



*Western*

*Australia*

## **RECORD OF INVESTIGATION INTO DEATH**

*Ref: 43/14*

*I, Barry Paul King, Coroner, having investigated the death of **Gyan Murray Jeffery** with an inquest held at the **Bunbury Coroner's Court, Court 3, Bunbury Court House, Bunbury, on 19 and 20 November 2014**, find that the identity of the deceased person was **Gyan Murray Jeffery** and that death occurred on or about **30 September 2011** at **Argyle** and that the cause of death was **head and chest injury** in the following circumstances:*

### **Counsel Appearing :**

Ms I Burra-Robinson assisting the Coroner  
Mr D. Hunter representing B R Freeman

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## **INTRODUCTION**

1. At about 11.30 pm on the night of 30 September 2011 Gyan Murray Jeffery (the deceased) was lying on a dark stretch of the South Western Highway at Argyle between Donnybrook and Boyanup when he was struck by two motor vehicles within a short time. He died soon after being hit by the second vehicle.
  
2. There was no evidence to suggest that the drivers of the vehicles were in any way blameworthy by failing to avoid running over the deceased.
  
3. A short time prior to being run over, the deceased was in a car travelling north towards Boyanup with two friends, Bradley Ramon Freeman, who was the owner of the car and was driving, and a 16 year old girl whom I shall call Jess. All three of them were affected to some degree by drugs and alcohol and of the three, the deceased appeared to be the most affected. An altercation occurred between the deceased and Mr Freeman, so Mr Freeman stopped the car on the left side of the road.
  
4. Accounts of what happened next differed. Jess told police that the deceased had got out of the car and had gone to the front of the car where he challenged Mr Freeman to drive forward. Mr Freeman then caused the car to lurch forward, which struck the deceased causing him to fall backwards and hit his head on the

road. The deceased got up and stumbled to the back of the car. Mr Freeman then drove off.

5. Mr Freeman's account was that the deceased was lying on the back seat of the car when he suddenly got up and started to choke Mr Freeman. Mr Freeman stopped the car, pulled the deceased out of it and drove off without ever hitting the deceased.
6. Two women and a girl on their way to Harvey drove past Mr Freeman's car while it was stopped beside the road. They passed it slowly and saw a man fitting the deceased's description run out towards them from the car.
7. Only minutes after the women had passed Mr Freeman's car, the deceased was hit by two vehicles travelling towards Donnybrook.
8. On 10 May 2013 the State Coroner, Mr Hope, approved the holding of an inquest into the death of the deceased.
9. I held an inquest at the Bunbury Court House on 19 and 20 November 2014.
10. Under s 25 of the *Coroners Act 1996*, a coroner investigating a death must find if possible:
  - a. the identity of the deceased;

- b. how death occurred;
  - c. the cause of death; and
  - d. particulars needed to register the death under the *Births, Deaths and Marriages Registration Act 1998*.
11. The primary focus of the inquest was the issue of how the deceased came to be lying on the road prior to being run over and, specifically, whether Mr Freeman contributed to that occurring by hitting the deceased with his car.
12. Documentary evidence adduced at the inquest comprised: a report prepared by Detective Senior Constable P N Timms of the Western Australian Police, together with 47 attachments; criminal histories for the deceased, Mr Freeman and Jess; and handwritten notes of police interviews with witnesses. Following the inquest I received medical records for the deceased, which included records of treatment for mental health problems.
13. Oral evidence was provided by:
- a. Liam Jeffery, the deceased's brother;

- b. Kelly Warburton and Kelly Rakowski, the two women in the passing car;
  - c. Mario Contarino, a passenger in the second vehicle that struck the deceased;
  - d. Karis Blount, Mr Freeman's ex-partner;
  - e. Dr G A Cadden, a forensic pathologist who conducted a post mortem examination of the deceased;
  - f. Senior Constable Darren Hartson, a vehicle examiner with the Western Australian Police who had examined Mr Freeman's car; and
  - g. Mr Freeman.
14. Following the taking of oral evidence, counsel provided oral submissions for which I am grateful.

## **THE DECEASED**

15. The deceased was born in Bridgetown on 12 June 1980. He had a brother and a sister.<sup>1</sup>
16. The deceased's parents separated when he was eight years old. He lived with his father until he was 13 years

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<sup>1</sup> Exhibit 1, Tab

old. He moved out after he had attacked his father with a meat cleaver.<sup>2</sup>

17. The deceased started using drugs when he was 14 years old. He could not concentrate at school and he suspected that he had attention deficit disorder. He left school in Year 10 and went to Perth where he became involved with a drug-taking social group. He used cannabis, sniffed petrol and aerosols, and used amphetamines intravenously as his drug of choice.<sup>3</sup>
18. Mental illness was common in the deceased's family, with a number of uncles, aunts and cousins having experienced depression or bipolar affective disorder.<sup>4</sup> His brother also suffered from mental illness.<sup>5</sup>
19. In 1997 the deceased was living in a caravan in Nannup with a friend. He was using cannabis and magic mushrooms on a daily basis and was a heavy smoker of cigarettes. His mother referred him to the Warren Blackwood Community Mental Health Team as she was concerned that he was depressed and had strong thoughts of suicide. He was interviewed by a community mental health nurse who assessed him as being at risk of self-harm or suicide attempts. She considered that the deceased's heavy use of cannabis for several years had exacerbated his

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<sup>2</sup> Mental Health Service notes Third Admission 30/10/2000

<sup>3</sup> Mental Health Service notes, Third Admission 30/10/2000

<sup>4</sup> Bunbury Regional Hospital notes, Volume 1, Fourth Admission

<sup>5</sup> ts 8, 22, 27 per Jeffrey, L M; Mental Health Service notes 22/7/1997

depression. The deceased expressed a willingness to abstain from drugs and to turn his life around.<sup>6</sup>

20. In July 1999 the deceased was referred by a doctor to the Alma Street Centre at Fremantle Hospital for help with overcoming addictions to intravenous heroin and amphetamines. He was experiencing auditory hallucinations and had difficulties with anger management and impulse control. He attended the facility as an outpatient but did not appear to want to give up drugs.<sup>7</sup>
21. On 19 April 2000 the deceased was taken to the Bridgetown District Hospital by a youth outreach worker for depression and suicidal ideation. He was seen by an early intervention counsellor, who noted a past history of depression and an attempted hanging one year previously. The deceased provided an extensive drug history and said that he had tried to detoxify several times. He was transferred to the Bunbury Regional Hospital residential psychiatry unit.<sup>8</sup>
22. The deceased was admitted to the Bunbury Regional Hospital voluntarily for five days before being discharged home. On admission he was speaking freely about suicidal ideation by hanging or jumping in front of a car. He was assessed as having an adjustment disorder with

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<sup>6</sup> Mental Health Service notes

<sup>7</sup> Fremantle Hospital and Health Service Outpatient Notes

<sup>8</sup> Mental Health Service notes

depressed mood and cluster B personality disorder features. His problems appeared to be related to substance abuse, but he demanded benzodiazepines and seemed incapable of accepting non-medication strategies to overcome his issues.<sup>9</sup>

23. The deceased continued to see the community mental health team in Bridgetown. By the end of October 2000 the deceased had been on a methadone program for four months in order to overcome a heroin addiction. He had not worked and had travelled from place to place depending on whether he had worn out his welcome.<sup>10</sup>

24. In January 2006 the deceased was referred to the Bridgetown Mental Health Service with depression and anxiety. He was understood to have had a history of chronic drug-induced psychosis, bipolar affective disorder and schizophrenia. He was prescribed methadone, valium, temazepam and cipramil. He was using amphetamines and was hepatitis C positive. However, on the positive side he was working as a cleaner and was fond of his brother's son. He had intermittent suicidal ideation and had not attempted suicide since four years previously when he had overdosed benzodiazepines.<sup>11</sup>

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<sup>9</sup> Bunbury Regional Hospital notes, Volume 1, First Admission

<sup>10</sup> Mental Health Service notes

<sup>11</sup> Bunbury Regional Hospital notes, Second Admission



25. An appointment was arranged for the deceased to see a consultant psychiatrist but the deceased did not attend. The psychiatrist noted that the deceased's triage form indicated that the deceased appeared unmotivated to deal with his substance abuse.<sup>12</sup>
26. On 19 May 2008 the deceased presented at the emergency department of Bunbury Regional Hospital with suicidal ideation, including a plan of hanging himself from a bridge in Mandurah. He was feeling helpless and hopeless due to his ongoing drug addiction. He was admitted to the acute psychiatric unit for a week and was discharged outright with the diagnoses of adjustment disorder with poly-substance use disorder and cluster B personality traits.<sup>13</sup>
27. On 25 September 2009 the deceased presented at the emergency department at Bunbury Hospital with benzodiazepine withdrawal symptoms. He had recently moved to Bunbury and had yet to register with a doctor to obtain a prescription.<sup>14</sup>
28. On 10 December 2009 the deceased was admitted for three days to Bunbury Hospital with a fractured epicondyle of the humerus, allegedly caused by an attack by his partner with a machete. While admitted,

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<sup>12</sup> Bunbury Regional Hospital notes, Volume 1, Second Admission

<sup>13</sup> Bunbury Regional Hospital notes, Volume 1, Second Admission

<sup>14</sup> Bunbury Hospital notes, Volume 2, ED/OPD

he expressed suicidal ideation and referred repeatedly to his father's recent death.<sup>15</sup>

29. On 26 December 2009 the deceased presented at Bunbury Hospital with his elbow inflamed. He was agitated and distressed and sought diazepam, a small amount of which was provided.<sup>16</sup>
30. On 29 December 2009 the deceased again presented at Bunbury Hospital, this time with thoughts of killing his partner and himself. He was admitted to the acute psychiatric unit for three days.<sup>17</sup>
31. On 10 January 2010 the deceased was admitted to Bunbury Hospital for a week with cellulitis on his leg from a wound that would not heal, and he had wounds on his hand from punching someone in a fight. He was treated with antibiotics and discharged home with follow-up by a doctor.<sup>18</sup>
32. On 18 December 2010, 21 March 2011 and 3 June 2011 the deceased presented at the emergency department at Fremantle Hospital seeking diazepam. On the latter occasion he was in police custody.<sup>19</sup>
33. On 7 June 2011 the deceased was sentenced in the Fremantle Magistrates Court to two concurrent

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<sup>15</sup> Bunbury Regional Hospital notes, Volume 1, Third Admission

<sup>16</sup> Bunbury Hospital notes, Volume 2, ED/OPD

<sup>17</sup> Bunbury Regional Hospital notes, Fourth Admission

<sup>18</sup> Bunbury Hospital notes, Volume 2, First Admission

<sup>19</sup> Fremantle Hospital and Health Service notes

community based orders in relation to charges of burglary and stealing on 9 February 2011.

34. On 9 July 2011 the deceased presented at Bunbury Hospital seeking methadone without success.<sup>20</sup>
35. On 22 July 2011 the deceased presented at the emergency department at Bunbury Hospital seeking painkillers for his elbow. He said that he had stopped taking methadone and was taking heroin for the pain. He had a court case that day and his partner had been admitted to the acute psychiatric unit. He was given a small quantity of oxycodone. He presented again on 26 July 2011 seeking a prescription for oxycodone but was refused.<sup>21</sup>
36. On 6 September 2011 the deceased again presented to the emergency department at Bunbury Hospital. He said that he was using six points of amphetamines daily and was living with other drug users for three months so was at risk of continued intravenous drug use if he returned home. He gave as his place of residence an address on Devonshire Street in Bunbury. He had theft and burglary charges pending.<sup>22</sup>
37. On 8 September 2011 he underwent a mental health assessment. He disclosed chronic suicidal ideation, but

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<sup>20</sup> Bunbury Hospital notes, Volume 2 , ED/OPD

<sup>21</sup> Bunbury Hospital notes, Volume 2 , ED/OPD

<sup>22</sup> Bunbury Hospital notes, Volume 2 , ED/OPD

did not have a current plan. He said that he was 'over it' and had considered hanging himself, having witnessed his brother-in-law do it. He demanded that he be admitted to a mental health bed but declined referral to drug rehabilitation services. He was assessed to be at low risk of suicide.<sup>23</sup>

38. On 19 September 2011 the deceased was placed on remand at Bunbury Regional Prison in relation to a charge of burglary. It seems that on 26 September 2011 he was released on conditional bail with a curfew.<sup>24</sup>

### **30 SEPTEMBER 2011**

39. In the afternoon on 30 September 2011 the deceased went home to the house on Devonshire Street and found that a friend who had also been on remand in prison, Mr Freeman, was changing a wheel on a car. Mr Freeman had been living three doors down, but he had been ejected from the property by the owner, so he was using the property at which the deceased was staying.<sup>25</sup> He was a regular user of amphetamine.<sup>26</sup>
40. Mr Freeman had acquired some amphetamine, so he shared some of it with the deceased who used it intravenously. According to Mr Freeman, he gave most

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<sup>23</sup> Bunbury Hospital notes, Volume 2 , ED/OPD

<sup>24</sup> Exhibit 1, Tab 20

<sup>25</sup> Exhibit 1, Tab 46, pp. 7-9

<sup>26</sup> ts 104 per Freeman, B R

of the amphetamine to the deceased,<sup>27</sup> but Jess was also present and she smoked some of it with him.<sup>28</sup>

41. A little later, the deceased and Mr Freeman went to the property at which Mr Freeman had been staying in order for him to regain possession of some belongings he had left there, including number plates for his car. The deceased was wearing a balaclava.<sup>29</sup>
42. Mr Freeman got into a loud argument with the female owner of the property, who called for assistance from male friends of a neighbour. The friends showed up and one of them told Mr Freeman to leave. Mr Freeman hit the man on the face, but the situation did not escalate further.<sup>30</sup> The deceased and Mr Freeman went back to the car and attached the number plates.<sup>31</sup>
43. The deceased, Mr Freeman and Jess stayed at the back of the house at which the deceased was staying until it became dark. This was because Mr Freeman, and presumably the deceased, had breached reporting conditions for their bail.<sup>32</sup>
44. When it became dark, the three friends drove to a bottle shop where the deceased grabbed a 1.25 litre bottle of bourbon and ran back out to the car without paying.

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<sup>27</sup> Exhibit 1, Tab 46, pp. 9-10; ts 104 per Freeman, B R

<sup>28</sup> ts 128 per Freeman, B R

<sup>29</sup> Exhibit 1, Tab 46, p. 13; Exhibit 1, Tab 22

<sup>30</sup> Exhibit 1, Tab 22

<sup>31</sup> Exhibit 1, Tab 46, p. 14

<sup>32</sup> Exhibit 1, Tab 46, p. 15

They then went to the home of the deceased's brother, Liam, also on Devonshire Street,<sup>33</sup> where a number of people had gathered to socialise.<sup>34</sup>

45. At the house, the deceased, Mr Freeman and Jess each drank some of the bourbon. Jess also drank a bottle of champagne and two beers.<sup>35</sup> The deceased grabbed some of Liam's anti-depressant medication and ingested it, causing Liam to become upset.<sup>36</sup> The two men who had confronted Mr Freeman and the deceased also attended the party, which led to tension.<sup>37</sup>
46. The three friends left the house, taking the bourbon with them, and drove off. They stopped at a service station in Gelorup where they filled up the car and drove off without paying.<sup>38</sup> That occurred at about 10.20 pm.<sup>39</sup>

## **DONNYBROOK**

47. After leaving the service station, the deceased wanted to visit a woman he knew in Donnybrook. Mr Freeman agreed to drive him there and Jess went along with them. The deceased was in the front passenger seat and

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<sup>33</sup> Exhibit 1, Tab 20

<sup>34</sup> Exhibit 1, Tab 46, pp. 16-17

<sup>35</sup> Exhibit 1, Tab 5

<sup>36</sup> ts 21-23 per Jeffrey, L M; ts 106 per Freeman, B R

<sup>37</sup> ts 11 per Jeffrey, L M

<sup>38</sup> ts 107 per Freeman, B R; Exhibit 1, Tab 46, pp. 15-16

<sup>39</sup> Exhibit 1, Tab 46, p. 20

Jess was in the back seat. On the way, the deceased drank bourbon from the bottle.<sup>40</sup>

48. The two men started arguing. Mr Freeman stopped the car near Boyanup. The two men got out of the car and had a brief fist-fight before hugging and shaking hands and getting back into the car to proceed to Donnybrook.

During the fight each man sustained at least one blow to the head, but neither appeared to be much affected by his injury.<sup>41</sup>

49. The three friends continued to Donnybrook, but when they arrived there the deceased was unable to locate the woman's home. After driving around Donnybrook for some time and becoming frustrated, Mr Freeman decided to drive back to Bunbury. He first stopped at a toilet block in the middle of Donnybrook so that Jess could use the facility.<sup>42</sup>

50. While Jess was out of the car, the deceased moved into the back seat and lied down. Jess came back and sat in the front seat and they drove toward Bunbury.<sup>43</sup>

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<sup>40</sup> ts 107 per Freeman, B R

<sup>41</sup> ts 109 per Freeman, B R

<sup>42</sup> ts 110 per Freeman, B R

<sup>43</sup> ts 110 per Freeman, B R

## **ARGYLE**

51. When they reached Argyle, a locality half-way between Donnybrook and Boyanup, the deceased suddenly sat up in the back seat and grabbed Mr Freeman by the throat, demanding to know why they were not in Donnybrook. Mr Freeman stopped the car on the left side of the road with the left wheels off the carriageway and the right wheels still in the northbound lane.<sup>44</sup>
  
52. Jess' account to police of how they came to stop beside the road at Argyle is somewhat different from the foregoing in that she makes no mention of the deceased grabbing Mr Freeman by the throat. However, the police officers who interviewed Mr Freeman noted that he had red scratch marks consistent with having been grabbed by the deceased.<sup>45</sup> The deceased's brother Liam also saw bruising and finger marks around Mr Freeman's neck on the following afternoon.<sup>46</sup> Given that evidence, I accept Mr Freeman's version of this part of the series of events that led to the deceased's death.
  
53. Determining precisely what happened next is more problematic. On 2 October 2011 Mr Freeman gave police officers an account that was reasonably consistent in relation to crucial issues with his evidence at the inquest. He said that after he stopped the car he pulled

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<sup>44</sup> ts 112 per Freeman, B R; Exhibit 1, Tab 46, p. 32; Exhibit 1, Tab 8

<sup>45</sup> Exhibit 1, Tab 2, p.3

<sup>46</sup> Exhibit 1, Tab 19, paragraphs 72-74



the deceased out of the car from the passenger side and then got back into the driver's seat. He did not want the deceased in the car after the choking incident. The deceased went to the front of the car and leaned on the bonnet with his hands. Mr Freeman then moved the car slowly forward and the deceased came around to the driver's side and tried to open the driver's door. Mr Freeman drove off leaving the deceased behind waving his arms.<sup>47</sup>

54. Jess was interviewed by police on 1 October 2011. It is apparent that she told them that the deceased was standing in front of the car and would not move, that Mr Freeman drove close to him but did not hit him, and that the deceased started walking back to Donnybrook.<sup>48</sup>
55. The next day Jess was arrested under suspicion of murder and was interviewed by police again.<sup>49</sup> The resultant statement was received in evidence.<sup>50</sup>
56. Attempts were made by the State Coroner's Office to arrange for Jess to provide oral evidence at the inquest, but logistical problems precluded that happening during the hearing of the inquest. I formed the view that if I accepted her statement as an honest account of what

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<sup>47</sup> ts 113-116, 124-128; B R; Exhibit 1, Tab 46, p. 33-40

<sup>48</sup> Exhibit 3

<sup>49</sup> Exhibit 3

<sup>50</sup> Exhibit 1, Tab 5

occurred without being forensically tested, my conclusions on the relevant issues would not be affected. On that basis, I did not adjourn the inquest part-heard in order to call her as a witness later.

57. In her statement Jess said that the deceased stood in front of the car and yelled at Mr Freeman in the driver's seat, 'Go on, do it, do it' and kept repeating this. Mr Freeman then accelerated heavily forward and then the car stopped, causing Jess to fly forward then backwards into her seat. As the car went forward, it hit the deceased, who fell backwards and hit his head on the road. After a couple of seconds he got up but he was bent over and was not walking right. He stumbled around the driver's side to the back of the car and Mr Freeman drove off.<sup>51</sup>
58. As mentioned earlier, it is clear that only minutes later the deceased was lying on the road when he was hit by two vehicles within a short space of time.
59. At about 11.30 pm the first vehicle struck the deceased as he was lying on the road in Argyle.<sup>52</sup> St John Ambulance records indicate that a call was received in relation to the deceased at 11.39 pm.<sup>53</sup>

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<sup>51</sup> Exhibit 1, Tab 5, paragraphs 51-56

<sup>52</sup> Exhibit 1, Tabs, 9 and 10

<sup>53</sup> Exhibit 1, Tab 39

60. The second vehicle hit the deceased shortly after the first one did. By the time a passenger in the second vehicle, Mr Contarino, got out of the vehicle, he saw that other motorists had stopped to perform cardiopulmonary resuscitation on the deceased. He heard the deceased mumble something, indicating that he was still alive.<sup>54</sup>
61. Ambulance officers attended at about midnight, but the deceased was clearly dead.<sup>55</sup>
62. There is further evidence relevant to the events before Mr Freeman and Jess drove off: the evidence of Dr Cadden, Kelly Warburton, Kelly Rakowski and Ms Warburton's daughter.
63. Dr Cadden testified that, having regard to the injuries seen during post mortem examination and neurological examination, it was not possible to exclude the possibility that the deceased had suffered a brain injury and injuries to the front of his legs before being run over subsequently by two vehicles.<sup>56</sup>
64. Ms Warburton, Ms Rakowski and Ms Warburton's daughter were the two women and the girl who drove past Mr Freeman's car while it was stopped beside the road in Argyle. That occurred shortly after 11.00 pm on 30 September 2011. Their evidence had some

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<sup>54</sup> ts 64 per Contarino, M N; Exhibit 1, Tab 12; see also Tab 10

<sup>55</sup> Exhibit 1, Tab 39

<sup>56</sup> ts 85-88 per Cadden, G A

substantial inconsistencies, but it was consistent in relation to one crucial issue: a man, who on the basis of other evidence must have been the deceased, ran out from the stopped car towards their car as they passed him. He was waving his arms as if he wanted them to stop.<sup>57</sup>

65. In oral evidence, Ms Warburton said that she looked at the man and thought that he looked OK and that he did not need any help. He looked like he could handle the situation, so she did not stop.<sup>58</sup>

66. Ms Warburton's daughter remembered a look on the man's face as if he were angry.<sup>59</sup>

67. In my view, the evidence of Ms Warburton, Ms Rakowski and Ms Warburton's daughter casts doubt over the reliability of that contained in Jess' statement to police.

Jess was undoubtedly intoxicated to some degree during the event, which may have affected her perception and memory.

68. After passing the stopped car, Ms Warburton, Ms Rakowski and Ms Warburton's daughter looked back and noticed the car pull back onto the road and follow them. It passed them before Boyanup.<sup>60</sup> Ms Rakowski

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<sup>57</sup> Exhibit 1, Tabs 6, 7 and 8

<sup>58</sup> ts 32-35 per Warburton, K T

<sup>59</sup> Exhibit 1, Tab 8

<sup>60</sup> Exhibit 1, Tabs 6 and 8, ts 35 per Warburton K T; see also ts 62 per Contarino, M N

called her husband with her mobile phone just after the car passed them. Telstra records indicate that she made the call at 11.32 pm.<sup>61</sup>

69. Ms Warburton and her daughter recalled that the man they saw, who as mentioned must have been the deceased, got into the driver's seat just before the car started to follow them.<sup>62</sup> While in my view Ms Warburton was an honest, credible witness, she was clearly mistaken about this part of the events of that night. I can only surmise that in the poor light and confusion of the situation, as the deceased moved to the back of Mr Freeman's car, it appeared to her and her daughter that he had got into it.

## **1 OCTOBER 2011**

70. When Mr Freeman and Jess arrived back in Bunbury, Mr Freeman dropped Jess off at the house in Devonshire Street where the deceased had been staying. She went from there to Liam's home nearby. She went in for a drink and told Liam that she and Mr Freeman had left the deceased in Donnybrook.
71. After dropping off Jess, Mr Freeman went to the home of his ex-girlfriend, Ms Blount. Mr Freeman and Ms Blount had been partners for about 5 years. She left him when

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<sup>61</sup> Exhibit 1, Tab 7; ts 54 per Rakowski K L

<sup>62</sup> Exhibit 1, Tabs 6 and 8, ts 35 per Warburton K T

she discovered that he had been using amphetamines. She noted that in the period that he was using amphetamines he was quite aggressive after he had been awake for a few days.<sup>63</sup>

72. Mr Freeman convinced Ms Blount to go with him to Devonshire Street to retrieve a trailer with their furniture on it. He appeared to her to be under the influence of alcohol, but could not tell if he was on drugs, though she said that she never could.<sup>64</sup>

73. After they had picked up the trailer, Ms Blount and Mr Freeman went to Ms Blount's girlfriend's house where they spent the rest of the night. Mr Freeman slept and was his normal calm self in the morning.<sup>65</sup>

74. During the day Mr Freeman went to Liam's house where Liam and his sister were sitting on the porch. They told him that the deceased had been run over and killed at Argyle. Mr Freeman became upset and started crying. He told them that he deceased had grabbed him around the neck and showed them bruising and finger marks. He described how he and the deceased had been in a fight and that he had hit the deceased in the head, after which the deceased was slurring his words. He

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<sup>63</sup> ts 69 per Blount, K M

<sup>64</sup> ts 72 per Blount, K M

<sup>65</sup> ts 74 per Blount, K M

suggested that the deceased's drug paraphernalia should be checked to see if he had injected a 'hot shot'.<sup>66</sup>

75. Mr Freeman left Liam's home and was picked up by Ms Blount. He was still crying and told her how a friend had been hit by a truck.<sup>67</sup>

## **CAUSE OF DEATH**

76. Forensic pathologist Dr Gerard Cadden conducted a post mortem examination of the deceased's body and found severe head injury with skull fracturing on the right. He found thoracic spinal injury, extensive ribcage injury and laceration of the lungs. Neuropathological examination of the brain and spine confirmed traumatic brain injury.<sup>68</sup>
77. Toxicological examination of the deceased's blood, liver and vitreous humour detected an alcohol blood level of 0.125 percent, benzodiazepines at therapeutic levels, and methylamphetamine at a 'recreational' level. Cannabis product was also detected.<sup>69</sup>
78. Dr Cadden stressed that he was not a toxicologist, but suggested that benzodiazepines, alcohol and cannabis have a potential sedating effect.<sup>70</sup>

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<sup>66</sup> Exhibit 1, Tab 19

<sup>67</sup> ts 74-75 per Blount, K M

<sup>68</sup> Exhibit 1, Tab 40

<sup>69</sup> Exhibit 1, Tab 42

<sup>70</sup> ts 89-90 per Cadden, G A

79. Dr Cadden formed the opinion, which I adopt, that the cause of death was head and chest injury.

### **HOW DEATH OCCURRED**

80. Much of the evidence of the events of 30 September 2011 was vague and inconsistent, making it somewhat unreliable. That has been a result of the fact that the witnesses closest to the events were affected by alcohol and drugs at the time and by the fact that their memories have been affected by the passage of over three years.
81. Notwithstanding the difficulties with the evidence, in my view it is relatively clear on the balance of probabilities that Mr Freeman did not contribute directly to the deceased's death.
82. It is possible that the deceased had been hit by the car and then he fell onto the road causing injury to his head such that he had difficulty walking. However, that scenario is unlikely because of the evidence of Ms Warburton and Ms Rakowski who saw the deceased running onto the road and waving his arms to flag them down as they went past.
83. In addition, I found Mr Freeman to be a credible witness and I note that his account of what occurred was not inherently improbable.



84. Even taking the contents of Jess' statement as an honest account, the facts that she was undoubtedly intoxicated at the relevant times and that she had previously provided an inconsistent account to police lowers the reliability of that evidence.
85. Moreover, even if I had concluded that Mr Freeman had hit the deceased with his car, I could not be satisfied that knocking the deceased onto the road had contributed to his death.
86. I would need to be satisfied to a high standard, perhaps approaching 'beyond reasonable doubt', in order to find that Mr Freeman had contributed to the deceased's death: *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336; *Anderson v Blashki* [1993] 2 VR 89.
87. Given the considerable evidence of the deceased's mental illness, including ongoing suicidal ideation, I could not exclude the possibility that he placed himself on the roadway, effectively as an act of suicide.
88. Also, given the likely sedating effect of the drugs and alcohol consumed by the deceased and the evidence of him lying on the back seat of Mr Freeman's car, I could not be satisfied that he did not simply lie down on the roadway, overcome with drowsiness.

89. It follows from those considerations that, not only could I not conclude that Mr Freeman contributed to the deceased's death, I cannot determine whether the death occurred by way of accident or suicide.
90. In these circumstances, I must make an open finding as to the issue of how death occurred.

## **CONCLUSION**

91. The deceased's history was marked by inter-related mental illness, criminality and drug dependency, especially in relation to methylamphetamine. From the time of adolescence he was in a spiral of self-destruction from which he did not, and perhaps could not, extricate himself.
92. The tragedy of his death was compounded by the trauma no doubt suffered by his family and by the unfortunate motorists who struck him.

B P King  
Coroner  
30 December 2014