



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION

Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

I, Simon Cooper, Coroner, having investigated the death of Timothy Luke Rubenach

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

- a) The identity of the deceased is Timothy Luke Rubenach;
- b) Mr Rubenach died in the circumstances set out below;
- c) Mr Rubenach's cause of death was aspiration pneumonia; and
- d) Mr Rubenach died on 22 May 2018 at 36 Dalmayne Road, Gray, Tasmania.

Introduction

I. In making the above findings I have had regard to the evidence gained in the comprehensive investigation into Mr Rubenach's death. The evidence includes:

- The Police Report of Death for the Coroner;
- An opinion of the Forensic Pathologist who conducted the autopsy;
- The results of toxicological analysis of samples taken at autopsy;
- Affidavits confirming identification and life extinct;
- Affidavits of Peter and Beverley Rubenach, Mr Rubenach's parents;
- Affidavits of Hannah Mary Rubenach-Quinn and Esther Beveridge, Mr Rubenach's sisters;
- Affidavit of Sergeant Sharmaine Ward;
- Affidavit of Constable Peter Bergersen;
- Tasmania Police information holdings;
- Medical reports and records from Department of Health and Human Services – Pharmaceutical Services Branch;
- Records from St Marys Pharmacy;
- Medical reports and records from GD James Pty Limited, Scamander;
- Medical reports and records from St Marys General Practice/Community Health Centre;
- Medical reports and records from psychologist Terece Moore;

- Written submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disabilities, authored by the parents of Mr Rubenach;
- Written notes and emails from family members of Mr Rubenach; and
- Report from the Medical Advisor to the Coronial Division.

Background

2. Timothy Luke Rubenach was born to Beverley and Peter in Launceston on 9 May 1986. He was the youngest of six children. At the time of his death, he was aged 32 years and lived with his parents at the family home at Gray, Tasmania.
3. Gray is a small settlement a few kilometres south of St Marys on Tasmania's East Coast.
4. At the age of just five months, Mr Rubenach contracted a meningococcal infection. The consequences of that infection were to blight the rest of his life. He commenced to suffer from seizures at around 16 months. The evidence is that during and following his first seizure, he was treated at the St Marys Hospital and he suffered a hypoxic brain injury.
5. He suffered epilepsy and severe intellectual and developmental impairment.
6. For the rest of his life, cared for by his parents and family, Mr Rubenach continued to suffer debilitating seizures, as many as 16 or 17 a day, every day.
7. After he reached adulthood, Mr Rubenach was treated with what might be described as alternative therapies – conventional medication seeming to his parents to be ineffective. Those alternative therapies included massage and diet. The evidence is that Mr Rubenach's parents researched such remedies very carefully. His medical records include several references to the fact that conventional anti-seizure medication such as Tegretol and Epilim had been prescribed for, and used by, Mr Rubenach but by about 2010 discontinued because of perceived intolerance or adverse reactions.¹
8. Towards the end of 2014, Mr Rubenach's parents began to treat him with medicinal cannabis. They made no secret of what they were doing, advising Tasmania Police² and medical practitioners associated with Mr Rubenach's care.³
9. Some relief for Mr Rubenach from 'conventional' medication in the form of diazepam suppository continued to be used by him in the last period of his life.

¹ See Medical Records – Timothy Rubenach – St Marys General Practice, pages 26 and 23 of 117.

² Tasmania Police Service Intel Submissions.

³ See for example Medical Records – Timothy Rubenach – St Marys General Practice, page 14 of 117.

The Function of a Coroner

10. Before looking at the circumstances of Mr Rubenach's death in more detail, and what, if anything in a legal sense follows from it, it is necessary to say something about what a coroner does. When investigating any death, a coroner's role is inquisitorial. Their job is to thoroughly investigate a death and answer the questions (if possible) that section 28 of the *Coroners Act 1995* asks. Those questions include who the deceased was, how she or he died, what was the cause of the person's death and where and when it occurred. This process involves the making of various factual findings, but without apportioning legal or moral blame for the death.⁴ A coroner is required to make findings of fact from which others may draw conclusions.⁵
11. A coroner does not have the power to charge anyone with crimes or offences arising out of the death the subject of investigation. In fact, a coroner may not even say that she or he thinks that someone has committed a crime in relation to the death being investigated.⁶
12. As noted above, one matter that the *Coroners Act 1995* requires is that a finding be made about how death occurred. It is well settled that this phrase involves the application of the ordinary concepts of legal causation. Any coronial inquiry necessarily involves a consideration of the particular circumstances surrounding the particular death so as to discharge the obligation imposed by section 28(1)(b) upon the coroner.
13. A coroner may comment on any matter connected with the death into which he or she is enquiring. The power to make comment "arises as a consequence of the [coroner's] obligation to make findings ... [i]t is not free ranging. It must be comment 'on any matter connected with the death' ... [i]t arises as a consequence of the exercise of the coroner's prime function, that is, to make 'findings'."⁷ For a coroner to exercise the power conferred by section 28(2) and (3) to make recommendations and comments, it is necessary that any recommendations or comments are sufficiently connected with the death being investigated.
14. The standard of proof applicable to a coronial investigation is the civil standard. This means that where findings of fact are made, a coroner needs to be satisfied on the balance of probabilities as to the existence of those facts. However, if an investigation reaches a stage where findings may reflect adversely on someone, the law is that the

⁴ *R v Tennent; Ex parte Jager* [2000] TASSC 64 at par 7.

⁵ *Keown v Kahn* [1999] 1 VR 69 at 75-76.

⁶ Section 28(4).

⁷ *Harmsworth v State Coroner* [1989] VR 989 at 996.

standard applicable is that set out in the well-known High Court case of *Briginshaw v Briginshaw*, that is, that the task of deciding whether a serious allegation is proved must be approached with caution.⁸

Circumstances of Death

15. During the last 12 months of his life, Mr Rubenach had a number of episodes of haematemesis (vomiting blood). Clinical investigations showed Mr Rubenach had severe ulcerative oesophagitis and associated iron deficiency, pressure sores and pain. Between June 2017 and May 2018 he was admitted to the Launceston General Hospital (LGH) on eight occasions, the St Marys District Hospital once, and presented to the LGH as an outpatient on two occasions. He was also under the constant care of a local general practitioner.
16. In the lead up to his death, it was apparent to everyone close to Mr Rubenach that he was unable to eat, was frequently agitated and in constant, severe pain.
17. The burden on Mr Rubenach's parents, as his carers, can only be imagined. Both sought and received psychological support. The records of the psychologist indicate that during their first session on 16 March 2018, Mrs Rubenach disclosed she was "very distressed and had a plan to kill Tim by suffocation and then suicide by drowning herself in the property dam".⁹ The treating psychologist attributed Mrs Rubenach's distress to the stress of caring for her son, and aggravated by difficulties associated with obtaining appropriate levels of help from the National Disability Insurance Scheme (NDIS). I will return to this issue later in this finding.
18. On 23 April 2018, Mr Rubenach was again vomiting blood and was taken by ambulance to the LGH. He was admitted to the LGH for the final time. During that admission, he had a blood transfusion, a gastroscopy and was treated for constipation. He was discharged home to the care of his parents and general practitioner on 27 April 2018.
19. On 15 May 2018, Dr Daniel Oxlee, a general practitioner, reviewed Mr Rubenach and had a lengthy discussion with his family. A decision was made to commence palliative care. He was unable to eat or communicate.
20. On 19 May 2018, a syringe driver was commenced with a view to keeping Mr Rubenach as comfortable as possible. He received breakthrough subcutaneous analgesia (morphine) administered by his sister, Ester Beveridge (a registered nurse). A general

⁸ (1930) 60 CLR 336.

⁹ Records – Terece Moore, Registered Psychologist.

practitioner, either Dr Oxlee or Dr Robert Newton (as locums for his usual doctor Cyril Latt), saw him every day until his death at about 4.30pm on 22 May 2018. On that day, Dr Newton saw him at 1.00pm and recorded in Mr Rubenach's medical notes that he was "shutting down and [had] pneumonia".¹⁰

Investigation

21. Initially a Medical Certificate of Death was issued. Because of concerns about the circumstances surrounding Mr Rubenach's death, it was reported under the *Coroners Act 1995* and a coronial investigation was commenced. His father formally identified his body.¹¹ It was then taken by mortuary ambulance to the Royal Hobart Hospital where life was formally pronounced extinct.¹² On 25 May 2018, experienced forensic pathologist, Dr Christopher Lawrence, performed an autopsy upon Mr Rubenach's body.
22. Dr Lawrence found that Mr Rubenach weighed just 33.3 kg, was 1.77 metres in height, with a body mass index of 10.5 (significantly underweight). The autopsy also revealed muscular changes consistent with Mr Rubenach's history of acquired brain injury.
23. Dr Lawrence expressed the opinion that the cause of Mr Rubenach's death was aspiration pneumonia and reflux oesophagitis.¹³ I accept Dr Lawrence's opinion. I am satisfied that the cause of Mr Rubenach's death was aspiration pneumonia and reflux oesophagitis attributable of course to his acquired brain injury as an infant.
24. Toxicological analysis of samples taken at autopsy was carried out at the laboratory of Forensic Science Service Tasmania. The results of that testing indicated presence at reasonably high levels of morphine, as well as some other pain killing drugs. I note no cannabis was detected as being present in those samples. The levels of morphine are, in my view, explained by the palliative care Mr Rubenach was receiving. The evidence does not support a conclusion that morphine toxicity either caused or contributed to Mr Rubenach's death. In reaching that conclusion, I have specific regard to the evidence from Forensic Science Service Tasmania, in the form of an affidavit from a forensic scientist, Neil McLachlan-Troup. In his report, Mr McLachlan-Troup said:

"Morphine was identified at a concentration of 1.2 mcg/L in post-mortem blood. The interpretation of this concentration needs to be done with caution as there is significant overlap with morphine concentrations identified as in therapeutic, toxic or fatal cases.

¹⁰ Medical Records – St Marys General Practice, page 2 of 117.

¹¹ Affidavit of Senior Constable RD Shepherd, sworn 24 May 2018.

¹² Affidavit of Dr Lori Coulson, sworn 24 May 2018.

¹³ Rule 19 affidavit, Dr Christopher Hamilton Lawrence, sworn 15 August 2018, page 11 of 13.

Tolerance tends to develop with consistent use of morphine over a prolonged period of time."¹⁴

25. I also have regard to Mr Rubenach's weight and body mass, which I consider is likely to have contributed to the elevated concentration of morphine identified post-mortem. In any event, viewing the evidence as a whole I do not consider that there was anything suspicious about the administration of morphine to Mr Rubenach in the lead up to his death. On the contrary, it was completely consistent with the palliative care he was receiving and was administered in accordance with the regulatory framework administered by the Pharmaceutical Services Branch.¹⁵
26. Because Mrs Rubenach had articulated threats to her son's life it was necessary to look at those threats and determine whether, in fact, those threats were acted upon. I observe first that Mrs Rubenach indicated to her treating psychologist that her 'plans', such as they were, were contingent in the sense that she intended to kill her son and then commit suicide in a specified way. Self-evidently, she did not do that. Secondly, the medical evidence makes it quite plain that the cause of Mr Rubenach's death was aspiration pneumonia. Third, he was seen by a general practitioner every day in the lead up to his death. His father was a constant presence. So was his sister, Esther. None of those people suggested that Mr Rubenach had been harmed in any way, by his mother, or indeed anyone. In all of the circumstances, I consider that there is no evidence to support a conclusion that Mrs Rubenach harmed her son. In fact, I am affirmatively satisfied that she did nothing of the sort; on the contrary, her devotion to, and love for, her son was palpable.
27. I think that Mrs Rubenach said what she said out of a sense of terrible frustration and distress. I do not consider that when she said what she did she meant it, nor had any intention to act upon it.

Care

28. The focus of the coronial investigation was the care Mr Rubenach received in the lead up to his death. That involved, *inter alia*, obtaining and carefully analysing all relevant medical and pharmaceutical records relating to Mr Rubenach. Those records were also analysed and summarised by Ms L Newman, the Coronial Division forensic nurse, and reviewed by Dr Anthony J Bell MB BS MD FRACP FCICM, the Medical Advisor to the Coronial Division. Dr Bell provided a detailed report.

¹⁴ Rule 19 affidavit, Neil McLachlan-Troup, sworn 31 July 2018, page 2 of 6.

¹⁵ Report Department of Health and Human Services, Pharmaceutical Services Branch, 16 August 2019.

29. In addition, additional affidavits were obtained from Mr Rubenach's parents, and a report and records obtained from the Department of Health, Pharmaceutical Services Branch.
30. All this information, along with the extensive material provided by Mr Rubenach's parents, has informed the findings that follow.
31. The evidence obtained and referred to above does not support a conclusion that, apart from the use of cannabis oil, there was anything in the nature of a concerted effort to prevent Mr Rubenach's seizures. This is not a criticism of anyone, but rather a conclusion reached having regard to the evidence.
32. It is not my role to pass judgment on the efficacy, or otherwise, of the use of cannabis oil to assist in the control of epileptic seizures. Self-evidently, there is a good deal of societal interest in the use of cannabis oil in relation to, amongst other things, the treatment of epilepsy. I can do little better than set out Dr Bell's expert opinion in relation to this issue. In his report he said:

“Safety and efficacy data are accumulating for cannabidiol, a component of cannabis most commonly investigated in medical studies. Several randomized trials have demonstrated modest efficacy of a standardized preparation of cannabidiol oil for patients with Dravet syndrome (DS) or Lennox-Gastaut syndrome (LGS), and cannabidiol is approved for the treatment of seizures associated with DS or LGS in patients ≥ 2 years of age.

However, for other indications, cannabidiol or other cannabis compounds should not be used outside of the context of a clinical trial.

A 2014 systematic review found four randomized trial reports that included a total of 48 patients. The treatment agent was cannabidiol in all reports. One report was an abstract and another was a letter to the editor. No adverse effects were reported for the dose of 200 to 300 mg of cannabidiol with short-term treatment; safety of long-term treatment could not be assessed. The authors concluded that no reliable conclusions could be drawn regarding the efficacy of cannabinoids as a treatment for epilepsy from the available data. A 2014 review by the American Academy of Neurology also concluded that there is insufficient evidence to prescribe cannabidiol or recommend self-treatment with smoked marijuana in patients with epilepsy”.

33. In short, the position seems to be that while preliminary studies suggest the short-term use of cannabidiol is generally safe, those tests are in their infancy and the long-term safe use of cannabidiol has not been established. It must be said that significant concerns exist

amongst experts regarding the potential negative effects of chronic cannabis use on brain development, cognitive function, and school performance, particularly in children with drug-resistant epilepsy, who may have increased vulnerability to such effects. I recognise that views in the community may differ. Nonetheless, I consider it is important to highlight the scientific concerns set out above.

34. I also acknowledge that Mr Rubenach's parents held a genuine belief that mainstream medication provided their son with no relief. Nonetheless, I must observe that mainstream medical treatment results from rigorous, objective and scientific study and trials. I note also that Mr Rubenach appears to have had little choice as to his treatment regime and there is no evidence that his parents had any form of medical training which might have equipped them to make appropriate decisions as to their son's treatment.
35. Finally, I acknowledge that Mr Rubenach was so gravely ill there was nothing that could be done, in the last year or so of his life, to have prevented the ultimate outcome.

NDIS

36. Earlier in these findings I touched upon the frustration expressed by Mr and Mrs Rubenach in relation to their dealings with the NDIS. I do not consider it appropriate to examine those complaints because I do not think that they are sufficiently connected (in a legal sense) with Mr Rubenach's death.
37. In saying this, I am neither rejecting nor accepting the veracity of those complaints. Rather, I do not consider it is any part of my function to rule.

Comments and Recommendations

38. The circumstances of Mr Rubenach's death are not such as to require me to make any comments or recommendations pursuant to Section 28 of the *Coroners Act 1995*.
39. I convey my sincere condolences to the family and loved ones of Mr Rubenach.

Dated 12 April 2021 at Hobart in the State of Tasmania.

Simon Cooper
Coroner