



# MAGISTRATES COURT *of* TASMANIA

## CORONIAL DIVISION

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### **Record of Investigation into Death (Without Inquest)**

*Coroners Act 1995  
Coroners Rules 2006  
Rule 11*

I, Olivia McTaggart, Coroner, having investigated the death of Justin Michael Tonner

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

- a) The identity of the deceased is Justin Michael Tonner;
- b) Mr Tonner died as a result of injuries inflicted upon him by Robert Michael Allen;
- c) The cause of death was hypovolemic shock due to blood loss resulting from multiple stab wounds, particularly a stab wound of the posterior right leg incising the popliteal artery; and
- d) Mr Tonner died on 11 April 2016 at Hobart in Tasmania.

In making the above findings, I have had regard to the evidence obtained in the investigation into the death of Justin Michael Tonner. The evidence includes reports by the investigating officer, Police Report of Death for the Coroner, toxicology reports, opinion of the forensic pathologist, ambulance and medical records, electronically recorded police interview conducted with Robert Michael Allen, statutory declaration and video interview of Danielle Gearman, victim impact statements, Comments on Passing Sentence of Justice Brett and the Court of Criminal Appeal decision of *Allen v Tasmania* [2019] TASCCA 7.

Mr Justin Michael Tonner was born in Hobart on 20 April 1976 and was aged 39 at the time of his death. He was the eldest child of Mr Michael Tonner and Ms Deborah Howlett. At the time of his death he had five siblings. He had never been married but was in a significant relationship with Cindy Maree Knowles. Ms Knowles has two children from a previous relationship. Mr Tonner did not have children, was unemployed and would regularly stay with Ms Knowles at her residence in Lutana. Mr Tonner had a history of illicit intravenous drug use and had been diagnosed with Hepatitis C.

Mr Tonner had a long history of criminal convictions in Tasmania, including serious assaults, burglary and stealing and serious traffic matters. He had a prior history of family violence against another partner but there was no reported family violence history involving Mr Tonner and Ms Knowles until 3 April 2016. On 3 April 2016 the police were called to Ms Knowles' residence where Mr Tonner was allegedly involved in a violent altercation with her. He was

arrested on outstanding warrants and a Police Family Violence Order was made preventing him from, among other things, contacting Ms Knowles or going within 50 metres of her and her specified address in Lutana. This order was in force at the time of Mr Tonner's death, eight days later.

Mr Tonner and Mr Robert Michael Allen were known to each other. Mr Allen told police in his interview that both he and Mr Tonner did not like each other. The extent of the history between them was not clear on the evidence and is of little relevance to this finding.

On the evening of Sunday 10 April 2016 Ms Knowles was at her address with her two children, Gracie and Hollie Hawkins. Two friends, one of whom was Mr Jack Harvey-Bailey, was also at the address. At about 8.00pm Mr Allen and his partner, Ms Danielle Gearman, arrived at the address. Their 18 month old son was also staying at the address.

During the evening and into the morning, the persons at the address made various trips in vehicles away from and back to the address. These trips included Ms Knowles taking her daughter (who had burnt herself on hot noodles) for medical treatment returning at about midnight; Ms Knowles (after her return with her daughter) and Mr Harvey-Bailey making two trips to a service station nearby to purchase cigarettes and soft drinks; and Mr Allen and Mr Harvey-Bailey attending the Waratah Hotel to purchase alcohol, leaving at about 5.00am and returning at about 5.45am.

Ms Knowles, Mr Allen, Ms Gearman and Mr Harvey-Bailey were smoking cannabis from about midnight onwards. Mr Allen also consumed methylamphetamine at some time during the evening or early morning. Upon the return of Mr Allen and Mr Harvey-Bailey at 5.45am, they commenced to drink alcohol and were sitting and talking amicably in the kitchen/lounge area of the residence.

At about 6.00am there was a bang at the door and a voice they recognised to be that of Mr Tonner calling for Ms Knowles. Ms Knowles went outside to talk to him. Mr Tonner asked whose bike was parked at the house to which Ms Knowles replied that it was Mr Allen's. Mr Tonner then assaulted Ms Knowles and walked inside the house. He then assaulted Ms Gearman before he attacked Mr Allen. At this stage, Mr Allen attempted to defend himself by grappling with Mr Tonner and to defend the others in the house by deliberately forcing him outside. The fight moved out onto the front lawn of the house. During the altercation, Mr Allen produced a knife which he used to stab Mr Tonner, initially causing wounds that were not fatal.

Witness accounts describe that Mr Allen chased Mr Tonner from the front of the residence, up the driveway, around the corner of the street and into the front yard of the neighbouring property. Mr Tonner was retreating at the time and attempting to extricate himself from the altercation. It was unnecessary for Mr Allen in such circumstances to inflict further violence upon him in defence of himself and the others in the house. Nevertheless, Mr Allen continued to pursue Mr Tonner and to struggle with him. During this struggle he inflicted numerous knife wounds, including a deep wound to the back of his right knee causing an immediate and significant loss of blood. This wound was inflicted towards the end of the physical altercation when Mr Tonner had become weak as a result of the other wounds. I note that, at this time, a neighbour witnessed Mr Allen on top of Mr Tonner and making stabbing motions towards his leg area. Mr Allen's attack stopped when Mr Tonner was able to grab hold of the blade of the knife and persuade Mr Allen not to continue to hurt him. Mr Tonner was aware of the severity of the wounds at this stage and was losing a large amount of blood.

During the altercation Ms Knowles called police and requested an ambulance. Uniform police arrived quickly at 6.14am and arrested Mr Allen who was sitting on his motorbike attempting to start it. They searched him and found a large folding knife covered in blood. Mr Tonner was treated by ambulance officers who arrived shortly after police. It was observed that a large amount of blood surrounded Mr Tonner. During the transport to hospital, he went into cardiac arrest resulting in the initiation of extensive resuscitating efforts, including thoracotomy incisions of the sides of the chest as well as fluid resuscitation and three units of transfused red blood cells. However, the attempts were unsuccessful and he was pronounced deceased in the Department of Emergency Medicine at the Royal Hobart Hospital a short time after his arrival.

Dr Donald Ritchey, forensic pathologist, performed an autopsy upon Mr Tonner. In his report, he noted several stab wounds on both his right and left upper arms. He also noted three stab wounds surrounding Mr Tonner's right knee. The wound directly behind the right knee had perforated the skin, subcutaneous tissue, muscle and the popliteal fascia and incised the popliteal artery. Having incised the popliteal artery, the injury caused copious blood loss leading to Mr Tonner suffering hypovolemic shock, cardiac arrest and subsequently, death. I accept Dr Ritchey's opinion as to cause of death. Toxicological testing indicated that Mr Tonner had consumed methylamphetamine, and likely morphine, before arriving at Ms Knowles' residence. The effects of the ingestion of these substances would have contributed to his poor decision to attend Ms Knowles' address in breach of the Police Family Violence Order.

Mr Allen was transported to the Hobart Police Station where he was detained for an interview. During the interview he admitted to stabbing Mr Tonner using a knife that he said he found inside Ms Knowles' house. The evidence raised some question about whether Mr Tonner was "lured" to the address on the morning of 11 April 2016. However, telephone records of all parties involved were scrutinised and the enquiries did not reveal any contact between Mr Allen and Mr Tonner in the time leading up to the incident. I am satisfied that the meeting between them was a meeting of chance.

Mr Allen was charged with the crime of manslaughter, the Crown alleging that he stabbed Mr Tonner's arms and right leg (rather than the torso and head) intending to cause serious injury but not death.

Mr Allen pleaded not guilty, raising the issues of self-defence and defence of others. He was tried by a jury in the Hobart Supreme Court. He was found guilty of one count of manslaughter by an intentional act. On 23 May 2018 Mr Allen was sentenced by Justice Brett to a period of eight years' imprisonment with a non-parole period of five years.

In sentencing, Justice Brett made the following comments concerning Mr Allen's use of the knife:

*"I am prepared to accept that you initially produced the knife as a defensive measure, in the hope that its production would cause Mr Tonner to retreat and leave the property. However, I am also satisfied that very shortly after producing the knife, and while you were still outside 30 Anear Court, you stabbed Mr Tonner with the knife at least once. I am satisfied that you did not inflict the fatal wound at that time, but you probably inflicted one of the other wounds then. I will accept that at this point in these events, that is, when you first used the knife to inflict injury on Mr Tonner, you were acting defensively in a struggle with him, a struggle which he had initiated by his attack on you in the house.*

*However, I am also satisfied that your production and use of the knife, and the causation of injury to Mr Tonner did then cause a significant change in his attitude to the struggle. I am satisfied the Crown's assertion that "the tables quickly turned" is accurate and occurred at this point in time. Thereafter, you had the upper hand and he was either attempting to extricate himself from the engagement or attempting to persuade you to do so..."*

Justice Brett further commented that he did not accept that lawful self-defence justified Mr Allen stabbing Mr Tonner with a knife at any stage of the altercation. He commented that Mr

Allen's actions in pursuing Mr Tonner and administering the fatal stab wound created a very serious case of manslaughter by intentional act. He stated that Mr Allen could easily have withdrawn from the struggle well before he delivered the fatal wound. His Honour described Mr Allen's continued attack as "a violent reaction to the earlier provocation from Mr Tonner". In imposing sentence, he noted that Mr Allen had an extensive criminal history with prior convictions for assault, driving offences, drug matters and crimes of dishonesty.

Mr Allen appealed his sentence to the Court of Criminal Appeal on the grounds that it was manifestly excessive. In *Allen v Tasmania* [2019] TASCCA, Chief Justice Blow, with Justice Geason and Acting Justice Martin agreeing, held that the sentence imposed by Justice Brett was not manifestly excessive and that the five year non-parole period was well within the bounds of reasonableness.

### **Comments and Recommendations**

In summary, I find that Mr Tonner died as a result of an act of violence by Robert Michael Allen that was inflicted with the intention of causing bodily harm to Mr Tonner but not with the intention of causing his death. This act of violence involved stabbing Mr Tonner with a knife on multiple occasions with the fatal stab wound, being a stab wound to the leg, causing incision of an artery and death by blood loss. No other person was involved in the episode of violence that resulted in Mr Tonner's death.

The evidence gathered in the investigation supports this finding. Further, this finding is not inconsistent with the determination of the matter by the criminal proceedings, as required by section 25 (4) of the *Coroners Act 1995*.

Members of Mr Tonner's family have raised the issue of the adequacy of first aid intervention by police officers who first attended to Mr Tonner. I am satisfied that, in the circumstances, the efforts of the officers in attempting to ascertain the extent of the wounds and to bandage them, were commendable.

The investigating officer has advised that, at the time of this incident, police were not issued with, trained in the use of, or permitted to use tourniquets. Front line police officers have since received specialist training in the use of tourniquets.

I extend my appreciation to investigating officer, Detective Senior Constable Tony Edmondson for his investigation and report.

The circumstances of Mr Justin Michael Tonner's death are not such as to require me to make any comments or recommendations pursuant to Section 28 of the *Coroners Act 1995*.

I convey my sincere condolences to the family and loved ones of Mr Tonner.

**Dated:** 1 June 2020 at Hobart Coroners Court in the State of Tasmania.

**Olivia McTaggart**  
**Coroner**