



MAGISTRATES COURT of TASMANIA

CORONIAL DIVISION



Record of Investigation into Death (Without Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Olivia McTaggart, Coroner, having investigated the death of Vincent Allen

Find, pursuant to Section 28(1) of the Coroners Act 1995, that:

- a) The identity of the deceased is Vincent Allen;
- b) Mr Allen died as a result of injuries sustained whilst a front seat passenger in a single motor vehicle crash on 9 March 2014;
- c) The cause of Mr Allen's death was head injury; and
- d) Mr Allen died on 9 March 2014 on the Huon Highway, Dover, in Tasmania.

In making the above findings I have had regard to the evidence gained in the comprehensive investigation into Vincent Allen's death. The evidence comprises a detailed report by crash investigators; an opinion of the State Forensic Pathologist who conducted the autopsy; relevant police and witness affidavits; medical records and reports; and forensic evidence.

I make the following further findings, based on the evidence, as to how Mr Allen's death occurred.

Vincent Allen was born in Salisbury, United Kingdom, on 16 February 1963 and was aged 51 years. He immigrated to Australia with his family in 1971 and moved to Tasmania in the early 1990s. Mr Allen never married although he was in a long-term relationship that ended in the late 1980s. There is one adult son, Kevin Allen, from that relationship. Kevin Allen lives in South Australia.

Mr Allen had worked in a number of sawmills in his early employment. However, later in life he was in receipt of an invalid pension. He also received some income from undertaking small jobs in the area. Mr Allen regularly consumed alcohol to excess. It appears he may also have suffered depression. Mrs Lindsey Smithers, one of his two sisters, stated that Mr Allen suffered from arthritis and had a drinking problem for most of his adult life. Mr Allen had been treated for gastritis which was likely secondary to alcohol use. It is clear from the statements of family members that Mr Allen was a caring and supportive member of his family and much loved.

On Sunday 9 March 2014 Mr Allen arrived at the home of a friend, Mr Ian Rushton, in Dover. After around 20 minutes the pair decided to go for a drive. The evidence suggests that Mr Allen was driving at this time. They drove to Southport in Mr Allen's Ford Fairlane sedan and

stopped near the beach and consumed beer. It is also likely that both consumed cannabis together.

After about an hour Mr Allen and Mr Rushton left Southport to head back to Dover. Mr Rushton stated that Mr Allen was the driver until they reached approximately half way between Lady Bay and the Huon Highway, when they stopped on the side of a gravel road and Mr Rushton took over driving. Mr Rushton was wearing a seatbelt but Mr Allen was not.

At about 3.00pm, shortly after Mr Rushton began driving, he lost control of the vehicle and crashed on the Huon Highway.

A witness, who observed the vehicle just prior to the crash, stated that the vehicle appeared to be travelling at excessive speed and began to fishtail. The passenger of the vehicle (Mr Allen) was sighted to be hanging out the window and holding on to the roof.

The crash investigation, headed by Senior Constable Adam Hall, revealed that Mr Rushton approached a closed right hand curve in the road in the vicinity of the driveway entrance to 7304 Huon Highway. A curve speed advisory sign indicated a recommended speed of 45kmh for the curve. Although the posted limit for the road was 100kmh, the critical curve speed was calculated by investigators at 87kmh. Mr Rushton commenced to negotiate the curve at a speed calculated through crash reconstruction techniques to be 103kmh. The vehicle entered onto the gravel verge on the northern left hand side of the road, sliding up the gravel verge passenger side first. Mr Rushton attempted to correct the position of the vehicle by steering hard right. He lost steering control of the vehicle and it continued to slide along the gravel verge for around 50 metres. The vehicle flipped and became airborne, completing at least two revolutions prior to coming to rest on its wheels in the gravel verge and table drain.

During the airborne rotations of the crash Mr Allen was ejected from the vehicle through the passenger side window. His body came to rest in the table drain on the northern side of the road, a short distance from the vehicle. Mr Allen sustained extensive head injuries and died at the scene.

During initial investigation at the scene Mr Rushton stated to witnesses and police that he was not the driver of the vehicle. He stated that Mr Allen had been driving. He was conveyed to the Royal Hobart Hospital for the purpose of a blood test and subsequently made an unsigned statutory declaration to police, indicating that he was not the driver of the vehicle at the time of the crash. He was detained for the purpose of further investigation.

On 10 March 2014 Mr Rushton made admissions, during a video recorded interview with police, that he was the driver of the vehicle at the time of the crash. He stated that he was confused when he made the statutory declaration the previous day denying being the driver. Mr Rushton also stated in his record of interview that he was disqualified from driving, had been consuming alcohol prior to driving and that he has a drinking problem. In this regard, Mr Rushton's record of prior convictions reveals that on 24 February 2014, 13 days before this crash, Mr Rushton was sentenced by a magistrate for a high reading breathalyser

offence to perform community service orders and was disqualified from driving for a period of two years.

On 11 March 2014 State Forensic Pathologist, Dr Christopher Lawrence, conducted an autopsy upon Mr Allen. Dr Lawrence determined the cause of Mr Allen's death was massive head injuries sustained in the crash. I accept Dr Lawrence's opinion as to cause of death. Toxicological testing of Mr Allen's blood revealed a very high blood alcohol reading of 0.296g/100mls and the presence of cannabis.

Mr Rushton's blood alcohol concentration was tested at nearly three times the legal limit, namely 0.147 grams/100mls, rendering his relative risk of being involved in a crash 20 times greater than that of a driver with a zero reading. I accept the evidence of the toxicologist that the presence in his blood of the antidepressant citalopram and THC (cannabis) would have contributed to Mr Rushton's driving impairment.

I am satisfied on the evidence that Mr Allen's vehicle was roadworthy prior to the crash, that the road and weather conditions were good and there were no obstructions to view. There is no record of other crashes occurring in the immediate area.

Mr Rushton was charged with numerous driving offences as a result of the crash, these being: causing death by dangerous driving, driving whilst disqualified, driving whilst a prescribed illicit drug was present in his body, driving a motor vehicle while exceeding prescribed alcohol limit, and failing to ensure that his passenger was wearing a seat belt.

Mr Rushton pleaded guilty to the charge of causing death by dangerous driving and was sentenced in the Hobart Supreme Court on 25 March 2015. Justice Porter ordered Mr Rushton serve 21 months with a non-parole period of half that sentence. Justice Porter's sentence was subsequently the subject of a Crown appeal. On 28 August 2015 the Court of Criminal Appeal allowed the appeal and quashed the sentence; see *Director of Public Prosecutions (Acting) v Rushton* [2015] TASCRA 20. The Court instead ordered that Mr Rushton serve a sentence of two years and nine months imprisonment backdated to 10 March 2015 with a non-parole period of one half of that sentence. Additionally, the Court disqualified Mr Rushton from driving for a period of two years upon his release from prison.

In her judgment, Justice Tennent (with whom Chief Justice Blow and Justice Wood agreed) stated at [17] – [20]:

17. "I accept that there are mitigating factors in this case and that they needed to be given appropriate weight. However, there were, in my view, factors which showed that the act of driving by the respondent which caused Mr Allen's death was deserving of a significant sentence. The respondent had been disqualified from driving on three prior occasions for drink driving. At the time of this act of driving, he was a disqualified driver. That fact alone is not the important factor, although it is relevant to sentence. It is that the disqualification was imposed only 13 days before the accident in this case for exactly the same behaviour, that is, drink driving. The respondent's breach of the order of disqualification was blatant and deliberate. It was explained on the basis he was concerned about Mr Allen's emotional state. With

respect, he could have parked the car and found some other way to get home. He did not have to drive. He chose to do so.

18. *Mr Allen was seen to be hanging out the passenger window of the car. He was far more intoxicated than the respondent. That action by Mr Allen was dangerous. That dangerous act by Mr Allen could easily have affected the respondent's ability to drive the car. The respondent however continued to drive.*
19. *There were other cars on the road. It was a long weekend. The potential risk to those other cars was high given the demonstrated inability of the respondent to control the car on the bend where the accident occurred.*
20. *While the inappropriateness of comparing outcomes in cases which might, on their face, be similar, is regularly noted, those other cases provide some guidance as to the range of what might be an appropriate sentence for this type of offending. The present case was not one involving an action of short duration. The respondent's ability to control a car was adversely affected by the amount of alcohol he had consumed from the moment he got behind the wheel. The decision to drive was a deliberate one in blatant disregard of a very recent court order which banned him from so doing for the exact same behaviour. The respondent's explanation for driving did not suggest any level of emergency or urgency. As a result Mr Allen died."*

Mr Rushton also pleaded guilty in the Magistrates Court to the remainder of the offences with which he was charged. On 17 February 2017 Magistrate Marron, in sentencing, recorded a conviction on each of the charges with no further penalty.

I note, in particular, that, in his sentencing comments, Justice Porter stated that Mr Rushton was travelling at a speed of about 75kmh at the time that his vehicle lost control before the crash. The indictment against Mr Rushton to which he pleaded guilty did not allege excessive speed as a particular of the charge of causing death by dangerous driving. The particulars alleged, *inter alia*, that Mr Rushton drove whilst affected by alcohol, failed to exercise due care and skill and failed to maintain proper control of his vehicle.

As previously indicated, the actual speed calculated by Senior Constable Hall was in fact 103kmh, slightly in excess of the 100kmh speed limit for the road, 16kmh in excess of the critical curve speed and 58kmh in excess of the speed advisory sign. The evidence, including that of eyewitnesses, allows only of the conclusion that Mr Rushton was travelling at 103kmh, a vastly excessive speed for the circumstances.

The requirement imposed upon a coroner by section 25(4) of the *Coroners Act 1995* is "If in the course of criminal proceedings a person has been charged on indictment, the inquest, on its resumption, must not contain any finding which is inconsistent with the determination of the matter by the result of those proceedings." I observe that this provision, read literally, applies where a coroner has resumed a public inquest after the conclusion of the specified criminal proceedings. In this case I neither commenced nor resumed an inquest. An inquest in this matter is not required. It may be that this provision is intended to apply to any finding,

whether as a result of an inquest or “in chambers”, and the recent amendments to the Act were ineffective in clarifying this intention.

In any event, I do not consider that the making of a finding that Mr Rushton was travelling at 103kmh when he lost control of his vehicle is a finding which is “inconsistent with the determination of the matter by the result of the proceedings.” An allegation of travelling at a particular speed was not an element of the charge nor a particular of the indictment.

On all of the evidence, I find that speed and impairment on the part of Mr Rushton together with Mr Allen’s own failure to wear his seatbelt were the contributing causes of Mr Allen’s fatal injury.

Comments and Recommendations:

I extend my appreciation to investigating officer, Constable Adam Hall, for his thorough investigation and report.

Mr Allen’s death highlights the tragic consequences of impaired judgment both as a driver and passenger whilst under the influence of alcohol and drugs.

The circumstances of Vincent Allen’s death are not such as to require me to make any recommendations pursuant to Section 28 of the Coroners Act 1995.

I convey my sincere condolences to the family and loved ones of Vincent Allen.

Dated: 11 December 2017 at Hobart in the State of Tasmania.

Olivia McTaggart
Coroner