



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 Olga Baraquio Neubert

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

- a) The identity of the deceased is Olga Baraquio Neubert;
- b) Mrs Neubert died as a result of being shot with a rifle by her estranged husband, Klaus Dieter Neubert;
- c) The cause of Mrs Neubert's death was a contact gunshot wound to the head; and
- d) Mrs Neubert died on 14 May 2015 at the Royal Hobart Hospital, Hobart, Tasmania.

Introduction

1. In making the above findings I have had regard to the evidence gained in the comprehensive investigation into Mrs Neubert's death. The evidence comprises:

- Police Report of Death for the Coroner;
- An opinion of the forensic pathologist who conducted the autopsy;
- Results of toxicological analysis of samples taken at autopsy;
- The complete DPP prosecution file;
- Relevant police and witness affidavits; and
- Forensic and photographic evidence.

What a Coroner Does

2. Before looking at the circumstances surrounding Mrs Neubert's death it is necessary to say something about the role of a coroner. A coroner in Tasmania has jurisdiction to investigate any death which appears to have been unexpected, unnatural or violent and where the body is in Tasmania.¹ Mrs Neubert's death, at the hands of her ex-husband, in public, and broad daylight, on a busy street in suburban Hobart, meets this definition.

¹ See section 3 of the *Coroners Act 1995*.

3. When investigating any death, whether or not an inquest is held, a coroner performs a role very different to other judicial officers. The coroner's role is inquisitorial. She or he is required to thoroughly investigate a death and answer the questions (if possible) that section 28(1) of the *Coroners Act 1995* asks (the Act). Those questions include who the deceased was, how he or she died, what was the cause of the person's death and where and when it occurred. This process requires the making of various findings, but without apportioning legal or moral blame for the death. A coroner is required to make findings of fact from which others may draw conclusions. A coroner may also, if he or she thinks fit, make comments about the death being investigated or, in appropriate circumstances, recommendations with a view to preventing similar deaths in the future. In the context of Mrs Neubert's death, there is no doubt as to her identity, how her death occurred, the cause of her death and when and where death occurred. However, there is an issue in respect of what occurred before her death and when she sought the assistance of police, that requires careful consideration and which may also give rise to comments or recommendations. I will return to this issue shortly.
4. A coroner does not impose punishment nor award monetary compensation – that is for other proceedings in other courts, if appropriate. Nor does a coroner have the power to charge anyone with crimes or offences arising out of the death the subject of investigation. I note that Mr Neubert was charged with, and found guilty of, murdering his wife. He was sentenced to 25 years imprisonment for that crime.
5. Section 25(4) of the Act provides that any finding following a coronial investigation into a death which has resulted in charges “must not contain any finding which is inconsistent with the determination of the matter by the result of those proceedings”. It is important for a coroner to keep this provision in mind when making the findings following a death as a result of homicide.
6. As noted above, one matter that the Act 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.

Background

7. Mrs Neubert was born on 13 November 1977 in the Philippines. She met her husband (a man of German descent but an Australian citizen) in that country in about 1995. The couple decided to marry and moved to Australia, where they married on 4 December 1997. There are no children of the relationship.
8. In about 2000, Mr and Mrs Neubert moved to Tasmania. They purchased a property at 68 Nichols Road, Lymington where they remained living until they separated shortly before Mrs Neubert's death.
9. In April 2014 Mrs Neubert told her husband that she intended to leave the marriage. Nonetheless the couple travelled to Massachusetts in the United States of America to sell a boat - the "Catriona II" - registered in Mrs Neubert's name. Mr and Mrs Neubert stayed on the boat in Boston. Mr Neubert asserts that prior to the trip to the United States of America he had no knowledge of his wife's intention to leave the marriage. It is unnecessary for me to determine whether that is true or not. In any event, whilst in Boston, the marriage, on any view of it, came to an end when on 5 September 2014 Mrs Neubert left her husband on the "Catriona II" and moved in on a nearby boat the "Gypsy Spirit" owned by Mr Eric Harvey, with whom she had formed a relationship.
10. On 23 September 2014, local police responded to a call of a disturbance at the harbour where the boats were moored. They found Mr Neubert in a rowing boat circling the "Gypsy Spirit" yelling out to his wife who clearly did not wish to speak with him. Police took a statement from Mrs Neubert. In that statement Mrs Neubert outlined that her husband's behaviour had been continually escalating into confrontational episodes where he had been circling her boat at night and yelling at her. At least on one occasion he had grabbed her arm. He had articulated suicidal ideation, and sent her a letter in which he said he had "lost his honour". Mr Neubert was taken into custody. An Abuse Prevention Order (much the same as a family violence order or domestic restraint order in this state) was made by a local judge and Mr Neubert was taken for mental health evaluation. The Abuse Prevention Order was valid for a period of 14 days. Mr Neubert left the United States on 8 October 2014 and the Order was not renewed.

11. Mrs Neubert returned to Tasmania on about 17 October 2014. On the day of her arrival, she sought legal advice from a specialist in the family law area. She also removed personal effects from the Lymington property,² and went to stay with a friend (and her family) at an address in Rokeby.³ Proceedings under the *Family Law Act 1975* were commenced shortly after.
12. Meanwhile, on 21 October 2014, Mr Neubert returned to Tasmania. He had seemingly spent some time in Germany after leaving the United States of America. After arriving back in Tasmania, Mr Neubert commenced looking for Mrs Neubert. Amongst other things, he reported her to police as a missing person. This report led to police officers making contact with Mrs Neubert to ensure her safety. Police did not tell Mr Neubert where she was.
13. On 11 December 2014, an order was made by the Federal Circuit Court requiring Mr and Mrs Neubert to attend a conciliation conference on 17 March 2015. The couple attended that conciliation conference but the property matters in dispute between them were not resolved on that day. A further court appearance, on 14 April, followed. That appearance was a directions hearing. Mrs Neubert was described by her solicitor as “clearly uncomfortable” in the presence of Mr Neubert and, that every time he left his client alone, Mr Neubert would try to speak to her.⁴
14. On 19 April 2015, Mrs Neubert attended a birthday party for a friend and fellow member of the local expatriate Philippine community. The party was at a park in Sandy Bay. Mr Neubert arrived at the party as Mrs Neubert was leaving in her silver Peugeot Hatch Sedan. He stood in front of her car and then spread himself on the bonnet, in an obvious attempt to prevent her from leaving. Mrs Neubert reversed which caused Mr Neubert to slide off the car bonnet. She then drove around him and away. It seems unlikely that Mr Neubert’s presence at the place of the party was a coincidence.
15. Two days later (on 21 April 2015) Mrs Neubert kept an appointment with her solicitors. During the appointment, she spoke of the incident at Sandy Bay. Her solicitor later told investigators that he and Mrs Neubert discussed “making an application for a restraint order”. She was then referred to a junior solicitor in the same firm. Mrs Neubert spent 20 minutes with the junior solicitor. According to the solicitor (and I have no reason whatsoever to doubt the veracity of the account) the pair discussed “relationship issues with her husband, Klaus Dieter Neubert, and what could be done to assist her”.

² Affidavit of Brian Lawrence Reardon sworn 22 May 2015, page 4.

³ Interview with Josephine Ramos Cooper on 19 May 2015; Affidavit of Roger Tasman Cooper, sworn 14 May 2015, page 1.

⁴ Affidavit of John Lewinski sworn 22 December 2015, page 3.

16. Notes of the meeting made by the solicitor are as follows:

- *Olga reports that there was an incident on Sunday (19 April 2015)*
- *She had been invited to Sandy Bay Park for a party. Everyone was invited.*
- *Someone had tipped him off that she would be there.*
- *She parked her car and saw him. She was shocked he was there.*
- *She had to follow him because he was going where she was going.*
- *He was waiting for her.*
- *She didn't say happy birthday to the person celebrating because she didn't want trouble. She went back to her car.*
- *In Sandy Bay Park - one entry and exit. He blocked the road so she couldn't pass. She had to stop. He stood in the middle of the road.*
- *He said 'Can we talk'. She said 'Not without lawyers'. He insisted they talk.*
- *2-3 cars were behind her.*
- *She honked her car horn at him.*
- *He went on top of the bonnet and lay on the car and grabbed the side mirror. She tried to tell him to get out of the way. She moved the car to get him off. Passers-by told him to get off. A few minutes later he got off.*
- *In America he had [a] suicide letter. Doesn't care if he takes her with him.*
- *He was stalking her in America – doesn't leave her alone.*
- *She was living on a friend's boat. His boat was not far from her. He was coming around a lot. She called the harbourmaster and they called the police. The police arrived and the harbourmaster helped and took him away. They put him in hospital – mental – involuntary because he wanted to kill himself.*
- *Police made 10 day restraining order.*
- *Next day went to court and Judge confirmed the order right away.*

Advice given:

- *Advised that I am happy to draw an application for family violence orders but that obtaining orders through the Magistrates Court can take time. Advised that happy to continue our appointment to draw application for family violence orders but that I would then need to file it in the Magistrates Court, serve the respondent, wait for a court date and then convince a magistrate that orders were required. Can take up to a month or two to do.*

- *Advised that if she wants immediate protection then she should go to the police station. Googled nearby police stations. Advised that she should tell them exactly what she has told me and show them a copy of the American orders. Advised police have power to make an immediate police family violence order.*
- *Advised that if she cannot convince the police to give her the order, to come back to me and we will finish the application for orders. Advised that if she did not want to go to the police then we could continue with the application ourselves.*
- *Olga advises that she will go to the police with a friend that day.*

17. Later the same day, Mrs Neubert went to the Bellerive Police Station. There she spoke to a police officer. The only account of what transpired is that of the officer concerned (who has since left Tasmania Police). I have no reason to doubt his account. He later told investigators that while he was working afternoon shift at the Bellerive Police Station on Tuesday, 21 April 2015 he had an “interaction” with Mrs Neubert in the foyer area of the station at about 7.30pm. The “interaction” lasted for about 15 minutes.

18. In his account to investigators the officer said:

“[Mrs Neubert] had attended the Station to seek advice in relation to a current relationship breakdown between herself and her husband. During this conversation I have no cause to take any notes of the interaction nor did I establish the identity of the victim or her husband.

In relation to the conversation with [Mrs Neubert] I can recall the following information:

[Mrs Neubert] stated that she had earlier been to an appointment with her lawyer that was involved in her divorce settlement proceedings. She stated that her lawyer had given her advice that she should go to the police to seek a police family violence order.

I spoke with [Mrs Neubert] about the process of issuing a police family violence order and asked her to outline the circumstances that might be relevant to the situation. [Mrs Neubert] stated that since separating from her husband, now known to me as Klaus Dieter Neubert... She had no specific contact with him apart from interaction through their lawyers.

[Mrs Neubert] stated that she had been given advice to attend the Police Station by her lawyer as a result of and [sic] interaction with [Mr Neubert] that had occurred over the preceding weekend. [Mrs Neubert] stated that she had been in a park in Sandy Bay and that as she was leaving [Mr Neubert] had approached her car. [Mrs Neubert] stated that during this interaction she did not stop and specifically interact with [her husband] but that he had looked very angry and had approached her car to try to speak with her. I questioned her further about this and she said that he had just looked agitated and irate but stated that no conversation had occurred between them. I asked [Mrs Neubert] if anyone else had been present at the time however she stated there was no one.

From the interaction that [Mrs Neubert] described to me there was no indication of family violence having been committed on this occasion. I pressed [her] further for any evidence that may indicate family violence was likely to be committed in the future however she could not provide me with any further significant information.

I then advised her that for police to issue a police family violence order that we had to identify risk or safety concerns for the victim and that from the information that she had provided to me that it did not satisfy the provisions for us to issue one.

[Mrs Neubert] stated that her lawyer had told her that we should issue one for her and at this time I advised her that her lawyer also has the ability to apply for one on her behalf and that it did not have to be specifically issued by police. I also advised her that she could make her own application for an order, and that this would be considered by court and that they [sic] may grant one.

Whilst having this conversation I provided her with an application form for a family violence order from behind the customer service counter. At this time I gave her advice that the application could be lodged in the Hobart Court of Petty Sessions and that there was an associated fee involved.

[Mrs Neubert] then stated that the lawyer had also told her that police would do it for free and that it would be quicker for police to issue the order. I then advised her that her lawyer could have made the application during her appointment and that it could have already been lodged with the court earlier in the day. I further reminded her that from the information that she had given me regarding her circumstances that it was not sufficient for us to issue a police family violence order.”⁵

⁵ Statutory declaration of Constable Tai Gavin made 15 May 2015.

19. In my view, much of what the officer says he told Mrs Neubert was correct. In particular, his observation that the application could already have been made during her appointment earlier in the day and could have already been lodged with the court is difficult to dispute. I note also that apparently Mrs Neubert made no mention of the history between her and her estranged husband in the United States of America, that an order had been made by a court in the United States of America and that Mr Neubert had been detained for a mental health assessment. Had the police officer been made aware of that history then his approach may well have been different. I observe that Mrs Neubert's solicitors were aware of this information. I also observe that the information was available to the officer concerned, if only he had looked for it.
20. In any event, the upshot of Mrs Neubert's consultation with her solicitors and subsequent attendance upon Tasmania Police is that when she left the Bellerive Police Station just before 8.00pm on Tuesday, 21 April 2015 no order of any type protecting her from her estranged husband was in place. No protective order of any type was applied for, or made, before her death.

Circumstances of Death

21. On Thursday, 14 May 2015 Mrs Neubert and her friend, Mrs Josephine Cooper, visited a friend in Kingston. Later in the afternoon, they drove to Glenorchy to buy some groceries. Having completed their shopping, the pair were on their way back to Rokeby, via Main Road, Moonah. Mrs Neubert was the driver; Mrs Cooper the front seat passenger.
22. At the same time, Mr Neubert was driving his black Mercedes four-wheel-drive along Main Road at Moonah. He had just bought a new washing machine from the Good Guys store in Moonah. Mr Neubert recognised his wife's car. He turned and followed it from Main Road, New Town onto Risdon Road towards the Brooker Highway. He had a firearm with him in his motor vehicle. He had no license to have a weapon with him and no lawful reason to do so.
23. On Risdon Road, Mr Neubert drove his vehicle across the centre dividing line and overtook vehicles in front of him before turning onto an angle in front of his wife's Peugeot, blocking her from moving forward. He got out of his vehicle, walked towards his wife's vehicle and fired at close range through the window. The window shattered and the bullet hit Mrs Neubert in the right shoulder, exiting her right shoulder and then entering the skin behind her right ear before exiting her head above her right ear.

24. Mrs Neubert did not die straight away. She moved the vehicle forward and applied a minor steering input, before it came to rest. Mr Neubert followed the vehicle. He fired again. The wound on this occasion, a contact wound, was to the lower right side of Mrs Neubert's head. It exited her skull behind the left ear. It is highly likely that this wound caused Mrs Neubert's death. Mrs Cooper was badly wounded.
25. Mr William Yabsley was driving three or four car lengths behind Mr Neubert. He saw Mr Neubert shoot his wife. Mr Yabsley drove his vehicle towards Mr Neubert and stopped about 10 m away from him. He got out of his vehicle. As he did, he saw Mr Neubert place the firearm under his own chin and pull the trigger. The weapon misfired. Mr Yabsley then seized the firearm from Mr Neubert and threw it into a nearby creek. His bravery is worthy of particular recognition.
26. Two ambulance paramedics were close by. They assisted treating Mrs Neubert and Mrs Cooper. Police were quickly on the scene and took Mr Neubert into custody. A murder investigation was commenced at the scene. Mrs Neubert was rushed to hospital but could not be saved.

Investigation

27. After Mrs Neubert's body was formally identified, a post-mortem examination was carried out by the then State Forensic Pathologist Dr Christopher Lawrence. Dr Lawrence expressed the opinion after that post-mortem examination that Mrs Neubert had died as a consequence of a contact range gunshot wound of the head. The autopsy showed a contact range gunshot wound behind her right ear which exited in the left base of the skull. Dr Lawrence said a second gunshot wound ("gunshot wound 2") which had superficially penetrated the scalp on the right but not entered the skull did not cause any lethal injury (this gunshot is, in my view, almost certainly the first one fired by Mr Neubert). Dr Lawrence also found evidence of a superficial gunshot wound on the right shoulder ("gunshot wound 3"). He was unable to say whether it represented a separate wound but thought, based on the appearance of the gunshot wound which had superficially penetrated the scalp, that gunshot wound 3 was a continuation of gunshot wound 2.
28. I accept Dr Lawrence's opinion as to the cause of Mrs Neubert's death.
29. Forensic and ballistic testing was also carried out. The results of those tests satisfies me that the firearm recovered at the scene was the one which Mr Neubert used to shoot his wife. I am satisfied that the fatal shot was not in any way accidental.

30. Mr Neubert was interviewed at length by detectives from the Criminal Investigation Branch of Tasmania Police. It is unnecessary to canvass the content of that interview other than to say he made full and complete admissions to shooting his wife dead.

Criminal Proceedings

31. Mr Neubert was charged with murder. He was subsequently found guilty of murder (as well as causing grievous bodily harm to Mrs Cooper). On 22 May 2017, Justice Brett sentenced Mr Neubert to imprisonment for a term of 25 years for murder and 3 years to be served cumulatively in relation to causing grievous bodily harm.

Issues Arising from Mrs Neubert's Death

Legal advice

32. The principle issue that arises from Mrs Neubert's shocking death is the absence of any protective order at the time of her death. She had sought assistance from solicitors, who advised her that obtaining a family violence order at the Magistrates Court could "take a month or two", and advised her "that if she wanted immediate protection she should go to a police station".
33. Acting on that advice Mrs Neubert went to the Bellerive Police Station, but was unable to persuade the police officer to whom she spoke that there were grounds to make a police family violence order.
34. While it is true that it may take some time to 'obtain' a family violence order, that is of course not always the case. The power exists (and existed at the time of Mrs Neubert's death) for a magistrate to make an interim family violence order, at any stage in the proceedings. The magistrate may make such an order whether or not she or he is satisfied that a person has committed family violence and that the person may again commit family violence.⁶
35. Similarly, an interim restraint order can (and could) be made at any time in the proceedings.⁷
36. In practical terms these provisions mean that interim protective orders can (and frequently are) made on an urgent, interim basis. At the risk of repetition, both powers existed at the time of Mrs Neubert's death. There was nothing to stop an application under either provision having been made on 21 April 2015.

⁶ See section 23 of the *Family Violence Act 2004*.

⁷ See section 106D of the *Justices Act 1959*.

37. I observe that had an order under the *Family Violence Act 2004* been made protecting Mrs Neubert from her husband it would certainly have contained an order requiring him to surrender his firearms.⁸
38. A coroner may comment on any matter connected with the death into which he or she is enquiring.⁹ The power to make comment “arises as a consequence of the [coroner’s] obligation to make findings ... It is not free ranging. It must comment “on any matter connected with the death” ... It arises as a consequence of the exercise of the coroner’s prime function, that is to make “findings”.¹⁰ In my view, Mrs Neubert’s efforts to obtain some type of protective order are very much connected with her death and therefore an appropriate subject of comment.
39. No-one should overlook that Mrs Neubert was an extremely vulnerable person by reason of her gender and ethnicity, as well as highly dependent upon advice from her solicitors, upon which she was entitled to rely. Those solicitors were quite aware of the history between Mr and Mrs Neubert, including that:
- A protective order had been made against Mr Neubert in the USA;
 - Mr Neubert had been detained for an assessment of his mental state;
 - Mr Neubert stalked Mrs Neubert in America;
 - He wouldn’t leave Mrs Neubert alone;
 - Mr Neubert had threatened suicide and “didn’t care if he took [Mrs Neubert] with him”;
 - He had threatened her family;¹¹
 - Mr Neubert was “very controlling”;¹²
 - Mrs Neubert was “extremely intimidated by [Mr Neubert]”;¹³
 - She was concerned that he would continue with “his threatening [and] bullying behaviour; and¹⁴
 - He had accosted her two days earlier in Sandy Bay.

⁸ See section 16(3)(b) of the *Family Violence Act 2004*.

⁹ See section 28 (3) of the *Coroners Act 1995*.

¹⁰ See *Harmsworth v The State Coroner* [1989] VR 989 at 996.

¹¹ Affidavit of John Lewinski, *supra*, page 2.

¹² Affidavit of Olga Baraquio Neubert sworn 24 October 2014, par 10, filed in Federal Circuit Court proceedings.

¹³ *Supra*, par 42.

¹⁴ *Supra*, par 44.

40. In the circumstances it seems to me that the advice given to Mrs Neubert was unfortunate. I do acknowledge it may be that a magistrate would not have been persuaded to make an order on the basis of the material set out above. It also may have been the case that had an order been made, and served, it may have had no impact whatsoever upon Mr Neubert. Nonetheless, in the circumstances, I consider it appropriate to **comment** that solicitors acting in the field of family law must ensure that all reasonable steps are taken to protect, where necessary, clients from physical harm, particularly vulnerable clients such as Mrs Neubert.

Police Actions

41. Mrs Neubert was not able to persuade the officer she saw that a police family violence order should be made. In assessing whether the officer may have been justified in his approach, I note he did not even identify who Mrs Neubert was. If he had, he would have been able to access information held by Tasmania Police relating to her and her husband, relevantly, relating to him having reported her as a missing person – and which entry included information about the protective order made in the USA. Had the officer been aware of this information he may have, at the very least, conducted further enquiries.
42. The officer concerned did not record any information, at all, about his dealing with Mrs Neubert. It seems to me, at the very least, the officer should have made an entry in the police family violence management system. At the very least, the information about the incident at Sandy Bay should have been added to the information already held about Mr Neubert. No such entry was made and there is no clear reason why this was so.
43. One final matter that I consider should be commented upon is the fact that Tasmania Police, to its credit, conducted an internal review of the circumstances of Mrs Neubert's interaction with police. In that review Tasmania Police concluded the officer, whose assistance Mrs Neubert sought, had not breached any departmental policies. The reviewer concluded that they "would expect most people wanting [police] help with [sic] be ready to provide more evidence".¹⁵ With respect, I cannot accept that this is a reasonable conclusion in the circumstances. Even without the benefit of hindsight, it should have been obvious that she was particularly vulnerable. She had already been to her solicitors and provided them with considerable evidence, but instead had been sent to the police. Police actually had extra evidence, but the officer involved chose not to look for it.

¹⁵ Review of Circumstances Regarding Police Interaction with Olga Neubert 17 June 2015, page 4.

44. As part of preparing these findings, they were sent, in draft, to Tasmania Police and the solicitors involved. The comments received from both entities has been considered and afforded appropriate weight.

Conclusion

45. I accept that Tasmania Police's inaction (and the legal advice she received) did not cause Mrs Neubert's death. However, I consider it necessary to **comment** that both led to a situation where she was unprotected by a system designed to protect people such as Mrs Neubert.
46. I express my sincere condolences to all those who knew and loved her.

Dated 2 July 2020 at Hobart in the State of Tasmania.

Simon Cooper
Coroner