



MAGISTRATES COURT of TASMANIA

CORONIAL DIVISION



Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

(These findings have been de-identified in relation to the name of the family and others by direction of the Coroner)

I, Olivia McTaggart, Coroner, have investigated the deaths of Alexander Michael Flockhart and Damian Kenneth Pauly with an inquest held on 11 and 12 May 2017 at Hobart in Tasmania.

Counsel Assisting: Ms Jane Ansell

Introduction

Alexander Michael Flockhart and Damian Kenneth Pauly were both found deceased at a residence in Bridgewater, apparently having died by violent means. I suspected that each died as a result of homicide. Holding this suspicion, I was required by section 24(1)(a) of the *Coroners Act 1995* to hold a public inquest into their deaths. As delegate of the Chief Magistrate under the Act, I made an order under section 50 that both deaths be investigated at the same inquest.

Alexander Michael Flockhart

Pursuant to section 28(1) of the Act, I make the following formal findings:

- a) The identity of the deceased is Alexander Michael Flockhart;
- b) Mr Flockhart's death occurred in the circumstances described further in this finding;
- c) The cause of Mr Flockhart's death was gunshot wounds of the head and chest; and
- d) Mr Flockhart died on 26 November 2014 at 16 Cowle Road, Bridgewater in Tasmania.

Mr Flockhart was born on 21 October 1981 in Hobart and was 33 years of age at the time of his death. Mr Flockhart had been in a relationship with Suzanne Maree Williams for approximately 18 years. At the time of his death they were separated. Mr Flockhart and Ms Williams have two children who were then aged 14 years and 11 years.

Mr Flockhart was living at 13 Ashbourne Grove, West Moonah at the time of his death with a close lifetime friend, Mr Brett Allen. He was not suffering any significant physical ailments at the time of his death. He was employed as a road worker.

Mr Flockhart had a significant number of prior convictions arising from offending since 1997. These include convictions for assault and offences against public order. In 2002 he served a period of imprisonment for common assault.

At the time of death Mr Flockhart was attempting to reconcile with Ms Williams. In her evidence Ms Williams described Mr Flockhart as an excellent father and a very hard worker.

Damian Kenneth Pauly

Pursuant to section 28(1) of the Act, I make the following formal findings:

- a) The identity of the deceased is Damian Kenneth Pauly;
- b) Mr Pauly's death occurred in circumstances described further in this finding;
- c) The cause of Mr Pauly's death was a single stab wound to the chest; and
- d) Mr Pauly died on 26 November 2014 at 16 Cowle Road, Bridgewater in Tasmania.

Mr Pauly was born on 10 May 1980 in Hobart and was 34 years of age at the time of his death. He was not married but had been in a relationship with Shannon Lee Eaves for approximately 15 years. The relationship was unstable and had ended recently before his death. Mr Pauly and Ms Eaves have three children. At the time of Mr Pauly's death they were aged 13 years and 7 years (twins). Ms Eaves was 8 months pregnant with their fourth child. Mr Pauly lived with his parents at 16 Cowle Road, Bridgewater.

Mr Pauly had a lengthy record of prior convictions. These included burglary, stealing, driving-related offences and breaches of family violence orders. He served several terms of imprisonment between 2000 and 2004.

At the time of his death, Mr Pauly was subject to a firearms prohibition notice issued by Tasmania Police following the allegation of the use (and illegal possession) of a pistol in respect of a family violence incident relating to Ms Eaves. He was charged with this offence, which was not finalised at the time of his death.

Mr Pauly was in the process of obtaining employment interstate at Roxby Downs with Cape Mining and was due to leave two days after the incident in which he died, subject to returning negative drug tests.

Circumstances surrounding the deaths

A thorough investigation took place into the circumstances of the death of each of the deceased. Importantly, I was assisted by the opinions of experts who attended the scene, including the State Forensic Pathologist, a ballistics expert and a forensic scientist. The evidence also included numerous affidavits of eye witnesses to events preceding the deaths of each man, affidavits from family members and investigating police officers, and telephone records. I also had the benefit of attending the scene before the inquest with counsel assisting to enable a fuller understanding of the evidence.

The evidence allows me to make the requisite findings as to how each death occurred. The family of both deceased did not challenge the evidence of the crucial eye-witnesses or

forensic experts. The expert forensic evidence was of high quality. The eye witness evidence was reliable and did not contain conflict to any material degree.

There remains some uncertainty on the evidence about why the two men met at the address on the evening in question. The evidence suggests that they were known to each other but had no history of hostility between them. Two members of Mr Pauly's family provided affidavit evidence that Mr Pauly may have been in some trouble with "drugs and money" in the weeks before his death. One of the family members retracted this statement in evidence at inquest. The other believed that the issue involved Mr Pauly "undercutting" someone else and therefore accruing a debt in the vicinity of \$2000.

It is in the context of illicit drugs that the acrimony between both deceased may well have arisen, although the details of any such dispute cannot be determined due to the lack of reliable evidence. I am satisfied, at the very least, that both Mr Flockhart and Mr Pauly had used illicit substances during periods of their lives. They had also ingested amphetamine and methylamphetamine respectively in the 24 hours before their deaths.

During mid-late afternoon on Wednesday 26 November 2014, Mr Flockhart was at his home at 13 Ashbourne Grove in Moonah. After consuming a number of alcoholic drinks, he left home at about 6.00pm in a good mood. Ms Williams was expecting him for dinner.

At about 6.00pm on the same day Mr Pauly was at 16 Cowle Road, Bridgewater with his mother, his children and some other family members. His mother, Sharmane Pauly, described her son as being in good spirits.

At about 6.05pm Mr Pauly received a call on his mobile phone from Mr Flockhart. The conversation lasted at least 60 seconds. Mrs Pauly overheard part of the conversation and believed it to be a dispute about money. At the conclusion of the call Mr Pauly told his mother to "*get the kids out of here, there is going to be a fight*". Mrs Pauly asked him who had called and he replied "*Flocky*" and said "*he is coming from Chigwell and will only be 10 minutes so get the kids out*".

Mrs Pauly left the house with the children as requested, leaving Mr Pauly alone in the home. Mr Pauly was described by his mother as then being agitated. She noticed that he had removed his jumper and was wearing only a blue singlet, as if ready for a fight.

The telephone records indicate that at 6.21pm Mr Pauly attempted to call Mr Flockhart, but the call was unanswered.

At approximately 6.30pm a number of children, aged between 10 and 12 years, were present on Cowle Road near a broken seat, approximately 30 metres from 16 Cowle Road, Bridgewater, on the opposite side of the road. They had a direct line of sight to part of the residence. One of the children was the nephew of Mr Pauly, who had just been told to leave the home.

The evidence from these young persons, who swore affidavits for the investigation, was that a white station wagon arrived and parked directly opposite 16 Cowle Road. The witnesses describe a male occupant of the vehicle matching the description of Mr Flockhart casually

walking to Mr Pauly's home. He did not appear to be angry and there was no one else with him or in the vicinity of him. I am satisfied that the male was Mr Flockhart.

I find on the evidence that Mr Flockhart went to the door, knocked three times and said in a raised voice, although not yelling, "*let me in*". Mr Flockhart proceeded to walk to the side gate and then return to the front door where he then entered the house. It cannot be determined whether Mr Pauly answered the door or whether Mr Flockhart entered without being greeted by Mr Pauly. It would seem that the front door may not have been locked. There is no evidence of damage to the door. Further, Mr Pauly was expecting to confront Mr Flockhart and therefore is unlikely to have locked the door.

One of the children opposite the house on Cowle Road then heard Mr Pauly yell "*get out of the house*" and then heard two banging noises less than one second apart. Several of the other young people gave similar evidence although none of them associated the banging noise with gunshots. They kept looking at the house for about 15-20 minutes but no one was seen to leave. There was no noise emanating from the house and Mr Flockhart's vehicle remained in its parked position. The group of young people then left the area.

The kitchen and laundry area of a neighbour's house overlooked the backyard of 16 Cowle Road. The neighbour was cooking in the kitchen when she heard two males arguing from within the house at 16 Cowle Road. She was not aware of the exact time but I am satisfied from the other evidence that it was approximately 6.30pm when she heard the voices. She could not identify their voices. She estimated that they were yelling at each other for about five minutes when one of the males raised his voice and said "*I told you, you shouldn't have messed with me*". The neighbour stated in her affidavit:

"Just after I heard the men say that I heard a popping sound that I thought was a gunshot. A short time after may be a minute I heard another popping sound which I thought was a second gunshot. I can't recall hearing any voices or other noise coming from 16 Cowle Road between the two popping sounds."

At inquest, the neighbour gave evidence that she heard three popping noises and not two. I prefer her earlier affidavit evidence but nothing turns on this point. In general, she gave credible evidence at inquest which I accept. The statement she described may have been uttered by either Mr Flockhart or Mr Pauly at any time before the last two gunshots to Mr Flockhart.

At 7.20pm Corey Jetson, another nephew of Mr Pauly, arrived at 16 Cowle Road where he was living at the time. He noticed the front door was open and walked inside. He immediately noticed Mr Pauly, lying face up and motionless in a pool of blood in the doorway between the kitchen and hall area of the house. Mr Jetson ran to a nearby address, 1 Oakwood Court, where he alerted Mr Pauly's sister, Annette Pauly. Mr Jetson and Ms Pauly went to 16 Cowle Road where Ms Pauly called the ambulance and shouted for someone to help perform CPR.

Rebecca Smith, Corey Wordsworth and Andrew Pearce arrived at the house after hearing Ms Pauly's calls for help. Mr Wordsworth and Mr Pearce went inside and observed Mr Pauly

lying on his back in the doorway to the kitchen. They noticed that he was wearing motorcycle gloves. They also observed a second person lying motionless in the kitchen. They could not identify that person, (who was subsequently identified as Mr Flockhart), due to the position in which he was lying. I am satisfied that none of the persons arriving at the scene moved either of the bodies or caused any intentional disturbance of evidentiary material.

Ambulance officers subsequently arrived and declared both Mr Flockhart and Mr Pauly deceased.

Examination of the Scene and Forensic Evidence

Police officers from Bridgewater Criminal Investigation Branch, Tasmania Police Forensic Services (including ballistics services), members of Forensic Science Services Tasmania (FSST) and the State Forensic Pathologist, Dr Christopher Lawrence, attended the scene to gather the evidence and investigate the deaths.

Mr Pauly was observed by the investigators to be lying on his back in the doorway between the kitchen and hallway area of the house. He was wearing dark coloured motorcycle gloves and a semi-automatic style pistol was lying on the floor near his left hand.

The following day, 27 November, Dr Lawrence conducted an autopsy upon Mr Pauly at the Royal Hobart Hospital. He determined that Mr Pauly died as a result of a single stab wound to the chest that perforated the aorta. He was of the opinion that death would not have been instantaneous and that Mr Pauly would have had the physical ability and opportunity to fire gunshots after being stabbed and to move about the premises for a short time period before the blood loss caused unconsciousness. Dr Lawrence noted that toxicological testing showed the presence of methylamphetamine in Mr Pauly's blood.

Mr Flockhart was observed by the investigators to be lying on his left hand side in a substantial pool of blood. A knife was located on his right hand. His back was against the kitchen cabinet.

On 27 November Dr Lawrence performed an autopsy upon Mr Flockhart. He observed three gunshot wounds - to the head, to the chest and to the groin. He formed the opinion that the shot to the head was likely to have caused death. It penetrated the left temple and perforated the cerebellum in the base of the skull. It is unlikely that Mr Flockhart was capable of moving after sustaining this shot. Dr Lawrence recovered the fired bullet from within the skull. He noted that the shot to the chest could also have been fatal, but not necessarily immediately so. The fired bullet from this shot was recovered from within the torso.

None of the shots contained gunshot residue around the entry sites, allowing Dr Lawrence and ballistics expert, Constable Simon Taylor, to conclude that each was fired from a distance of more than a metre. The presence of a significant amount of alcohol (0.108 g/100ml) and therapeutic levels of diazepam and amphetamine were detected in Mr Flockhart's blood.

From the outset, police investigators and forensic experts examined the scene for the possibility of involvement of a third person in accordance with proper investigative procedure. Additionally, there were strong suggestions from some members of the Bridgewater community that another person may have been present and responsible for one or both deaths.

I am satisfied that investigating police officers made thorough enquiries as to the presence of a third person at the scene and followed up information they received. Further, Dr Lawrence and Constable Taylor formed the opinion, after examining the scene, that it was highly unlikely that a third person could have been involved. Their opinion was based upon the small size of the area concerned, the lack of disruption to the remainder of the house, and the injuries suffered by both men.

The forensic scientist, Dr Charles Connor, provided detailed evidence of his examination of the scene, both inside and outside the house, over a period of 13 hours. His team took samples for DNA testing. He, too, gave evidence that there was nothing at the scene to suggest that there was a third person present. In particular, he saw no movement of blood out of the house. The absence of blood outside was confirmed by luminol testing. He also noted a large amount of "passive" blood staining inside, indicating blood dripping from a bleeding person. Furthermore, once the samples were examined, there was no DNA to suggest a further person within the rooms in question. The testing also revealed that Mr Pauly's blood had dripped from a vertical position onto the side of Mr Flockhart's shoes in the lying position.

The pistol located in the house was a 9mm Beretta self-loading pistol. A magazine containing rounds was loaded into the pistol and a round was loaded in the breach of the weapon. The pistol was found in the 'cocked' position and the safety switch was set to the 'fire' position. The serial number on the pistol had been obliterated in two locations on the firearm. Constable Taylor gave evidence that he restored and identified the serial number, however the weapon was not recorded on any firearms databases.

The pistol was later tested by Constable Taylor who gave evidence that it was capable of propelling the rounds, could inflict a lethal wound upon a human being and was not prone to accidental discharge.

Three spent cartridges were located at the scene, consistent with the three rounds fired by Mr Pauly. The tests conducted by Constable Taylor on the fired cartridges indicated that they had been fired from the pistol located at the scene.

Two spent bullets were recovered from within Mr Flockhart (one in his head, one in his torso). One spent bullet was recovered from within the hallway wall of the crime scene.

Forensic examination of the pistol revealed Mr Pauly's DNA was present at the areas tested. The evidence did not reveal the origin of the pistol. However, I am satisfied that at some stage prior to this incident Mr Pauly unlawfully obtained this firearm.

There is no evidence of the origin of the knife located lying on the hand of Mr Flockhart. Police conducted enquiries as to its origin. The consistent evidence from family and friends of Mr Flockhart was that he was not a person who used knives to threaten or inflict violence. Sharmane Pauly provided evidence that she had not seen the knife before at her house and she had not seen her son with any similar knife. I accept this evidence. From examination of the photos, it is not a knife that matches the others within Mrs Pauly's home. Mr Flockhart was not seen with a knife leaving his home nor entering Mr Pauly's home.

I find that Mr Flockhart came to the house with the knife in his possession. I cannot determine where he obtained the knife. He may have kept it privately in his home. It is also possible that it was in his vehicle.

Discussion

Upon a consideration of all of the evidence I am satisfied that there was no other person present during the incident in the house occurring between Mr Pauly and Mr Flockhart. I am also satisfied that no other person was directly involved in the circumstances of each death.

I am satisfied that Mr Pauly caused the death of Mr Flockhart by shooting him with the pistol. I am satisfied that Mr Flockhart caused the death of Mr Pauly at about the same time by stabbing him with the knife.

It is likely that the first incident of aggression between the men was the act of Mr Pauly shooting Mr Flockhart in the groin before he entered the kitchen. Mr Pauly was somewhere within the kitchen when taking the shot. The furthest point in the kitchen from which the shot could have been taken was a distance of 5.6 metres.

Dr Lawrence gave evidence that the initial shot penetrated Mr Flockhart's soft tissue and no major artery. The injury would not have physically prevented him from advancing forward. Constable Taylor agreed with this proposition. It is likely that Mr Flockhart would have experienced pain but he may not have even realised what had occurred. He then continued to move into the kitchen. It would appear that, at this time, both were arguing in a sufficiently loud and heated manner for a neighbour to hear them and to be able to distinguish two male voices.

As the argument continued in the kitchen it is likely that Mr Flockhart, already with a gunshot wound, approached Mr Pauly with the knife and stabbed him in the heart. Mr Pauly, with a fatal wound to the heart, shot Mr Flockhart on two further occasions from a distance of over a metre away. It was these two shots in quick succession that were heard by the witnesses on the street outside. The shot to the torso was likely to have been fired when Mr Flockhart was still standing, followed by the shot to the head. Neither of these shots could have been fired whilst Mr Flockhart was on the ground, given the size of the room and the fact that he was lying on his left side with the right side of his head facing the ceiling.

I accept the evidence of Dr Lawrence that the shot to the head caused Mr Flockhart's immediate collapse onto the floor. I am satisfied that, once on the ground, Mr Flockhart did not move again.

On the evidence of Dr Lawrence there were no defensive wounds upon the hands and arms of either man. Therefore, aside from the injuries already described, it is unlikely that there was physical fighting between them.

I note that both men, upon the altercation commencing, had two potential exit routes, being the front door, and the back door which was located less than 5 metres from the kitchen door. Neither man took that opportunity.

Summary

There is no reliable evidence of the nature of the dispute that led to the confrontation between Mr Flockhart and Mr Pauly. Mr Flockhart, at least, perceived a grievance against Mr Pauly. It is plausible that it involved a dispute surrounding the sale of drugs. Some members of both families believe that, because of the absence of prior hostility between them, the dispute arose as a result of others causing trouble between them. This is certainly a possibility but will remain unknown in this investigation.

It is feasible that Mr Pauly armed himself with a pistol intending only to deter Mr Flockhart rather than to shoot him. It is equally feasible that Mr Flockhart armed himself with the knife intending to threaten Mr Pauly rather than to wound him. It is apparent, however, that both men were intending to confront each other, anticipated significant hostility and were armed in preparation for the confrontation.

Upon entering the house, Mr Flockhart did not leave as directed by Mr Pauly. A verbal argument occurred during which Mr Pauly shot Mr Flockhart in the groin area. Mr Flockhart still did not leave the premises but continued into the kitchen where Mr Flockhart stabbed Mr Pauly on one occasion to the heart. Mr Pauly shot Mr Flockhart on a further two occasions, with the final shot to the head causing Mr Flockhart's immediate collapse and death. Mr Pauly then moved around the kitchen for a short period of time before collapsing from a standing position onto his back due to blood loss. On the evidence of the witnesses, the entire incident was of about 5 minutes in duration and occurred within the confined space in the kitchen area of the house.

Neither of the deceased removed themselves from the situation through either exit in close proximity when the opportunity arose. Mr Flockhart could have left through the front door once he realised that Mr Pauly had a firearm. Mr Pauly was expecting the confrontation that was initiated by Mr Flockhart's telephone call and remained alone in the home to await him. He did not avail himself of the back door exit of the house when Mr Flockhart advanced inside. It is likely that the impulsive actions of both men were affected by the ingestion of illicit drugs and, in Mr Flockhart's case, alcohol.

As was apparent from the inquest, the deaths of these two men have had a great effect upon both families, particularly in such confronting and unexpected circumstances. The evidence of Mrs Pauly and Ms Williams was most poignant. It is especially sad that the children of Mr Pauly and Mr Flockhart have lost their fathers in this unnecessary and violent incident.

Notwithstanding the nature of the deaths, family members and loved ones of both families conducted themselves in a dignified manner at inquest and were most respectful of each other's loss. Family members at inquest expressed sympathy for the other family's loss.

I extend my condolences to the families and loved ones.

I thank the investigating officer, Constable Adam Jago, for his thorough preparation of the investigation file and report to me.

I have also been fortunate to have had the benefit of the evidence of Dr Chris Lawrence, Dr Charles Connor and Constable Simon Taylor, whose expertise has significantly assisted me.

I am grateful to counsel assisting, Jane Ansell, and Coroner's Associate, Constable Katie Luck, for their assistance in the preparation and efficient conduct of the inquest.

Dated: 31 May 2017 Hobart in the state of Tasmania.

Olivia McTaggart
Coroner