



Record of Investigation into Death (With Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Simon Cooper, Coroner, having investigated the death of Jessica Ann Kupsch, with an Inquest held at Launceston on 17 March 2016, make the following findings:

Jurisdiction

The jurisdiction of a coroner to investigate a death, and hold an inquest, is governed by the provisions of the *Coroners Act 1995* (the “Act”).

Section 21 of the Act provides that a coroner has jurisdiction to investigate a death if it appears to the coroner that the death is or may be a reportable death. The Act defines reportable death as being, *inter alia*, a death that appears “to have been unexpected, unnatural or violent or to have resulted directly or indirectly from an accident or injury”.

Section 24 of the Act provides that where a coroner has jurisdiction to investigate a death she or he must hold an inquest if homicide is suspected. An inquest is defined in the Act as a public inquiry.

In the circumstances of this investigation, I was satisfied on the basis of material supplied to me that the death of Jessica Ann Kupsch was a reportable death, and it was one that arose as a result of homicide.

As such I determined an inquest was mandatory. If an inquest had not been mandatory then in the circumstances of Ms Kupsch’s death I would have determined to have had a public inquiry. In summary, I considered that given the nature of the relationship between Ms Kupsch and the person who caused her death, including the existence of a family violence order designed to protect her, a public inquiry is warranted.

Formal Findings Pursuant to Section 28(1) of the Act

The Act governs the findings that a coroner is obligated to make (if the evidence allows). In this case the formal findings were not the subject of any dispute. Accordingly I find as follows:

- a) The identity of the deceased is Jessica Ann Kupsch;
- b) Ms Kupsch died in the circumstances set out further in this finding;

- c) Ms Kupsch died as a result of multiple blunt traumatic injuries of the face and head;
- d) Ms Kupsch died on 9 August 2012 at Room 234, Penny Royal Hotel, 147 Paterson Street at Launceston in Tasmania; and
- e) Jessica Ann Kupsch was born in Hobart on 3 February 1983 and was aged 29 years; she was single and was unemployed at the date of her death.

I turn to consider Ms Kupsch's background and the circumstances of her death. The findings below arise from the evidence led at the inquest, none of which was in anyway in dispute.

Background

As I have already noted Ms Kupsch was born in Hobart in 1983. When she died she was the mother of four children aged at that time 11, 10, 8 and a baby just one year of age. Care of the orphaned children has now fallen to her mother Donna.

Ms Kupsch and Matthew Patrick Tunks were partners in what might be described as an 'on and off' relationship for a period of six or seven years. The relationship was plainly dysfunctional and was beset by a serious history of family violence.

I accept Donna's evidence that her daughter was a drug user who tried, unsuccessfully, to detox "on a few occasions".

Donna reports that she saw Ms Kupsch over the years with a great many black eyes, a swollen mouth and bruising to various parts of her body. In addition the evidence satisfies me that Ms Kupsch suffered broken bones at the hands of Mr Tunks on several occasions during their relationship.

Serious incidents of domestic violence were perpetrated by Mr Tunks upon Ms Kupsch on many occasions during the course of their relationship. Several were reported to the police on the following dates: 28 July 2007, 20 November 2007, 9 May 2010, 3 October 2011, 10 January 2012 and 24 March 2012.

The incident on 28 July 2007 involved Mr Tunks slapping Ms Kupsch to the back of the head and ripping a ring out of her right ear, as well as punching her to the head, and after she fell to the ground, kicking her in the side of the head and the torso. Ms Kupsch was pregnant at the time. At least some of part of the attack upon her occurred in the presence of one or more of her children.

Mr Tunks was apprehended and charged with various offences for which he was sentenced to a term of imprisonment. A family violence order was made. In the aftermath of the 28 July 2007 incident (and before the next on 20 November 2007) the Family Violence Counselling Support Service initiated 13 individual counselling sessions to support Ms Kupsch. Evidence also was that there are a number of additional attempts to contact her made by that service but without success. In addition Housing Maintenance took steps to upgrade security at Ms Kupsch's home and her case was discussed by the Integrated Case Coordination Committee.

Shortly after his release from prison Mr Tunks breached the family violence order by approaching Ms Kupsch at her home on 20 November 2007. He was apprehended, charged and convicted of breaching a family violence order. The Court sentenced Mr Tunks to four weeks imprisonment wholly suspended on condition he be of good behaviour for two years.

Following this incident, the Family Violence Counselling Support Service initiated six individual counselling sessions with Ms Kupsch. In addition the evidence was that a number of other support services tried to contact her, but without success. Her case was reviewed by the Integrated Case Coordination Committee on two occasions.

On 9 May 2010, Mr Tunks assaulted Ms Kupsch at her home by punching her in the face. Twelve hours after the incident Mr Tunks was located by police, arrested and charged with assaulting Ms Kupsch. He was detained for the purpose of making the family violence order application.

A family violence order was made which in its terms prevented Mr Tunks from approaching Ms Kupsch at all. The charge of common assault was dismissed by a magistrate on 10 May 2010 after Ms Kupsch withdrew her complaint against Mr Tunks on oath in court.

Five individual counselling sessions were initiated by the Family Violence Counselling Support Service after this incident. As in the past two instances set out above efforts were made to contact Ms Kupsch on several other occasions, but without success.

On 2 October 2011, Mr Tunks again assaulted Ms Kupsch, this time by dragging her, in broad daylight, and in the presence of numerous members of the public, across the car park of Chickenfeed at Mowbray, a suburb of Launceston. Ms Kupsch was seven months pregnant at the time, something Mr Tunks well knew. Police attended the scene in its immediate aftermath and spoke with Ms Kupsch. She told the officers she did not wish to make a complaint against Mr Tunks. Nonetheless police gathered evidence from witnesses and located Mr Tunks at a nearby hotel. He was arrested and conveyed to the Launceston Police Station where he was charged with common assault. A police family violence order was made.

The evidence was that there was no contact with Ms Kupsch by either, Court Support, the Family Violence Counselling Support Service or the Integrated Case Coordination Committee after this incident. Child protection authorities, however, had six contacts with Ms Kupsch after the incident.

On 26 November 2011, Mr Tunks was convicted of assault and sentenced to 11 months imprisonment wholly suspended on condition he abide by the conditions of a drug treatment order.

The next reported incident of domestic violence suffered by Ms Kupsch occurred on 10 January 2012. The evidence was that by this time Ms Kupsch and Mr Tunks were living together at 22 Tulipwood Crescent, Rocherlea. About 4.00am that day they had an argument over the care of their child. In the course of the argument Mr Tunks kicked Ms Kupsch's feet out from under her which in turn caused her to fall to the

ground. He then kicked her approximately 10 times to the head and torso. Ms Kupsch lost consciousness.

I note, that at the time of this incident, there was in place the police family violence order I have already referred to. The evidence is that this assault was not reported to police until 21 January 2012. On that day the couple argued again about the care of their child. Mr Tunks smashed Ms Kupsch's mobile phone and their camera. On this occasion he did not physically assault her. Ms Kupsch reported the incident to the police who attended and spoke to her. She told them she was fearful for her life and wanted to make a break from the relationship with Mr Tunks.

The next day, 22 January 2012, police re-attended 22 Tulipwood Crescent. Mr Tunks was located hiding under a bed after Ms Kupsch had advised police he was not present. He was arrested and taken to Launceston Police Station where he was charged with assault and breaching a police family violence order and detained for court.

The evidence was that two contacts were made with Ms Kupsch by the Family Violence Counselling Support Service after this incident but none by either Child Protection or the Integrated Case Coordination Committee.

On 24 March 2012, Mr Tunks attended an address in a Launceston suburb where Ms Kupsch had spent the night with friends. He dragged her from bed, punched her to the ground and then kicked her when she was on the ground. Her right arm was broken in the attack. Although Ms Kupsch was treated at the Launceston General Hospital for her broken right arm, the incident was not reported to police.

On 6 April 2012, Good Friday, Mr Tunks and Ms Kupsch were at her home in Rocherlea when, again, an argument developed between the two in relation to the care of the baby. Mr Tunks picked the four-month-old baby up by the singlet he was wearing, pulled him off the couch, during which the child's singlet top ripped, and then carried him into a bedroom. The baby's head and arms were flopping around while this occurred.

Ms Kupsch intervened to try to stop Mr Tunks. He hit her to the left side of her face. The blow deflected off her face and connected with the right side of the baby's head. Mr Tunks then walked into the main bedroom of the house and threw the baby onto the bed from a distance of about one metre. He then turned and pushed Ms Kupsch to the ground, who had followed him into the bedroom to attempt to protect her baby. She landed on the floor with her head striking the floorboards. Mr Tunks stood over her screaming at her and kicked her to the right side of the face. He then deliberately stamped on her broken right arm and walked away.

Ms Kupsch picked herself up from the floor, grabbed the baby and left the home on foot carrying her baby. She walked to her mother's home nearby. Her mother's evidence was that Ms Kupsch arrived in a state of hysteria. Donna noted the baby had a black eye and a bump on his head. She called both police and the ambulance service.

Both Ms Kupsch and the baby were hospitalised. An application was made to the Magistrates Court by the appropriate authorities for an order under the *Children*

Young Persons and Their Families Act 1997 with respect to the protection and care of the baby.

Mr Tunks was located, arrested, charged and detained for court. An application was also made to the Court for a so-called full 'non-contact, not approach' family violence order designed to protect Ms Kupsch and the baby. The order sought, and granted, was one which forbade any contact on Mr Tunks' part with Ms Kupsch. I note there were exceptions to the not approach order, but none were relevant in the circumstances of Ms Kupsch's death.

As in the past Ms Kupsch again indicated to police she did not wish to participate in prosecution proceedings. In the event prosecution entered into negotiations with the solicitor for Mr Tunks, and ultimately an amended set of facts was put before the Court. That set of facts, removed any reference whatsoever to Ms Kupsch suffering a broken arm or the assaults on the baby. Mr Tunks then pleaded guilty to amended complaints which only made reference to him pulling Ms Kupsch's hair and causing her to fall to the ground, and another of pushing her over and causing to hit her head. Mr Tunks was sentenced on the basis of what might be described as a significantly diluted set of facts, about which more will be said later in these findings. He was made the subject of a second drug treatment order (being sentenced to 11 months imprisonment but suspended subject to that order).

Circumstances Leading up to Ms Kupsch's Death

After the Good Friday incident, but prior to Ms Kupsch's murder, child protection personnel had 28 separate contacts with her. The evidence was that that contact ranged from telephone calls to face-to-face meetings. In the same period the Family Violence Counselling Support Service had 20 separate contacts which also involved telephone calls and face-to-face meetings. Court Support Services had three separate contacts with her during the same time.

On 2 August 2012 police received advice from the Court Support & Liaison Service that the organisation in turn had been advised by Anglicare that Ms Kupsch and Mr Tunks had visited Anglicare together to discuss accommodation for him. The evidence was that the email was sent directly to the Victim Safety Response Team's Sergeant at 4.46pm on 2 August 2012 (after the Sergeant had finished work on that day). It was accessed, and presumably read, at 8.00am the following day, 3 August 2012.

Nothing was done about the information until Monday, 7 August 2012 when police attended Anglicare and spoke with a staff member who confirmed the substance of the report. The employee was, on the evidence of the inquest, initially reluctant to provide a statutory declaration, expressing a wish to consult with a superior regarding her reporting obligations.

The same day police attended the last known address of Mr Tunks. He was unable to be located.

On Thursday, 9 August 2012 police re-attended Mr Tunks' last known address, a caravan park, and spoke to a staff member as to his whereabouts. It was confirmed that Mr Tunks had been living there until 4 August 2012, when he left in the middle of

the night without paying his rent. I observe that this occurred after the information as to the apparent breach of the full non-contact family violence order had been received by police. I find, and it is obvious, that had police acted on the information received in a timelier manner, then, they would have been in a position to apprehend Mr Tunks before he abandoned his accommodation.

On the same day, the last day of Ms Kupsch's life, at about 12.30pm she and Mr Tunks met up in the Launceston CBD. By reason of the family violence order, Mr Tunks should not have even been in her presence. Being in her presence meant he was committing an offence, something he must have known. I note that the fact of his breaching the family violence order had, at the risk of repetition, already been reported to police some days before.

The couple spent the balance of the day together at the TRC Hotel.

In the afternoon they booked into the Penny Royal Hotel, and spent about 90 minutes in their room before walking to the Launceston CBD.

Early in the evening after having purchased more alcohol from the TRC bottle shop they returned to the motel room.

Other guests heard the sounds of what must have been Ms Kupsch and Mr Tunks arguing. The sounds ceased at about 7.00pm. At about 8.15pm a staff member heard some loud thumps and running water in the vicinity of their room (room 234).

During this time, that is between about 7.00pm and 8.15pm, Mr Tunks brutally beat Ms Kupsch to death. The injuries she sustained at Mr Tunks' hands were graphically described by Dr Ritchey, the forensic pathologist, who carried out the autopsy on Ms Kupsch's body, and gave evidence at inquest. The attack upon her was savage, vicious and sustained. The cause of Ms Kupsch's death was multiple severe blunt traumatic injuries to the face, neck and head. I am satisfied that those injuries were caused by both numerous punches and kicks inflicted on her by Mr Tunks.

After the attack, at 9.35pm Mr Tunks telephoned a friend and confessed that he had killed Ms Kupsch. The friend immediately contacted Police Radio Dispatch Service. In response, and shortly after, police attended the Penny Royal where they found Ms Kupsch's body in room 234. Mr Tunks was located a short distance away. He was arrested and conveyed to Launceston Police Station. Over the course of two interviews, he made admissions to police concerning Ms Kupsch's death. He was subsequently charged with, and pleaded guilty to, her murder.

On 18 December 2012, his Honour Chief Justice Crawford sentenced Mr Tunks to 23 years imprisonment, cumulative upon a sentence of 10 months imprisonment that had been imposed upon him on 10 August 2012. His Honour ordered Mr Tunks not be eligible for parole until he had served 13 ½ years of the sentence.

Issues at Inquest

The circumstances in which Ms Kupsch was killed, including the lengthy and serious history of family violence, to which she had been subject, as well as the fact that by reason of the family violence order her killer ought not have even been in her

presence necessitated, in my view, an examination of the approach of the various authorities and agencies involved with providing support and protection to Ms Kupsch in the lead up to her death. Those agencies included, amongst others, Tasmania Police, Anglicare and the Family Violence Counselling Support Service.

Evidence was put before the inquest from Inspector John King, a senior police officer, who conducted an extensive review in relation to Ms Kupsch's murder. The report itself was tendered in evidence. The report highlights a fundamental issue in this investigation, which was that Ms Kupsch was plainly trapped in a downward spiral of appalling violence. It is clear that despite numerous interventions by various agencies, Ms Kupsch returned, time and again, to Mr Tunks. The evidence makes it clear she was, on numerous occasions, a reluctant or unwilling witness in prosecutions of Mr Tunks; although it is equally plain she lived in terrible fear of him.

However, this inquest is not the appropriate avenue to explore issues associated with, why it was Ms Kupsch continually returned to a man who ultimately killed her. Rather the focus needs to be upon the narrower circumstances of her death.

That focus however, does not preclude an examination of the support afforded to her and, in particular, the response of Tasmania Police to the reports of offending with respect to Ms Kupsch by Mr Tunks, especially in the lead up to her death.

I am satisfied that by and large, with two exceptions, Tasmania Police made appropriate decisions with respect to the arrest, charging and prosecution of Mr Tunks over the years and especially in the lead up to Ms Kupsch's death. More will be said about the two exceptions shortly.

I am satisfied on the basis of the material tendered, and evidence given at the inquest, that the Family Violence Counselling Support Service acted appropriately and committed available resources over a number of years to endeavour to provide support to Ms Kupsch.

The evidence at inquest also satisfies me that there is no basis to conclude that any criticism is warranted of either the child protection authorities or the Court Support & Liaison Service.

The two areas, where in my view, the response of Tasmania Police to the ongoing issues between Ms Kupsch and Mr Tunks was inappropriate were first, in respect of the decision to enter into a so-called "plea bargain" which had the effect of making Mr Tunks eligible for a drug treatment order and second, the response to the report of Ms Kupsch and Mr Tunks associating with each other in early August 2012. I will deal with each in turn.

As I have already noted, as a result of negotiations between prosecution and the solicitor for Mr Tunks, a significantly diluted set of facts was put before the Magistrates Court on 16 April 2012. Critically, amongst other things, the facts relied upon by prosecution in court made no reference to Ms Kupsch having sustained a broken arm (or any assault upon the baby). Obviously, of course the magistrate still had discretion as to whether or not to make an order. The Court record makes it clear that before the Court was comprehensive material, which included Mr Tunks' extensive history of prior offending against Ms Kupsch. However, had the true

circumstances of Mr Tunks' offending against Ms Kupsch been put before the Court then it would have been precluded as a matter of law from making such an order (see section 27B(1) (a) (ii) of the *Sentencing Act* 1997). The practical effect would have been presumably, that, having reached the view that a sentence of 11 months imprisonment is appropriate, then the magistrate would have imposed that sentence, and not gone on to make a drug treatment order. This in turn would have meant that Mr Tunks would have been serving a sentence of imprisonment on 9 August 2012 and thus in no position to have murdered Ms Kupsch when he did.

Inspector King's report, which was completed while the murder charge against Mr Tunks was still before the Court, dealt with the history of family violence involving the couple and reviewed the response of Tasmania Police in that context. Importantly, in so far as this Coronial Investigation is concerned, the report dealt with the issue of so-called "plea bargaining" in cases involving family violence offending in some detail. It is to this issue that I turn.

The evidence at the inquest in relation to this issue was that there has been a change of procedure within Tasmania Police such that officers in charge of police prosecution sections and/or divisional inspectors are now to be made aware of all instances involving high risk family violence victims and the amendment of statements of facts and /or negotiations with respect to so-called "plea bargains". I am satisfied that this response is an appropriate policy response to the issue.

The second area where criticism is warranted is the slow response to the report to Launceston Police on 2 August 2012. I have already dealt with the facts surrounding that receipt of information by Tasmania Police and the fact that no steps were taken to investigate the apparent breach of the family violence order for several days, a delay which proved critical in the circumstances. The evidence was, and I accept, that police members responsible were on rostered days off on 4/5 August, but in my view, given the fact that there was a full non-contact order in place and the appalling history of family violence, coupled with the fact that Mr Tunks was the subject of a drug treatment order, ought to have led the matter to be afforded a much higher level of priority than it was.

The evidence is clear that no electronic record of the information received on 2 August 2012 as to the apparent breach of the family violence order was made in the Police Information Data Management System. No reason was offered as to why this was so.

In short, in my view there was a failure by Tasmania Police to deal with the information received on 2 August 2012 in a timely and appropriate way.

Recommendations and Comments

Section 28 of the Act provides as follows:

"(2) A coroner must, whenever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate.

(3) A coroner may comment on any matter connected with the death including public health or safety or the administration of justice.”

In this case it is doubtful that anything could have been done to prevent the tragic death of Ms Kupsch. As should be clear from my findings above, Ms Kupsch was in receipt of a high level of targeted support from various government instrumentalities none of which was ultimately able to protect her from Mr Tunks.

However, timely intervention by authorities in relation to domestic violence is plainly critical to prevent more deaths occurring in the future. The appropriate authorities, in particular police, cannot intervene and take action unless they are aware that domestic violence is being, or has been, perpetrated. Making authorities aware of the perpetration of domestic violence is a societal responsibility. In my view it is important to emphasise that obligation by statutory amendment to impose a positive duty upon persons and entities that are aware, or become aware, of domestic violence, to report that to police.

I note that the evidence was that at least one employee of Anglicare, directly involved in dealing with Ms Kupsch and Mr Tunks, was uncertain with respect to her duties or obligations so far as reporting apparent breaches of a family violence order were concerned.

I comment that the original Family Violence Bill contained a section, section 38, which had it commenced, would have imposed a positive obligation to report domestic violence. It is unclear why the section did not commence. In my view consideration should be given to an amendment of the *Family Violence Act 2004* to include a provision imposing a positive statutory obligation to report.

I acknowledge and thank Mr Phillip Zeeman for his assistance as counsel in relation to this very sad matter.

I wish to convey my sincere condolences to the family of Jessica Ann Kupsch on their loss.

Dated: 25 July 2016 at Hobart in the State of Tasmania.

Simon Cooper
Coroner