
**FINDINGS of Coroner McTaggart following the holding of an
inquest under the *Coroners Act 1995* into the death of:**

PAUL CHRISTOPHER THOMPSON

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Record of Investigation into Death (With Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Olivia McTaggart, Coroner, having investigated the death of Paul Christopher Thompson with an inquest held at Hobart in Tasmania make the following findings.

Hearing Dates

7, 8, and 9 August 2019, 27 November 2019, 4 March 2020

Representation

Counsel Assisting the Coroner: J Ansell

Counsel for Lawrence Kean: R Mainwaring

Introduction

This inquest involved the death of Mr Thompson, aged 57 years, at his home whilst in the company of his housemate, Lawrence Kean, following an evening of alcohol consumption by both men. During the evening, an altercation occurred with Mr Kean assaulting Mr Thompson by punching him to the face. Several hours after this incident, Mr Thompson was found by Mr Kean, unresponsive and apparently deceased.

Mr Kean was charged with manslaughter and taken into custody upon that charge. After further police investigation and medical opinion, the Crown did not proceed on the indictment, and Mr Kean was discharged on 10 May 2018, after spending almost four months in custody. An assessment by the Director of Public Prosecutions (DPP) was to the effect that the crime could not be proved to the requisite degree and there was no reasonable prospect of conviction.

Because there remained a strong *possibility* upon the evidence that the blow or blows delivered by Mr Kean caused the death of Mr Thompson, I suspected that he died as a result of homicide. Having a *suspicion* is a significantly less certain state of mind than the test for being *positively satisfied* of the causative link between the blow and Mr Thompson's death. However, once I had formed that suspicion (based properly upon the existing evidence) I was required to hold an inquest by virtue of section 24(1)(a) of the *Coroners Act 1995*.

Scope and Issues at Inquest

It was always clear, and not contested, that Mr Thompson's cause of death was an acute subdural haematoma, being bleeding on the brain. It was also not contested that Mr Kean did deliver a blow or blows to Mr Thompson's head in the hours before his death. However, this inquest focussed upon what actually *caused* the subdural haematoma, as Mr Kean's blows may have been only one of four explanations on the medical evidence for its occurrence. The other possibilities on the evidence were that Mr Thompson suffered spontaneous bleeding, an epileptic seizure leading to a fall, or a head strike associated with a fall due to intoxication and poor mobility. Therefore, the scope of the inquest involved scrutiny of (a) the circumstances of death, (b) the medical evidence, and (c) the actions of Mr Kean.

This case has been investigated very thoroughly and competently by the investigating officer, Detective Constable Damien McVilly. I am satisfied that no further evidence, apart from that tendered at inquest, is available or relevant to elucidate the circumstances and events surrounding Mr Thompson's death.

In the inquest 60 documentary exhibits were tendered, which included: the Police Report of Death and affidavits of attending officers; toxicology and autopsy reports; comprehensive medical records for Mr Thompson; affidavits of civilian witnesses (mostly neighbours); affidavits of family members of Mr Thompson; interviews and police documentation of Mr Kean; forensic evidence and photographs.

At the inquest, the following witnesses gave oral testimony:

- Robert Muir, friend of Mr Thompson, who described the relationship between Mr Thompson and Mr Kean, and also Mr Thompson's alcohol consumption, medical history and lifestyle;
- Yvonne Caller, Mr Thompson's neighbour of seven years, who gave evidence of statements made by Mr Thompson about previous violence towards him by Mr Kean;
- Jennifer Simpson, who described hearing swearing by both men towards each other on the night in question and heard thumps in Mr Thompson's house, and called police due to the noise;
- Timothy O'Hehir, Mr Thompson's immediate next door neighbour, who described the friendship between Mr Kean and Mr Thompson and their escalating pattern of drinking and altercations, and who described conversations with Mr Thompson about his relationship with Mr Kean;

- Sergeant Loretta Ashwood and Constable Trent Whitelaw, police officers, who attended at 12.08am on the evening in question, 22 January, as a result of the noise complaint; and noted them to be intoxicated but in good spirits;
- Sally Townsend, former partner of Mr Kean and nearby resident, who gave evidence of the relationship between Mr Kean and Mr Thompson, and statements made by Mr Kean on the morning of 22 January regarding hitting Mr Thompson;
- Sally Hudson, neighbour, who described the relationship between the men, and was notified by Mr Kean after he discovered Mr Thompson unresponsive;
- Detective Constable Damien McVilly, investigating police officer, who gave formal evidence of investigating the death;
- Dr Donald Ritchey, forensic pathologist, regarding cause of death;
- Jennifer Szymkow, sister of Mr Thompson, who gave evidence of Mr Thompson's life;
- Lawrence Kean, friend and housemate, who gave evidence of the relationship between himself and Mr Thompson, and events occurring on the evening of 21 / 22 January 2018; and
- Ludwig Szymkow, Mr Thompson's brother-in-law, who read a statement by Stephen Thompson (Mr Thompson's brother).

Mr Thompson's Background and Medical History

Paul Christopher Thompson was born in New South Wales on 3 March 1960 to Frank and Joyce Thompson, both of whom are deceased. Mr Thompson is survived by his sister, Jennifer Szymkow and brother, Stephen Thompson.

Mr Thompson grew up in the family home in Cabramatta, New South Wales, with his parents and two siblings. Mr Thompson's father was reportedly abusive and consumed alcohol heavily. He left the family when Mr Thompson was three years of age. Mr Thompson lived with his mother until the age of 27 years, at which time she passed away as a result of cancer. Mr Thompson worked as a roof tiler and in a variety of construction jobs during his working life.

Just prior to the passing of his mother, Mr Thompson formed a relationship with Michelle Blinman. Together they had three children, two of whom passed away at birth having been diagnosed with encephalitis. Those children were Shannon, born in 1983, and Christopher, born in 1985.

Following Christopher's death, Mr Thompson and Ms Blinman underwent genealogical studies performed at the Westmead Children's Hospital and were informed that they were not genetically compatible and were advised not to have any more children.

Nevertheless, on 26 April 1988 they had a third child, Shay. Despite also being born with encephalitis, Shay survived birth but suffered permanent and severe physical and intellectual disabilities, including the inability to speak or walk unsupported. Mr Thompson and Ms Blinman jointly cared for Shay until he was 10 years of age. They then separated but remained living in close proximity to each other in order to jointly care for Shay, who required intense support due to his ongoing disabilities. In 2002, Shay passed away at the age of 14 years, having suffered a seizure during a bath and drowned.

For most of his earlier life, Mr Thompson was reported to have consumed both alcohol and marijuana. However, after Shay's death, his consumption increased dramatically. His death clearly had a profound effect upon him and he subsequently became severely depressed.

In 2002, following Shay's death, Mr Thompson made a decision to move to Tasmania. He said to his sister, Jennifer Szymkow ("Mrs Szymkow") *"this is a chance at a fresh start, a new life, away from the sorrows of my past"*. He travelled back to New South Wales from time to time in order to visit family and friends. His siblings would also travel to Tasmania to visit him.

In Tasmania, Mr Thompson formed a friendship with Robert Muir. The evidence indicates that Mr Muir was a good friend to him and provided him with consistent support during his time living in Tasmania.

On 17 September 2010 whilst visiting friends in New South Wales, Mr Thompson was viciously assaulted and sustained a serious closed head injury and skull fractures. As a consequence, he was placed into an induced coma and eventually treated for a left sided subdural haematoma with residual dural scarring. The treatment included insertion of metal plates into his skull. He was released from hospital on 4 October 2010. This injury caused scar tissue which was observed during the post-mortem examination by Dr Ritchey and was the cause of ongoing medical issues and vulnerability to further head trauma.

Upon his return to Tasmania, Mr Thompson was transient in his living arrangements until the end of 2011. In December of 2011, Mr Thompson secured his own lease through Housing Tasmania at Unit 9/18 Torres Street, Warrane ("the unit") where he lived for the remainder of his life and was in receipt of a disability pension. He was well-liked by his neighbours and had a passion for spending time on his yacht, where, according to his sister, he would find peace.

The address of 18 Torres Street is a unit complex situated in a cul-de-sac backing onto the Tasman Highway. It comprises 10 single-storey units in close proximity to one another.

During 2011, Mr Thompson broke his leg helping police officers save the life of a suicidal person attempting to jump from the Tasman Bridge. For his efforts, he received a small amount of compensation and recognition from Tasmania Police. It appears that Mr Thompson was proud of his contribution in this incident.

Mr Thompson's state of health and quality of life declined steadily until the time of his death. Since arriving in Tasmania, Mr Thompson had a complex history of medical incidents and substance use. He was dependant on alcohol, marijuana and nicotine. Specifically, he was said to consume about 4 litres of wine per day. The report completed by Alcohol and Drug Services on 29 March 2011 indicated that he was unwilling and unlikely to abstain from his substance abuse. He suffered mobility issues caused by his acquired brain injury and broken leg.

In June 2012, Mr Thompson suffered a subsequent traumatic subdural haematoma believed to be the result of a fall due to intoxication. He was admitted to hospital and the subdural haematoma was drained. This injury precipitated an ongoing occurrence of seizures, headaches and blurred vision.

In 2013, he was again admitted due to similar symptoms after having been assaulted several days previously, and was diagnosed with a parenchymal haematoma (bleeding within the brain parenchyma).

Mr Thompson presented to the Royal Hobart Hospital ("RHH") on numerous further occasions for both recurrence of headaches and seizures, as well as other incidents. For example, in 2015, he presented due to injuries suffered in an assault and motor vehicle crash.

The RHH records indicate that Mr Thompson, by about 2015, was suffering an acute behavioural change, including delusions, likely related to alcohol and substance abuse. He was also diagnosed at the same time with seizure disorder on a background of his acquired brain injury in 2010.

Mr Thompson was admitted to the RHH in Dec 2016. He was exhibiting confusion and behavioural issues (for example, running about naked and disinhibited) and making statements such as "*God told me to do it*". He was psychiatrically assessed on two occasions. Although he was not diagnosed with a psychiatric illness, it was observed that he lacked insight and was having trouble with his memory and verbal fluency. His condition improved over the few days of his admission, with Mr Muir providing him with support upon discharge.

In April 2017, Mr Thompson re-broke his left leg after an altercation with Mr Kean and was admitted to the RHH.

In September 2017, Mr Thompson was admitted to RHH neurology for observations after having a seizure in the Emergency Department waiting room. This was the last presentation by Mr Thompson to the RHH.

It is clear upon the evidence that, before his death, Mr Thompson was in a very poor state of mental and physical health. Apart from his seizure disorder, acquired brain injury and alcohol abuse, he suffered restricted mobility (due to leg injuries), depression, headaches and hepatitis C. He did not take proper steps to look after his own health. It appears that his last visit to his regular general practitioner before his death was on 3 May 2015, although it is difficult to know whether he saw other doctors sporadically. Although he had been prescribed medication for his seizures, it is doubtful that he had taken it with any degree of consistency for a long time before his death.

Mr Muir, whose evidence was credible, said that Mr Thompson refused to go the doctor and did not take his medication. He said that Mr Thompson's memory was very poor due to his brain injury and he would forget whole segments of time. He said that he was witness to Mr Thompson's seizure episodes where (unlike the description given by Mr Kean) Mr Thompson would simply "vague out". He said that Mr Thompson used a crutch to help him walk. Mr Muir stated that Mr Thompson's consumption of alcohol and marijuana increased in about 2014, he believed as a result of his friendship with Lawrence Kean.

Relationship Between Mr Thompson and Mr Kean

Mr Thompson and Mr Kean met in about 2012 and formed a friendship, a large part of which revolved around the consumption of alcohol and marijuana.

Mr Kean moved into Mr Thompson's unit about 18 months prior to his death. It seems that Mr Thompson initially intended Mr Kean to stay on a short-term basis. Certainly, Mr Kean was not officially recorded with Housing Tasmania as a lawful tenant of the unit. According to Mr Muir, Mr Kean took advantage of Mr Thompson in the relationship. He said that Mr Kean did not pay rent. Mr Muir described it as an abusive relationship in a physical and psychological sense, with Mr Kean taking advantage of Mr Thompson's desire to help others. He described seeing bruising on Mr Thompson on several occasions, and Mr Thompson would tell him that that Mr Kean had assaulted him. He said that Mr Thompson would spend money on alcohol and marijuana for Mr Kean and that Mr Thompson was scared of Mr Kean. He described a pattern in the relationship whereby, when Mr Kean was not present (for instance, when he was in custody) Mr Thompson would become more social and more willing to leave the house.

Mr Muir and all of the neighbours who provided evidence stated that Mr Thompson and Mr Kean would drink large amounts of alcohol together on a daily basis. It is unnecessary to describe in detail

the observations of the neighbours concerning the nature of the relationship. Their evidence does not indicate, to the extent that Mr Muir's does, that Mr Thompson was in an "abusive relationship" from which he could not extract himself. Their evidence allows me to find that the pair found friendship with each other as they consumed alcohol, but that on regular occasions they became extremely loud and engaged in swearing and arguments. The neighbours did not actually witness physical violence between them, although it is clear that it occurred. The witness evidence (and that of Mr Kean himself) indicates that Mr Kean was the more aggressive of the two during the drunken altercations. Sally Hudson stated that they usually fought when they were drunk but, pretty quickly, things would be "good again". Yvonne Caller stated that Mr Kean was more aggressive during the fights with Mr Thompson on about three occasions displaying bruises which he said were due to Mr Kean. Mr O'Hehir stated that the fighting between the two had become progressively worse just before Mr Thompson's death. He also said that Mr Kean was the more aggressive of the two and he saw Mr Thompson with bruising to his face.

Mr Muir stated that Mr Thompson could be belligerent and "a handful" when drunk. Mr Kean described an incident where he punched Mr Thompson to the right side of his face about a month before his death because Mr Thompson was stabbing his bed during the night with a pair of scissors. I accept this occurred as Mr Kean stated and is consistent with Mr Thompson's increasingly delusional behaviour. Mr Kean also agreed that in 2017 he was responsible for punching Mr Thompson whilst they were out together (because Mr Thompson was provoking him) which caused Mr Thompson to twist and injure his leg.

During the time of their shared occupancy of the unit, there were many statements made by Mr Thompson to others regarding wanting to have Mr Kean move out. Mr Muir said that he was in constant contact with Mr Thompson regarding Mr Kean's ongoing abuse.

Until just before his death, Mr Thompson had an unremarkable tenancy record with Housing Tasmania until 2018 when the behaviour became so bad that neighbours in the unit complex began to anonymously complain to Housing Tasmania.

A formal complaint was received on 19 January 2018 by Housing Tasmania and a meeting was booked for 25 January 2018 to discuss the complaint. This did not occur due to Mr Thompson's death on 21 January 2018.

Ultimately, the evidence supports that Mr Kean and Mr Thompson chose to live together, to keep company with each other and to mutually drink large quantities of alcohol and to use marijuana. Mr Thompson had support, particularly from Mr Muir, but chose not to try and rehabilitate from his alcohol and drug dependence or seek proper treatment for his physical or psychological conditions. The evidence certainly indicates that Mr Kean was louder, stronger and more aggressive than Mr

Thompson. Mr Kean's record of prior convictions for recent family violence and his own admissions clearly support this finding.

Several witnesses at inquest described Mr Thompson's personality in positive terms, indicated that he was a kind, gentle person and not prone to being violent.

I find that Mr Kean did inflict injuries upon Mr Thompson during their relationship on more than one occasion when both were intoxicated, although it is impossible to determine whether Mr Thompson falsely attributed some of his bruises to Mr Kean's actions or the extent to which he provoked Mr Kean. The dynamic of the relationship was such that the level of fear of Mr Thompson was not at a point that he wanted to invoke support of others to remove Mr Kean, when this could easily have been achieved. Mr Thompson had such support available to him. Whilst Mr Kean was the dominant force in the relationship when the two were involved in intoxicated arguments, they would "make up" and resume a friendly relationship until the next similar incident.

I add that it was well known by most of the witnesses providing evidence that Mr Thompson suffered a head injury and that if he suffered blows to his head then death could result. Mr Kean himself gave clear evidence that he was aware that punches to the head could kill Mr Thompson. Mr Kean was fully aware of Mr Thompson's medical issues associated with his head injury and also described witnessing Mr Thompson's seizures, whereby his arms would become stiff. He gave evidence that he saw him have three seizures in one day but would then go for weeks without having one.

Upon all the evidence, Mr Thompson was physically and emotionally vulnerable in the relationship with Mr Kean, although it was a relationship in which he wished to remain. Mr Kean's company was important to him and perhaps served a purpose in easing his loneliness. However, there is no finding open on the evidence that Mr Thompson did not freely choose to continue to have Mr Kean live with him in the knowledge of what that entailed. The relationship provided mutual benefit, even if it was not in the best interests of Mr Thompson.

It was important to explore whether Mr Thompson was in a relationship of abuse and whether Mr Kean remained in the unit against Mr Thompson's will. However, as will be apparent from the discussion of the medical opinion, the fact that Mr Thompson was somewhat vulnerable in the relationship (albeit by his own choosing) bears little relevance to the determination of the cause of the subdural haematoma that led to his death.

Circumstances Surrounding Death

The evidence from all sources, particularly the neighbours, supports the following chronology of events occurring on Saturday 20 January and into the morning of Sunday 21 January.

At 10.30am on Saturday 20 January, Shane Bryan and Sally Hudson visited Mr Thompson and Mr Kean in the unit. At that time, Mr Bryan lent them \$40 for the purchase of alcohol.

At about midday, Mr Kean and Mr Thompson began consuming alcohol, having each purchased a 4 litre cask of wine.

At about 4.00pm, Sally Townsend visited Mr Thompson and Mr Kean at their unit and observed them to be drinking a mixture of wine and orange juice. They did not appear intoxicated to her.

At 4.30pm in the afternoon, Mr Thompson visited Jennifer Bryan, Mr Bryan and Ms Hudson in Unit 1. The evidence satisfies me that, by that time, he was reasonably intoxicated. For example, Mr Bryan said *"I could hear that he was pissed from the rambling he was doing about his dead kids. He always talks about kids when he has a few drinks"*.

At about 5.45pm, shortly after visiting the occupants of Unit 1, Mr Thompson visited Ms Caller in Unit 10. Ms Caller stated that Mr Thompson told her during this visit: *"Tomo was telling me he wanted Laurie out because he was sick of him abusing him. He told me he was going to put all Laurie's belongings outside near the fence. I told Tomo to wait until he had gone out and lock all the doors and windows. I told Tomo to call the police if he starts smashing the door because I thought he would get aggressive."* Ms Caller said that Mr Thompson left and returned to his unit. She noted that it was all quiet until the time she left to go to her friend's house at 6.50pm. Although Ms Caller told the court at the inquest that Mr Thompson was sober at this time, I do not accept that this was the case.

At 7.00pm, Ms Townsend called Mr Kean to see if he was coming to her unit. She stated that he grew agitated with her, hung up and refused to answer her subsequent text messages which she stated were designed to "wind him up" for becoming cranky. Mr Kean did not answer those text messages. By about this time, various neighbours heard loud music emanating from Mr Thompson's unit.

Between 7.30pm and 9.30pm, Mr O'Hehir, Ms Simpson and Ms Bryan overheard Mr Kean arguing with Mr Thompson.

Mr O'Hehir stated that at around 7.30pm he heard Mr Thompson and Mr Kean arguing about the fish they were eating, with Mr Kean's voice being the more aggressive. Ms Bryan said that between

8.00pm and 8.30pm she was watering her front yard and heard raised voices coming from Mr Thompson's unit. She recognised both of their voices and said *"I knew they'd had a few sherbets, so I went inside. I think they'd been arguing but I couldn't hear what they were saying"*.

At about 9.00pm, Ms Simpson placed a padlock on her gate for her security. At that time she could hear Mr Kean yelling words to the effect *"you fucking bastard, bringing up something else and my problems. Don't bring up my court case"*. It does not appear that she heard Mr Thompson's voice. She said that, as a matter of course, Mr Thompson and Mr Kean were quite aggressive towards each other. She said that they would fight and argue but there would be periods where they would be quiet for a few days.

At 9.30pm Mr O'Hehir heard a very loud "shaking" noise, which sounded like somebody was shaking the front fence very hard. At the same time, he also heard Mr Kean "yelling and screaming". Mr O'Hehir said he then went to sleep and only awoke when police attended.

At midnight (by now Sunday 21 January) Jennifer Simpson called police as she again heard Mr Kean making noise. At about the same time, Ms Caller and her friend, Vicki Curtis, who were outside the unit complex returning home, heard a disturbance emanating from inside Mr Thompson's unit. Ms Caller said that Mr Kean was screaming, including the words "who told you that" and she heard thumping sounds similar to hitting a wall.

At approximately 12.08am police officers, Senior Constable Loretta Ashwood and Constable Trent Whitelaw, arrived at the unit and spoke with Mr Thompson and Mr Kean about the noise complaint. Senior Constable Ashwood and Constable Whitelaw said that upon arrival they could hear raised voices. They knocked on the door and Mr Thompson answered and appeared intoxicated. They said he was slurring his words and unsteady on his feet, evidence that I fully accept. Mr Kean also came to the door. Both officers saw no signs of a disturbance or injuries upon either Mr Thompson or Mr Kean. Mr Thompson and Mr Kean appeared to the officers to be in good spirits and assured them that all was well at the unit and they would keep the noise down.

At 12.13am on 21 January the officers left the unit complex, determining that no further action was required. Both officers performed their duties appropriately in respect of this incident.

Ms Caller said that she heard nothing more from Mr Thompson's unit next door and went to sleep.

At 1.00am Ms Simpson overheard Mr Kean yelling "fuck off!" This drew her attention to the unit where she observed Mr Thompson leaving the unit and walking out of view before returning five minutes later. Ms Simpson stated that upon Mr Thompson re-entering the unit she heard yelling and

a loud thump “*like something hitting the floor on carpet*”. She stated that once Mr Thompson was back inside the unit things seemed to quieten down.

However, Ms Simpson said that “*around 1.30am to 2.00am I heard what sounded like a dog howling from the direction of number 9. I recognised the howling as coming from Thommo as he has done this before. The howling lasted for about 2 to 3 minutes.*” I accept that Ms Simpson is correct in this observation. Mr Kean told police that both he and Mr Thompson would regularly make howling noises. Ms Simpson said in her affidavit that all was quiet after that incident although in her court evidence she stated that she heard a thump in the unit after this event. I do not accept that she did hear the thump at that time. I rely upon her observations contained in her initial statement made upon the day of Mr Thompson’s death.

Mrs Simpson appears to have stayed up for most of the night when others were asleep, she says doing puzzles in her lounge room. However, she did not hear anything further, including when she took her dog outside at 6.00am to go to the toilet.

There is no further evidence from any of the neighbours about any other noise or event relating to Mr Kean or Mr Thompson after Ms Simpson’s observations at about 2.00am.

Mr Kean’s Account

Mr Kean participated in a video record of interview on the day of Mr Thomson’s death as well as giving evidence at inquest. Mr Kean did not vary significantly in his account from his previous accounts to police when he gave evidence at the inquest. The substance of Mr Kean’s account of the events before Mr Thompson’s death was as follows.

Mr Kean said that on 20 January he and Mr Thompson were drinking from midday through to about midnight. He said that by 9.00pm or 10.00pm they had become noisy. He recalled the police officers arriving and telling them to keep the noise down. He said that they nevertheless turned the radio back on and started yelling over the top of the music at each other. About one or two hours after the visit by the officers, (perhaps at about 2.00am) Mr Kean said that he wanted to go to bed but Mr Thompson wanted the radio turned up. An altercation then started between them. Mr Kean said that, because he wanted the volume down, he punched the radio which then went flying through the wall. Mr Thompson then punched him to the cheek. Mr Kean retaliated immediately by delivering two punches to Mr Thompson, one to each of his cheekbones. At this stage both Mr Thompson and Mr Kean were standing but Mr Kean said that after he delivered the punches to Mr Thompson, Mr Thompson deliberately sat back in the nearby lounge chair. He said that Mr Kean was conscious and he told him “*go to bed, you bastard because I’m right, the music is finished*”. In his court evidence he said that there was some continued short argument between them before Mr

Kean lay on the couch under the doona and went to sleep. I am not sure that this actually occurred or was embellishment. He said that he woke up a couple of hours later and saw that Mr Thompson was on the floor with his head in the lounge room and his feet towards the kitchen and hall area. Mr Kean noticed that he was snoring loudly and tried to wake him up but could not do so. Mr Kean, however, said to the first police officer on the scene that when he woke up to find Mr Thompson lying prone on his back on the lounge room floor, Mr Thompson was “gurgling” and he rolled him over on his side because he didn’t want him to choke.

Mr Kean said that rather than moving Mr Thompson, he went into the bedroom, retrieved a pillow and blanket. He placed Mr Thompson’s head on the pillow and placed the blanket over him and rolled him onto his side. Mr Kean then went back to sleep. On Mr Kean’s account, it appears that this occurred at about 3.00am or sometime later. Mr Kean’s account of time is vague and, for the hours between about 2.00am and 8.00am, his movements and those of Mr Thompson are unable to be corroborated by any other person.

Mr Kean gave different accounts of the time when he woke in the morning but it appears that he may have woken at a time after 8.00am. When he woke, he found Mr Thompson unresponsive and still located in the same spot he was lying earlier. Mr Kean said that, when he woke up in the morning, he walked past and over Mr Thompson several times before noticing that he was not breathing. It is not possible to say how long he was with Mr Thompson in the unit before seeking help. In any event, after several attempts to rouse him, Mr Kean went to his neighbours- Mr Hudson, and Mr and Mrs Bryan at Unit I- and said that he believed Mr Thompson to be dead.

At 9.18am an ambulance was called to Mr Thompson. The neighbours were instructed by the 000 operator to perform CPR, which they did.

At 9.33am, paramedics arrived and took over CPR on Mr Thompson. Paramedics worked on Mr Thompson for approximately 30 minutes. However, he remained unresponsive despite their efforts to resuscitate him. Medical efforts ceased and Mr Thompson was declared deceased at 10.02am.

The evidence indicates that, at 10.00am, whilst paramedics were attempting resuscitation, Mr Kean attended Ms Townsend’s residence. In her affidavit, Ms Townsend said *‘once he came inside he sat on my couch crying. He said, “And I hope that punch in the mouth didn’t kill him.” I asked him whether he punched him in the mouth or the stomach. He said in the mouth.’* Ms Townsend went on to say that Mr Kean *“just kept crying”* and stayed for about 15 minutes.

At 10.04am, Mr Kean telephoned Mr Muir, crying, and told him that Mr Thompson had passed away. In his affidavit, Mr Muir stated: *“I asked how, how long ago. Laurie said “about 2 - 3 hours ago, I think he*

choked on his spew". Mr Muir tried to ask Mr Kean more questions but Mr Kean was talking to others on the scene and said that he couldn't talk and hung up.

The first attending police officers arrived on scene at 10.15am and Mr Kean gave effectively the same account of events as stated above: that is, that both he and Mr Thompson had been drinking during the evening; that they had a verbal argument which turned into a "fisty cuff"; that Mr Thompson fell asleep on the couch after the altercation; that Mr Kean also fell asleep but woke up to Mr Thompson gurgling and laying on his back in the lounge room; Mr Kean rolling him onto his side because he didn't want him to choke; and Mr Kean going back to sleep and waking up in the morning, eventually realising that Mr Thompson was not breathing.

Mr Kean was arrested and taken into custody on 21 January 2018 at 11.12am and held for investigation into the unexpected death of Mr Thompson.

The following day, 22 January, Mr Kean participated in an interview with police officers whilst in custody. Mr Kean's statements to initial attending police officers at the scene were consistent with his answers in the video recorded police interview of 104 minutes duration. Mr Kean was charged with the manslaughter of Mr Thompson.

Whilst Mr Kean was in custody police undertook a full forensic examination of the scene, including an examination by forensic scientists of Forensic Science Services Tasmania. There was nothing in the scene examination that was inconsistent with Mr Kean's account. The further investigation that followed was comprehensive, and included door knocks of the area. As described above, numerous witness statements were obtained from neighbours to ascertain a clear picture of the events leading up to the death of Mr Thompson. I am satisfied that there was no further evidence that could reasonably be obtained to assist in performing my functions under the *Coroners Act 1995*.

As indicated above, the manslaughter charge against Mr Kean was discontinued and he was released from custody on 23 May 2018. The DPP did not proceed on the charge as the forensic pathologist, Dr Donald Ritchey, provided an opinion that there were four possibilities for causation of Mr Thompson's death, three of which did not involve Mr Kean applying force to Mr Thompson. These are discussed below. On the basis that at least two of the possibilities (not involving an application of force by Mr Kean) were reasonably open on the evidence, the DPP formed the opinion that the charge could not have been proved beyond reasonable doubt. In conducting this mandatory inquest, the prime consideration was whether any further medical or lay evidence could shed further light upon the direct cause of Mr Thompson's death. As will be apparent from the above discussion, there were no witnesses to the altercation between Mr Kean and Mr Thompson in the house or the circumstances surrounding Mr Kean's interaction with, or actions towards, Mr Thompson over the following hours of the early morning. However, Mr Kean was questioned at length in his oral

testimony and gave frank and credible evidence about almost all matters of significance. I am able to largely accept his account of the events of the evening, recognising, of course, that he was significantly intoxicated and had some motivation to minimise his involvement and the harm done to Mr Thompson.

Medical Evidence

On 22 January 2018, forensic pathologist, Dr Donald Ritchey, performed a full post-mortem examination of Mr Thompson.

Dr Ritchey determined that the cause of death was the result of an acute subdural haematoma, being a collection of blood surrounding the right side of Mr Thompson's brain.

Dr Ritchey gave evidence that, in Mr Thompson's case, significant complicating factors were previous closed head injuries, including subdural haematomas with residual dural scarring, post-traumatic epilepsy and alcohol dependence. Further, Dr Ritchey noted that individuals with dural scarring and previous episodes of subdural haematoma, such as Mr Thompson, are at risk of developing acute subdural haematoma and its complications. He also observed that the blood comprising the subdural haematoma could have accumulated slowly over several hours before Mr Thompson suffered any significant symptoms. Thus, he could have continued to walk around and undertake activities for some hours before succumbing to the effects.

Dr Ritchey also gave evidence that Mr Thompson had a high level of alcohol in his blood at the time he died. Toxicological testing after death revealed that his blood alcohol concentration was in the range of 0.155g/mL to 0.239 g/mL. Dr Ritchey said that alcohol use placed a person such as Mr Thompson at a greatly increased risk of having a seizure. He noted that toxicological testing showed that the valproic acid level (anti-seizure medication) in his blood was at a level that was not sufficient to ameliorate seizures.

Consistently with the opinion provided to the DPP, Dr Ritchey opined that there were four possible factual scenarios that may have caused the fatal subdural haematoma in Mr Thompson. These are as follows:

- (a) It was caused by a punch or punches. Mr Kean admitted punching Mr Thompson to each cheek. He consistently maintained that the punches were not forceful. Dr Ritchey's evidence was that there was bruising to the right cheek and nose but he indicated that the punches were not forceful, consistent with Mr Kean's account. However, the force may still have been sufficient to cause the subdural haematoma, particularly given Mr Thompson's previous head injuries.

- (b) It was caused by hitting his head in a fall whilst intoxicated. There was an 8mm scalp laceration within the front hairline and was consistent, in Dr Ritchey's opinion, with a fall. He stated that the laceration was more likely to have occurred hitting the floor or other object in a fall, as opposed to a punch. He said commonly, people fall forward and if Mr Thompson had done so, that would explain the scalp laceration. Dr Ritchey also noted bruising to both knees which was consistent with Mr Thompson falling onto his knees. He said that the visible marks (bruises to the right cheek and nose, the frontal scalp laceration and the superficial bruising to both knees) were 'classic' type injuries occurring as a result of a person becoming unconscious and falling.
- (c) It was caused by a seizure leading to unconsciousness and a fall. Mr Thompson had already been diagnosed with seizure disorder and suffered uncontrolled and regular seizures. Dr Ritchey noted seizures in a person such as Mr Thompson could occur at any time, especially as the valproic acid (anti-seizure medication) levels were low at the time of death. The dropping levels of valproic acid, combined with the high level of intoxication, could have led to a spontaneous seizure independent of the force delivered by Mr Kean.
- (d) It was caused by a spontaneous occurrence. It is possible that a subdural haematoma may develop without any trauma occurring at all. It may occur as a result of another medical condition. Dr Ritchey stated that Mr Thompson's prior medical history may have contributed to the development of a spontaneous subdural haematoma. He said that it was possible to have occurred, especially in someone such as Mr Thompson who had had two previous subdural haematomas. The evidence from Dr Ritchey was that most subdural haematomas occur with a trigger, but it was indicated in literature that 2% can be spontaneous. Given that low statistic, Dr Ritchey was of the belief that this was not the cause, but was not prepared to exclude it completely given the medical background of Mr Thompson.

Therefore, of the four possible causes of death that Dr Ritchey opined were likely, he was unable to state with any precision which of the four was more likely to have operated to cause death in Mr Thompson. Realistically, I am able to exclude Mr Thompson suffering a spontaneous subdural haematoma. This is a very unlikely scenario, particularly given that he was punched by Mr Kean and also had other injuries that appeared to be consistent with a fall. It is quite feasible to postulate that, at some time that evening, (including when Mr Thompson went outside the unit on two occasions) that he had a fall, which caused a subdural haematoma. The effects of it may have developed over several hours or he may have fallen whilst Mr Kean was asleep. He may have experienced a seizure at some time after the altercation with Mr Kean, causing an unconscious collapse and head strike.

It is also, of course, a strong possibility that the blows delivered by Mr Kean caused the fatal injury. However, I cannot determine this to be the case to the standard required when other plausible scenarios may explain the cause of Mr Thompson's death.

The standard of proof in coronial inquiries is the civil standard of the balance of probabilities. However, where the findings may reflect adversely on an individual, such as in this inquest, the standard is to be applied in accordance with the principle in *Briginshaw v Briginshaw* (1938) 60 CLR 336. In that case, Dixon J (as he then was) stated:

"...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences..."

Therefore, whilst the cause of the fatal injury was trauma to the head, I cannot determine to the standard required by *Briginshaw v Briginshaw* that it was caused by Mr Kean's blows. It may have been Mr Kean's blows or, alternatively, an accidental head strike (as described above).

Concluding Comments

Firstly, I comment that when Mr Kean discovered Mr Thompson on the floor making "gurgling noises", this should have alerted him of a medical emergency. It should have been at the forefront of his mind that his blows may have caused Mr Thompson to be unresponsive on the floor. This situation would have been gravely concerning to an alert and sober person. He clearly was concerned about the possibility of Mr Thompson choking and thus rolled him on his side and gave him a pillow and blanket. However, he did nothing more to assist him. He did not call for help for Mr Thompson, although he did not wish harm upon him. I cannot determine whether any timely assistance would have saved Mr Thompson. Mr Kean expressed regret for his actions and clearly was greatly upset at the death of his friend.

Secondly, I acknowledge the participation of Mr Thompson's family members in the inquest process. I have also had the benefit of their detailed submissions. I have taken all of their submissions into account in coming to my findings. In particular, I acknowledge the submission that the blows delivered by Mr Kean involved a high level of force and were the cause of Mr Thompson's death. In this regard, they submitted that the hole in the wall created by Mr Kean when punching the radio demonstrated such a level of force. They also submitted that assaults perpetrated by Mr Kean upon his former partner, mostly after Mr Thompson's death, demonstrated his propensity for assaults

with significant force. This may well be the case, however, these matters cannot realistically assist me to determine the level of force used during the incident in question. Whilst hesitating to accept Mr Kean's own assessment of the force he used upon Mr Thompson, I fully accept the expert evidence of Dr Ritchey that the force was not particularly hard but nevertheless still potentially capable of causing his death. The fact remains that, despite a thorough, independent scrutiny of all the evidence, other explanations remain open in respect of causation for Mr Thompson's death.

Findings required by Section 28(1) of the Coroners Act 1995:

- a) The identity of the deceased is Paul Christopher Thompson;
- b) Mr Thompson died in the circumstances set out in this finding;
- c) The cause of death was an acute subdural haematoma, the cause of which cannot be determined; and
- d) Mr Thompson died on 21 January 2018 at unit 9/18 Torres Street, Warrane in Tasmania.

Dated: 17 July 2020 in the State of Tasmania

Olivia McTaggart
Coroner