



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Matthew Mitchell
Hearing dates:	22 February - 25 February 2016 and 27 – 28 June 2016
Date of findings:	12 July 2016
Place of findings:	State Coroners Court, Glebe
Findings of:	Magistrate Barry Deputy State Coroner
Catchwords:	CORONIAL LAW – Blunt Force Head Injury , Motor vehicle collision, unknown Driver
File number:	2013/284015
Representation:	Sgt Paul Bush: Advocate Assisting the Coroner Mr Simon Healy : Representing Mr Jason Walker
Findings:	<p>The <i>Coroners Act</i> in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of Matthew Luke Mitchell.</p> <p>I find that Matthew Luke Mitchell died on 19 September 2013 at Royal North Shore Hospital as a result of a head injury occasioned by an impact with a moving vehicle, moving at speed, while he was walking or standing on Graham Drive Sandy Beach on 17 August 2013</p>

1 – Introduction

Matthew Luke Mitchell was thirty years old at the time of his death.

He lived at Sandy Beach with Robert and Tara Briggs and their children. He had resided with them for about ten years.

At the age of 17, Matthew was injured in a work place accident. Following that injury he suffered epileptic fits and was taking medication. An epileptic fit could be brought on by alcohol or stress. The evidence suggests that he was managing his epilepsy well.

On the evening of 17 August 2013, Matthew was with a number of persons who had gathered at a premises in Grahame Drive, Sandy Beach. All had been consuming alcohol to various degrees, some of those present being well affected by alcohol, although the evidence suggests that Matthew was not overly affected by alcohol.

At about 10pm, Matthew and another man, Aaron Gordon, departed the premises and proceeded to walk up the driveway of 59 Graham Drive and onto the roadway .

Earlier in the day, Matthew had been told that his friend Aaron was at the beach and was suicidal. Matthew had walked down to the beach and spoken with Aaron at the beach.

At about 10.40pm, Brandon Ranieri was driving his vehicle North along Graham Drive at Sandy Beach. He observed a male person on the roadway in front of his car. This male person was waving his arms about.

Brandon took evasive action and swerved to miss this male.

About 10.50pm, Laura Skibba was also driving North on Graham Drive when she observed a person on the roadway. She exited her car and noticed a male, unconscious and bleeding from a wound to the head. This person was Matthew Mitchell.

Ambulance and Police attended the scene and Matthew was transported to Coff's Harbour Hospital. He was later flown to Royal North Shore Hospital. He remained comatose for about one month and died of complications of his head injury on 19 September 2013.

Matthew Mitchell

Matthew was described by those who knew him as a decent man who was loyal to his friends and always willing to lend a hand.

He had offered enormous support to Aaron Gordon following the death of Aaron's baby some months before. He continued to offer support and comfort to Aaron up until the incident.

Matthew's family described him as kind, loving and honest. He was loved by everyone and never hurt anyone.

He had attained a black belt in Martial Arts.

In a statement read to the Court, Matthew's Uncle stated:

"If this world was full of people like Matt it would be a great place to be"

He was greatly loved and is greatly missed.

Role of the Coroner

The Coroner's role is to determine the identity of a person who has died, the date and place of that death, the cause of the death and the manner or circumstances of the death.

The identity, date and place and cause of Matthew's death are established.

This inquest will investigate the circumstances of Matthew's death, including the actions of those persons present at the party at 59B Graham Drive, Sandy Beach.

This inquest is not a criminal investigation but an inquiry into the circumstances that led to Matthew receiving a catastrophic head injury on Graham Drive at about 10.50pm on 17 August 2013.

The Autopsy/ Cause of Death

An Autopsy Report was prepared by Professor Johan Duflou on 29 September 2013.

Professor Duflou found the cause of Matthew's death to be a Head Injury.

In his report dated 29 September 2013, Professor Duflou stated the following:

"At this time, it appears more likely than not that the deceased has sustained a single heavy blow to the head with a blunt object. The absence of described other injuries to the organs of the body and the skeletal structures is not typical of a pedestrian v motor vehicle collision, although this mechanism cannot absolutely be excluded. If the injuries are the result of a collision, the possibility of a glancing blow to the head by, for example, a protruding part of the car such as a mirror, an edge of a utility tray, or similar could be reason for a limited area of injury which would otherwise be relatively uncommonly seen in a pedestrian v motor vehicle collision."(p3 Autopsy Report)

In a further report prepared by Professor Duflou, dated 6 October, 2015, Professor Duflou stated:

"I remain of the view that it is entirely possible that Mr Mitchell sustained injuries as a result of impact by a moving vehicle. The part of the vehicle which struck the deceased cannot be determined with any degree of certainty, given the vehicle is not known, but impact with a motor vehicle side mirror moving at some speed would quite reasonably be able to inflict the various injuries to the head including skull and

intracranial contents seen in this case. I also do not exclude other parts of a vehicle, such as a bull-bar, or a protruding part of a tray of a utility vehicle causing such injury”(P2 Review Report)

And further:

‘Based on the information from the scene, the clinical observations and the autopsy findings I conclude that the deceased more likely than not died as a result of being struck by a motor vehicle at some speed while he was walking or standing on the road.”(p2 Review Report)

In his oral evidence to this inquest, Professor Duflou stated that Matthew had a depressed skull fracture with very extensive damage.

He believed there had been “considerable force” applied to Matthew.

He further stated:

“I strongly believe a fist could not have caused that injury”

He explained that whilst at first he had excluded the possibility of a motor vehicle collision causing the injury, he now believed that a “*glancing blow by a vehicle such as a bull bar or wing mirror*” could have caused such an injury.

In relation to the question as to whether the injury was sustained as a result of interpersonal injury, Professor Duflou stated that there would have needed to be an implement such as a baseball bat. Even if that was the case he stated that a single blow by a baseball bat would be “uncommon” in the absence of other blows. There is simply no evidence to support this proposition.

In response to the proposition that Matthew may have sustained the injury as a result of a fall following an epileptic fit, Professor Duflou thought the injury to Matthew’s head could not be explained on the basis of losing consciousness during epilepsy and falling.

He explained that the damage to Matthew was on the side of the head. He stated that it is uncommon to obtain a depressed skull fracture on the side of the head as a result of a fall onto a flat surface. Essentially, if Matthew had fallen onto his side, his shoulders would have got in the way and protected his head from striking the ground first.

The gathering at Number 59B Graham Drive

Number 59 Graham Drive, Sandy Beach, is a large block which fronts the road. There are three houses on the one block.

Number 59 fronts onto Graham Drive and Numbers 59A and 59B are situated further back on the block.

There is a long track/driveway that runs the length of the property and exits onto Graham Drive.

Number 59A Graham Drive was occupied at the time by Aaron Gordon, a friend of Matthew's.

Number 59B was occupied by Scott Walker, Jasmine Clancy and their shared five children.

Initially, Scott Walker and his four children had lived at 59A Graham Drive but had moved into number 59B with Jasmine and her daughter sometime prior to this incident.

Number 59A had remained vacant, although Scott was still paying the rent.

In about May/June 2013, Aaron Gordon rented a room in number 59A.

Three weeks prior to 17 August, Aaron and Matthew helped Scott move his belongings from 59A to 59B.

During this time, Matthew would attend the premises on an almost daily basis. He helped Scott and Jasmine move furniture and clean up. He also helped with the children.

Scott needed to complete vacating the premises at 59A and by 17 August 2013, he had moved his belongings into Jasmine's house. Some of Aaron's belongings were also moved into Jasmine's house.

Some discarded furniture was placed in a fire pit down the back of the block to be later burnt.

On the afternoon of 17 August 2013, Scott, Aaron, Matthew, Jason Walker, Scott's brother and Ricky Bart, Scott and Jason's nephew were at the premises.

In the late afternoon, Aaron went to Jasmine's house. He had been drinking and according to Jasmine, he was agitated, punching his legs with a closed fist and raging about Jason Walker, stating "I just want to flog him". Allegedly, Jason had left Aaron's block-splitter too close to the fire on the previous night and it had been burnt.

Jasmine told him to leave her house and he started crying. She believed he was not just drunk, but also irrational.

Matthew took Aaron away from her house.

At about 10.30pm, Scott lit the bonfire, containing the abandoned furniture, at the rear of the premises.

Matthew and Aaron were present at this fire as was Jason.
Ricky Bart had gone to bed.

During this time, there was a considerable amount of skylarking involving Aaron driving his car, a Datsun 4WD, around the fire.

According to Scott, Matthew was concerned about Aaron's actions because of the level of his intoxication, and stopped Aaron from driving his car. Matthew hid the keys to Aaron's car. Aaron started punching and head butting his car demanding the return of his keys.

At about the same time, Jason Walker crashed his Pajero 4 wheel drive into a telegraph pole and then into a culvert on the bike track which ran behind the properties at 59 Grahame Drive.

According to Kiani Grundy, who witnessed this collision from the top of the bike track near the intersection of Coral Drive and Diamond Head Rd, this vehicle tipped over onto its side in a culvert. People in the vehicle climbed out the windows of the vehicle and with the help of persons from 59B, the vehicle was righted onto 4 wheels.

Kiani called the police to report what she had seen and a man from one of the neighbouring houses showed her a different way to walk home so that she could avoid having to continue down the bike track to her home.

Kiani was unable to identify the vehicle other than it being a 4WD vehicle.

There is little doubt that this was the vehicle driven by Jason Walker, although Jason maintained in his evidence that he was alone in the vehicle.

In any event, as a result of the collision, Jason's vehicle was damaged by smashing the side mirror and damaging the side of the vehicle.

Jason parked his vehicle on the footpath behind the properties and Scott spoke to him about his behaviour. Scott believed Jason to be well affected by alcohol.

Matthew also tried to speak with Jason, but Jason refused to get out of the vehicle.

Scott and Matthew left Jason in the vehicle and walked to where Aaron was standing. Scott described Aaron at this time as “really going off his head and really screaming”.

Worried about the police arriving and the level of noise, Scott demanded that Aaron leave.

Scott’s evidence was that Matthew stated:

“Look Scott, I’ll just deal with him. I’ll fix him up, I’ll take him for a walk.” According to Scott this was something that Matthew did regularly, stating “he was always calming Aaron down, pretty much”

At about 10.40pm Scott observed Matthew grab Aaron by the arm saying “Come on come on, let’s go, we’ll go for a walk.”

Aaron and Matthew proceeded to walk up the driveway towards Graham Drive. Some minutes later, Jason drove to the front of 59B. Scott heard the vehicle accelerate and saw Jason driving up the driveway towards Graham Drive.

Jason’s evidence is that he drove up the drive and turned left onto Graham Drive and then crossed the bridge to park in Johnston St. On that journey he maintains he saw no-one and nothing out of the ordinary.

Brandon Ranieri was driving his vehicle north on Graham Drive when he heard his passenger Brianna Sails yell out “look out there’s a man on the road”. Brandon swerved straight away because the man was “really close” and Brandon formed the view that the man was trying to kill himself because “it looked he was smiling.” He saw someone about 100 metres away who appeared to be chasing the man.

Brandon believed the man on the road was wearing a grey jumper but he could not be sure and that he was about 6 feet tall. However, in his statement to police a few days after this incident he described the man in the middle of the road as having no shirt on.

Another passenger in Brandon's car was Ethan Davies. He was seated in the front passenger seat. Ethan also observed the man on the road and believed him to be wearing a hoody with jeans. He thought this man looked drunk.

Laura Skibba was driving North on Graham Drive at about 10.50 when she came upon Matthew on the roadway. She called 000 and spoke with Police and the Ambulance Service.

Whilst on the phone she observed a number of people arrive on the scene. One man was "very, very inebriated" He was dressed in jeans with no shirt and was screaming about the man on the roadway. There is no doubt that this man was Aaron.

Aaron Gordon

Aaron's behaviour on the night was clearly problematic. He was, according to Scott, heavily intoxicated and unpredictable. Kiari Grundy, who observed him later in the evening, described him as "full of adrenaline" and he "seemed like he was on drugs".

Prior to arriving on the scene where Laura Skibba was talking to Police, Aaron had attended the home of Mark Willmott. Mr Willmott resides at 65 Graham Drive not far from the area that Matthew was struck.

Initially, Mr Willmott did not know it to be Aaron who had entered his home. He said Aaron was "frantic and screaming" and not making any sense. Aaron dived at Mr Willmott and they fell over and a scuffle followed.

Mark Willmott told the court that Aaron yelled out "Mattie's been hit by a car".

Regrettably, Aaron Gordon did not give evidence to the inquest. A medical Certificate was provided indicating he was unfit to give evidence.

The difficulty in this matter is that other than the driver of the vehicle that collided with Matthew, Aaron was presumably the last person to see Matthew alive and the court has not had the benefit of hearing his evidence.

What the court must rely on is the statements made by Aaron to the Police and the observations of other witnesses.

In a recorded Record of Interview conducted by Police on 14 October 2013, Aaron acknowledged that he was “pretty drunk” on the night in question. He claims he remembers nothing from the time Matthew and Jason took him to Scott’s house earlier in the night, to the time “I went to grab Mattie’s hand and to get him off the road.” He denied any knowledge of how he and Matthew came to be on Graham Drive.

Senior Constable Brooks attended the scene on Graham Drive. He observed Aaron to be wearing long black pants with no shirt. Senior Constable Brooks described Aaron as “agitated” and “getting in the way” He was “crying and ranting”

Even though Aaron was stumbling and smelt of alcohol Police thought that he still had control.

The next day, Aaron told Scott that he and Matthew were” walking one minute and I turned around and he was on the ground on the bridge”

From Aaron’s limited evidence it is safe to assume that he was, in fact, the last person with Matthew on that night and could possibly have thrown some light on the circumstances of Matthew’s death.

One possible scenario is that Aaron was the man seen on the roadway by Brandon and his passengers; the man who, according to Brandon looked as though he was “wanting to kill himself”. Certainly the evidence points to Aaron having an emotional, histrionic personality. It is possible that Matthew had tried to remove Aaron from the roadway in an attempt to keep him safe, which was, on the evidence, been a characteristic of Matthew’s personality.

In trying to remove Aaron from the roadway, it is possible that Matthew was struck by a motor vehicle.

What are the circumstances of Matthew's Death?

There are no eye witnesses to the collision other than Aaron, who for reasons explained did not give evidence to the inquest and the driver of the vehicle who remains unidentified.

The best objective evidence comes from Mr Gordon Stewart and Mrs Wendy Stewart. They reside at 77 Graham Drive, close to the little bridge over the creek being the area where Matthew was found.

Gordon Stewart was asleep and was awoken by male voices arguing and swearing. He next heard a car travelling from the South, heading North at a very fast speed. Later, there was also a car travelling South. This car was noisy and sounded like "an oldish sort of car – a four cylinder"

When he heard the car travelling from the North he heard a loud "thump." He stated it was like a "boom". After this he heard a male voice yelling and sounding stressed. This male headed down to Mark Willmott's house.

Mrs Wendy Stewart was also asleep sometime after 10pm when she also was woken by voices outside her house. There were two male voices talking loudly and swearing. She thought some of the words were to the effect : "well come on get over here" and the response was "Fuck off leave me alone" She believed this conversation took place around the bridge somewhere.

She also remembers cars racing on the street, two in one direction and one in the other direction. She thought there was about a ten second gap between the cars. When the last car went past, travelling South, she heard a crack and she remarked to her husband that it was a really strange noise. She later expanded by saying that the noise sounded a like coconut being cracked open, a " short sharp crack"

Jason Walker at around this time drove his 4 wheel drive South on Graham Drive. His evidence is that there were no other cars on the road at that time. He claims he was only on the roadway for about 20 seconds before turning into Johnson Street.

At some time later, when he was in Johnson St he was attracted by flashing red and blue lights reflecting off a road sign. He had entered the rear of his vehicle intending to sleep there.

Having seen these lights, but claiming to not know they were Police lights, he called his parents in Husskinson , hundreds of miles away, ostensibly to ask them if they knew what was going on. He claimed that he often called his parents and thought Scott may have called them and told them what had happened.

He also called Matthew's phone which was answered by Scott who was at the scene beside Matthew. Scott heard Jason say "it's not me they're looking for" and "Matti, Matti".

Scott's evidence is that he thought it strange that Jason called Matthew's phone as they never spoke to each other on the phone.

Jason's explanation for his behaviour in making those telephone calls beggars belief. It just does not make any sense, unless Jason believed that he might have been responsible for something that occurred on the roadway. If, as he asserts, he had not seen anyone on the roadway, he simply could have walked down to Graham Drive to see for himself.

The known timing of certain events is of assistance but is not conclusive.

At 22.46 Kiani Grundy called Police after she had observed Jason's vehicle to have been righted onto 4 wheels on the bike track at the back of 59B Graham Drive.

Kiani's evidence is that she then walked home a different way towards her house on Graham Drive when she observes the police and Ambulance vehicles at the bridge. She estimates this to be about ten minutes.

At about 22.46 Daniel Robey, who resides in the front property at 59 Graham Drive hears a vehicle race out of the driveway of the properties at 59 Graham drive and head south on Graham drive.

At 22.52 Laura Skibba called 000 having discovered Matthew's body.

There is a strong suggestion that Jason's vehicle would have been on the bridge within the time frame when Matthew was struck. A vehicle travelling South was heard on the road by Mr and Mrs Stewart. .It was a noisy vehicle. This noisy vehicle is the vehicle, that according to Mr and Mrs Stewart was present when a loud "crack" was heard.

Jason gave evidence that earlier in the evening when he drove his car into the culvert, the muffler had blown out, causing the car to make a lot of noise.

Jason denied any involvement with Matthew's death.

He was an unsatisfactory and unimpressive witness and I did not find him to be a witness of truth. His evidence is characterised by the answer" I cannot remember", except when there was an opportunity to remember self- serving evidence such as his adamantness that his headlights were on and his explanation about the phone calls

However, in the absence of any other evidence it is not possible to establish that Jason was in fact the driver of the vehicle that collided with Matthew.

Conclusion

Apart from the tragedy of losing a loved and respected family member, it is particularly difficult for Matthew's family not to have any certainty about what were the circumstances of his death. The failure of Aaron Gordon to give evidence not only denies the Court an opportunity to hear his explanation but denies Matthew's

family the opportunity to understand what took place in the moments before Matthew's death.

On the evidence the cause of death is clear.

I am satisfied on the evidence that Matthew was killed as a result of a motor vehicle collision. There is insufficient evidence to establish to the required standard, the identity of the person driving the vehicle.

Findings

I find that Mathew Luke Mitchell died on 19 September 2013 at Royal North Shore Hospital as a result of a head injury occasioned by an impact with a moving vehicle, moving at speed, while he was walking or standing on the road, which occurred on 17 August 2013 on Graham Drive Sandy Beach.