” and did not mean to say that to Ms Monger. Ms Harris is probably also mistaken about seeing a cut to Mr Clarke’s head at that time, since she is the only person to make mention of it, or to suggest that the kick was delivered to the forehead.
41. Ultimately, Ms Monger left Mr Clarke as he walked unassisted to his unit. Mr Peck said that Mr Clarke arrived home about 10 minutes after he arrived at the unit. Mr Clarke said that he had been “*bashed up*” but Mr Peck did not ask by whom. Soon after that, the incident referred to as ‘the home invasion’ unfolded.

### **The home invasion**

42. The real relevance of this body of evidence is in whether it can assist to explain Mr Clarke’s injuries, in particular the fatal injuries. There is no evidence that Mr Clarke was assaulted, or injured in any other way, during the course of these events.
43. Mr Peck said that when he heard yelling outside the door of Mr Clarke’s unit – “*stuff like, ‘we’re going to get you’*” – he told Mr Clarke that they needed some weapons because “*these guys are going to kill us*”. When he heard someone trying to kick the front door down, Mr Peck grabbed a hammer and went upstairs to hide leaving Mr Clarke downstairs. Mr Clarke’s flatmate, Garry Condren, was asleep upstairs.
44. The group of people who went to Mr Clarke’s unit at that time were Mr Zinn and his flatmate, Patrick Dandy, along with John Dickenson, Tyrone Roser and Jeremy Jessop. Mr Zinn had phoned Mr Dandy who was at a party in Jefferson Lane. There was conflicting evidence about what Mr Dandy and the others were told, however it is clear that it became known to the group that Mr Zinn and his girlfriend had been assaulted in their unit earlier in the night. Mr Dandy told police that after that phone call “*I was as pissed off as a motherfucker and I wanted to get back there and sort shit out*”. He and the others rode their skateboards from Jefferson Lane to 1488 Gold Coast Highway.
45. Mr Dandy told police that he did not pay a lot of attention to Mr Clarke (who he saw downstairs when he entered the unit) because he was not the target. Despite that, Mr Dandy said that Mr Clarke was “*perfectly fine*” and standing normally.
46. Mr Dickenson’s evidence was vague and inconsistent with the account he gave to police. He, along with the others, were clearly intoxicated at the time. Relevantly, Mr Dickenson told the police that he saw a man in the lounge room of the unit

when he went in and that the man looked “*shit scared*”. That person was clearly Mr Clarke. Mr Dickenson saw two people upstairs – a man in his 40s and dressed in underwear (likely to be Mr Condren) and a man in his 20s (Mr Peck).

47. Mr Roser said that he saw a large man in his 40s or 50s in the kitchen area of the unit. Mr Roser only had him under observation for a “*split second*” as he was leaving the unit. Mr Jessop said that he did not see Mr Clarke at all that night.
48. While it is clear that Mr Clarke was not assaulted during that incident, the evidence does not assist in clarifying his physical state at the time. Nobody was focused on him in an event that was fuelled by alcohol and rage, and which must have occurred quite quickly.
49. After that, Mr Clarke went to Maree Saw’s residence at 6/4 Nyrang Avenue, Palm Beach. That address is not far from the units at 1488 Gold Coast Highway and could be accessed by cutting through the back of the unit complex. Terry Davies had gone to Maree’s place to sleep and saw Mr Clarke when he arrived. Mr Davis thought that was about 2.30am but it must have been earlier because Constables Magro and Hardy (who saw Mr Clarke a short time later) arrived at 1488 Gold Coast Highway at 1.20am.
50. At that time, Mr Davis described Mr Clark as “*very dazed and confused*”. Mr Clarke said he had been assaulted and feared for his life but did not give any further details. He did not complain about any injuries. Mr Davis thought that Mr Clarke seemed different in that he did not know where he was and he was upset. Mr Davis saw blood, but no injuries.
51. At 1.21am Mr Davis phoned triple-0 and Mr Clarke spoke to the operator, Denis Wheeler. Mr Clarke told Mr Wheeler that:–
  - *My home has been invaded*
  - *I’ve just been beaten up. I just had to crawl away*
  - *Sorry, I can’t talk very well. They’ve jumped on my ribs*
  - *I’ve had my whole side kicked in*
52. Mr Clarke told Mr Wheeler that he was not sure if he needed an ambulance and that he did not want to go back to unit. Despite that, Mr Wheeler, in a rude and dismissive way, told Mr Clarke to go back to his unit and make a complaint to police who had arrived there.
53. Mr Davies walked Mr Clarke back to his unit. Constable Magro and Constable Hardy were already present at the complex and had been talking to Alexandra Stanley, Summer Harris and Patrick Dandy. The officers had detained and

released Matthew Peck when they saw Mr Clarke and Mr Davies walking slowly across the grass from the rear of the units

54. Significantly, Constable Hardy observed Mr Clarke "*holding his left side, as if injured*". She was unsure if he was holding his stomach or lower ribs. Constable Magro said that Mr Clarke complained of pain to ribs. Both officers saw that Mr Clarke had grazed knuckles. They did not notice a laceration above Mr Clarke's right eye.
55. Mr Clarke was uncooperative with the police and made it clear that he did not want medical assistance. Despite that, Constable Hardy told a triple-0 communications officer that "*an older bloke here by the name of Dave (has) been assaulted...he's holding his stomach but I think it's just bruising.*" And further, "*he's a lot older and he doesn't look like he's in real good shape but apparently he's an alcoholic as well so...*"
56. The Queensland Ambulance Service (QAS) dispatched Mr Mathieu and Mr Hunston to respond to that call. They arrived in the vicinity of 1488 Gold Coast Highway at 2.13am and examined Matthew Peck. They took him to Tweed Hospital where they arrived at 2.42am. Mr Clarke was not examined.
57. Ms Harris gave evidence that she saw Mr Clarke walking up the stairs to his unit "*hunched over*" at about 2.30am. She and her sister had been to McDonalds. That is consistent with Mr Clarke going back inside the unit after the police had attended and perhaps after seeing the ambulance leave with Mr Peck.
58. The next time Mr Clarke was seen by anyone was at about 8.00am on 27 January 2010 when Mr Davies came to check on him. Mr Clarke was lying on the couch, complaining that his ribs were sore and that he had a headache. Mr Davies noticed injuries on Mr Clarke's face that he had not seen the night before. Ms Harris came to the unit sometime after that. She also observed Mr Clarke to be in bad shape. In her statement to police, Ms Harris described seeing, at that stage, "*a 5 centimetre deep cut to his right forehead all the way to the bone*". He appeared to be in a lot of pain – so much so, that he could not roll over to have a drink of water.
59. Ms Harris called triple-0 and gave the operator the impression that the situation involved a potential overdose. Police officers, Piercy (now Williams) and Duroux attended to assist QAS officers Loomes and Borg. They arrived altogether at 10.15am. Mr Clarke said he had not been drinking that morning. He complained of tenderness to his ribs on both sides and grabbed his ribs. Mr Clarke was seen to wince in pain as he stood up and he fainted. He did not know how he had sustained the cut above his eye.

60. Mr Clarke was taken to the Robina Hospital and arrived at 11.25am (Exhibit B28, paragraph 7).

### **In hospital**

61. Shortly after arrival in hospital a sample of Mr Clarke's blood showed a blood alcohol content of 154mg/100mL (0.154 g%). Mr Clarke was appropriately transferred to the Gold Coast Hospital where his condition deteriorated. The evidence of Dr Little was that Mr Clarke's spleen probably ruptured at about 5.30pm on 29 January 2010 when the hospital records show a sudden loss of blood pressure, an increased heart rate (due to shock), lowered consciousness and complaints of increased abdominal pain.
62. Despite the best efforts of medical staff, Mr Clarke died from the intra-abdominal haemorrhage in the ICU at 3.50am on 30 January 2010.

### **Evidence on post-mortem examination**

63. Dr Little noted that Mr Clarke's spleen was "*much weaker than a normal spleen*" because he suffered from cirrhosis of the liver. That meant that the mere pressure of the ribs onto the spleen could cause it to rupture. Dr Little used the analogy of a half-blown up balloon –

*I think that probably the mechanism of injury in this case is that he has had an impact on his back which has fractured the ribs and although the ribs themselves haven't actually gone through and made a hole in the spleen themselves, the pressure associated with that is pushed on the spleen and it's almost – it's sort of pushed on one side and stretched the other side so that it's torn under the capsule and then started to bleed and then that just continued to bleed and eventually ruptured.*

64. The injury to the spleen caused bleeding under the capsule. Poor blood clotting capacity, due to liver disease, meant that the bleeding continued over several days until the spleen ruptured. That is likely to have happened at about 5.30pm on 29 January 2010 when the hospital records show a sudden loss of blood pressure, an increased heart rate (due to shock), lowered consciousness and complaints of increased abdominal pain. Dr Little said the cause of death was intra-abdominal haemorrhage – one of the largest such haemorrhages Dr Little has ever seen.
65. As to the level of force required to cause the injury (to the ribs and the spleen), Dr Little wrote to police – "*The injury causing the rib fractures would have to be reasonably forceful and it also injured the spleen, albeit enlarged and probably more susceptible to injury than a normal spleen, but there was no skin injury over this. A kick by a bare foot could therefore not be excluded since it could possibly not leave any injury.*"

66. Amongst the myriad possibilities, including a fall, Dr Little said that a kick delivered with momentum, even with a bare foot, could cause the injury. Even without momentum (and Mr Zinn denies there was such), Dr Little could not exclude a kick as causing the fatal injury.
67. Evidence that Mr Clarke complained of pain and appeared to have injured ribs immediately after the kick provides support for that possibility. Importantly, Dr Little confirmed that there were no other injuries that could explain a complaint of pain in that area.
68. Under cross-examination, Dr Little confirmed that she had seen Mr Zinn's re-enactment. She told the police, and gave evidence that the site of the rib fractures and injured spleen is more to the back (9 cm from the spine on the left) so that had Mr Clark been lying in the same position as the police officer in the demonstration, the site of the injury would have been protected.
69. As to the level of force required, Dr Little expressed some doubt about whether a bare footed kick, delivered without martial arts experience, would be sufficient. Dr Little was more certain that a kick with momentum could cause the injuries without necessarily leaving bruising to. There was subcutaneous bruising connected with the rib and splenic injuries. Mr Zinn's evidence was that he regularly walked about with bare feet – sometimes all day and for days on end – such that it can be inferred that they were toughened.
70. Mr Clarke had sustained a number of other injuries "*shortly before he came to hospital*". Those injuries included –
  - Blunt-force laceration above the right eye
  - Swelling to the back of the head on the left side
  - A bruise to the left side of the trunk – the only bruise that was not a deep injury
  - Fracture of the fifth finger on the right hand
  - Bruising to the central and right lower back, including three linear bruises
  - Bruising to toes on the right foot
71. Dr Little agreed that those injuries (in particular the laceration, the fractured finger and bruised toes) could have been caused by a fall - "*although, more classically, if you fall, you tend to fracture your wrist.*"

## **Findings of fact**

72. The standard of proof to be applied in making findings of fact is the balance of probabilities, conforming with the sliding scale of satisfaction in *Briginshaw v Briginshaw* (1938) 60 CLR 336. Importantly, though, the Court in *Hurley v*



*Clements & Ors [2009] QCA 167 pointed out that the following ought be kept in mind – Firstly “...an inquest is a fact finding exercise and not a method of apportioning guilt...In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use” – citing R v South London Coroner; ex parte Thompson at [26]; and*

*Secondly, “the application of the sliding scale of satisfaction test explained in Briginshaw v Briginshaw does not require a tribunal of fact to treat hypotheses that are reasonably available on the evidence as precluding it from reaching the conclusion that a particular fact is more probable than not” – at [27].*

73. The questions of fact that I must find if available on the evidence are:-

- (i) What caused Mr Clarke’s injury?
- (ii) Who, if anyone caused Mr Clarke’s injury?

74. Having regard to the requisite standard of proof, I find that the evidence supports the following findings of fact in respect of those questions –

- (i) Mr Clarke was not fatally injured (if he was injured at all) during the altercation involving Matthew Sokol earlier in the night on 26 January 2010;
- (ii) At about 12.50am, Mr Zinn kicked Mr Clarke to the left side of the back of his body, using force greater than that demonstrated by him at the police station or at the scene;
- (iii) While the evidence of Mr Matthew Davis was inconsistent in parts, there is no reason to doubt his description of the kick as one delivered with force and momentum – that is particularly so in light of Mr Zinn’s evidence that he was intoxicated and angry at the time;

75. It is more probable than not the injuries to Mr Clarke’s ribs and spleen were a result of being kicked by Mr Zinn because –

- (i) Mr Clarke had the appearance of having suffered an injury to his ribs immediately after he was kicked (based on Cheree Monger’s independent evidence);
- (ii) Mr Clarke was not assaulted between that incident and the attendance of Constables Magro and Hardy at about 1.20am (i.e. he was not assaulted during the alleged home invasion) – nor is there evidence of

any other event that might have resulted in the appearance of him having suffered an injury to his ribs;

- (iii) Mr Clarke told Mr Wheeler that “*they’ve jumped on my ribs*” and that he had “*had my whole side kicked in*” – an inaccurate description of the admitted assault by Mr Zinn, explicable by Mr Clarke’s intoxication and injuries;
- (iv) Constables Magro and Hardy observed Mr Clarke holding his left side in the area of his stomach or lower ribs;
- (v) Mr Clarke’s condition deteriorated in the hours before he was next seen, consistent with the slow bleeding into the splenic capsule described by Dr Little;
- (vi) There were no other injuries to explain the pain demonstrated by Mr Clarke immediately after the kick (again, as described by Ms Monger), such that whatever happened to cause the laceration above Mr Clarke’s eye and perhaps other injuries (for example to his finger and foot) did not cause the injuries to Mr Clarke’s ribs and spleen;
- (vii) Mr Clarke’s spleen was already enlarged on account of his liver disease and a kick (more likely with some momentum) could cause the injuries to the ribs and spleen.
- (viii) The injury to Mr Clarke’s spleen was fatal.

76. I find , pursuant to s. 45:-

- (i) The deceased’s name is David Michael Clarke;
- (ii) He died on 30.01.2010 at Gold Coast Hospital;
- (iii) He died of an intra-abdominal haemorrhage after rupturing his spleen;
- (iv) He ruptured his spleen after being kicked by Jeffrey Walter Zinn.

### **A referral pursuant to section 48 of the Act?**

77. Section 48(2) of the Act provides that –

- (2) If, from information obtained while investigating a death, a coroner reasonably suspects a person has committed an offence, the coroner must give the information to –
  - (a) for an indictable offence – the Director of Public Prosecutions.

78. Having considered all of the evidence I refer the papers to the Director of Public Prosecutions.

### **Systemic issues**

79. The systemic issues for examination in the inquest were –

- (i) The adequacy and appropriateness of the interactions with Mr Clarke by responding police, emergency communications staff and hospital staff leading up to his admission to hospital, and subsequent death;
- (ii) Whether the police investigation into the assaults upon Mr Clarke ought to have been commenced earlier; and
- (iii) Whether any change to the existing arrangements for reporting assaults by hospital staff committed upon patients prior to their arrival at the hospital, with or without the consent of the patient, are necessary and appropriate.

80. Section 46 of the Act relevantly provides that –

- (1) A coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to –
  - (a) public health or safety; or
  - (b) the administration of justice; or
  - (c) ways to prevent deaths from happening in similar circumstances in the future.

### **The Gold Coast Hospital and Queensland Health**

81. Counsel for the Gold Coast Hospital and Health Service (GCHHS) and Queensland Health (QH) has summarised the evidence relevant to the first and third of the systemic issues. I accept the submission by counsel for GCHHS that no adverse finding should be made about GCHHS or QH, and/or their employees and I make no adverse findings.
82. As to the question of the adequacy and appropriateness of the interactions with Mr Clarke by responding police, emergency communications staff and hospital staff leading up to Mr Clarke's admission to hospital and subsequent death and whether any changes to existing arrangements should be recommended by me, at the time of Mr Clarke's death there was no memorandum of understanding between the Chief Executive of Queensland Health and the QPS. Such a memorandum of understanding did commence on 26 July 2013.
83. I am informed that the current MOU is under review and I would recommend that this inquest be used as a case study to inform that review and that the merits (or otherwise) of sharing information with police in circumstances where the patient's condition is potentially the result of criminal conduct be considered together with appropriate protocols for doing so.

## **Queensland Police Service**

84. I accept the submission by Counsel for QH and GCHHS that the weight of the evidence supports a finding that the QPS knew that Mr Clarke had been assaulted from about 1.20am on 27 January 2010 (when Constables Magro and Hardy attended). The evidence of Constable Piercy and the job record from the Police Comms CAD system also make it clear that the QPS knew that Mr Clarke had been assaulted when he was ultimately taken to hospital.
85. In hindsight, the fact of two separate reports of an assault by Mr Clarke to police, in circumstances where the observations by attending police demonstrated a deterioration in his condition in the intervening period, warranted report to the District Duty Officer and the Criminal Investigation Branch.
86. The failure to report the assault is explicable in this case given –
- (i) the high volume of work on that particular night (Australia Day);
  - (ii) Ms Harris' inaccurate description of the emergency the next morning as an overdose;
  - (iii) the mistaken assumption that an overdose and the cut above Mr Clarke's eye, were the principle reasons for hospitalisation.
87. In any event, it is unlikely that an earlier start to the investigation would have made any real difference to the outcome. There was nothing more that could have been done between 27 January and 30 January 2010 that is likely to have answered the two critical questions articulated above.
88. In fact, after Mr Clarke died, the investigation was given the status of a major operation. That is unlikely to have been the case had the police been investigating an assault. Although some aspects of the investigation were left to languish under the leadership of Detective Buchanan, it was overall a very thorough police investigation. I make no adverse finding regarding the actions of the police throughout the investigation.
89. I make no recommendations pursuant to s. 46 of the *Coroners Act 2003*.

**James McDougall**  
**Southeastern Coroner**  
**Southport**  
**4 August 2016**