



# 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, Simon Cooper, Coroner, having investigated the death of Tony David Brown

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

- a) The identity of the deceased is Tony David Brown;
- b) Mr Brown died in the circumstances set out further in this finding;
- c) The cause of Mr Brown's death was traumatic brain injury; and
- d) Mr Brown died on 18 July 2013 in the Royal Hobart Hospital, Hobart in Tasmania.

### **Introduction - The Role of the Coroner**

A coroner in Tasmania has jurisdiction to investigate a death if she or he suspects homicide. In this case there is no doubt that Mr Brown died in circumstances that required his death to be investigated in the coronial jurisdiction, irrespective of what other investigations had taken place and no matter what other legal proceedings had arisen from it.

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 to make findings with respect to that death. This process requires the making of various findings, but without apportioning legal or moral blame for the death.<sup>1</sup> A coroner is required to make findings of fact from which conclusions may be drawn by others.<sup>2</sup>

A coroner does not punish or award compensation – that is for other proceedings in other courts, if appropriate. Nor does a coroner charge people with crimes or offences arising

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<sup>1</sup> see *R v Tennent; ex parte Jaeger* [2000] TASSC 64, per Cox CJ at paragraph 7.

<sup>2</sup> see *Keown v Khan* [1998] VSC 297; [1999] 1 VR 69, Calloway JA at 75 – 76.

out of a death the subject of investigation. In fact, a coroner in Tasmania may not even say that he or she thinks someone is guilty of a crime or offence.<sup>3</sup>

One matter that the Act requires a finding to be made about is how death occurred.<sup>4</sup> It is well-settled that this phrase involves the application of the ordinary concepts of legal causation.<sup>5</sup> Any coronial inquiry necessarily involves a consideration of the particular circumstances surrounding the death so as to discharge the obligation imposed upon the coroner.

It is also important to recognise that where someone is charged with a crime in relation to a particular death, no finding by a coroner about the same death may 'contain a finding which is inconsistent' with the result of the proceedings relating to that charge.<sup>6</sup> Given that Mitchell Clay Dowling and Jay David Blazely were charged with and convicted of crimes arising out of the incident in which Mr Brown died this is a particularly important provision to bear in mind.

Finally, I note that the standard of proof in coronial investigations is the civil standard, that is, where findings of fact are made a coroner needs to be satisfied on the balance of probabilities as to the existence of those facts. However, if an enquiry reaches a stage where findings being made may reflect adversely upon an individual it is well-settled that the standard applicable is that articulated in *Briginshaw v Briginshaw*.<sup>7</sup> That case stands for the proposition that it is particularly important to bear in mind the seriousness of any allegation and approach the task of deciding whether a serious allegation is proved with caution.

### **Mr Brown's background**

Mr Brown was born in Launceston on 11 September 1984, the son of David and Sandra Brown. He was educated at the Exeter Primary and High Schools, before moving onto Newstead College.

He was a keen sportsman having played AFL football and golf.

Mr Brown was a painter by trade and about to commence his own business.

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<sup>3</sup> Section 28(4) of the *Coroners Act 1995*.

<sup>4</sup> See section 28(1)(b).

<sup>5</sup> *March v E. & M.H. Stramare Pty. Limited and Another* [1990 – 1991] 171 CLR 506.

<sup>6</sup> Section 25(4) of the Act.

<sup>7</sup> (1938) 60 CLR 336 (see in particular Dixon J at page 362).

At the time of his death, he was in a relationship with Ms Sarah Beams and they had a child together, Saxon. Earlier in his life he was married to Ms Tahlia Wright with whom he also had a child, Ryder. Ryder was in Mr Brown's custody as at 17 July 2013.

His death robs two children of a much loved father, his parents of a son and his partner of the person with whom she shared her life.

### **Circumstances of death**

The following findings of fact rely heavily on comments on passing sentence made by Justice Pearce when sentencing Mitchell Clay Dowling and Jay David Blazely on 26 July 2015.

I find that Mr Brown was at the Mowbray Hotel in the afternoon and early evening of 17 July 2013. He was with his friends, brothers Darren and Jesse Thomas, and their father Grant Thomas. All four men were drinking alcohol and playing eight ball. A number of other people were also present in the bar consuming alcohol and playing eight ball.

Blazely and Dowling (also brothers) arrived at the hotel at about 5.00pm. There they met Mr Joshua Looney with whom they consumed alcohol and also played eight ball. It is noteworthy that the brothers had been consuming alcohol at other hotels in Launceston before their arrival at the Mowbray Hotel and had been refused service at one of those hotels earlier in the day by reason of their intoxication and poor behaviour. Blazely and Dowling were joined by Dowling's friend Rebecca Jackson. Blazely and Dowling did not know Mr Brown.

At about 8.00pm, Mr Brown was asked by the manager of the hotel, Mr Tyson Montgomery, to leave the premises on account of his unruly behaviour and taunts that he had directed towards, amongst others, Mr Looney. At about the same time Blazely and Dowling walked across the bar to confront Mr Brown and his companions. A scuffle followed which Mr Montgomery did his best to stop. While this was going on Blazely, as Mr Montgomery's attention was momentarily diverted, struck out at Mr Brown. The blow caused Mr Brown to step back and to the side and stand with his back to the bar. Mr Montgomery made an attempt to restrain Blazely but it was unsuccessful and he again stepped towards Mr Brown and with his right fist punched Mr Brown hard to the left side of his head. The blow caused Mr Brown to stagger to his right and away from Blazely. Blazely immediately followed and again used his right fist to punch Mr Brown hard to the face. This punch caused Mr Brown to fall sideways to the floor.

What might be termed an 'all in brawl' then ensued. While a number of men, including at least the Thomas brothers, their father, Mr Looney, Blazely and Dowling engaged in the brawl, Mr Brown lay on the floor beside the eight ball table. It was about 30 seconds before he stood up. The brawl came to an end, Mr Brown staggered backwards, very unsteady, in the general direction of the bar. Mr Montgomery attempted to support him, later telling investigators that Mr Brown appeared to be dazed. Mr Montgomery endeavoured to persuade Mr Brown to sit on the floor so that he would not fall. As he was doing this Dowling walked back towards Mr Brown and, while Mr Brown was dazed and supported by Mr Montgomery, punched him to the face. The punch caused Mr Brown to immediately slump to the ground where he lay motionless. The evidence makes it clear that he did not move again.

Staff at the hotel attempted to provide first aid to Mr Brown. In particular Jessie Pengelly and Gabriela Mullan are to be commended for their efforts in this regard. So is Mr Montgomery for attempting to defuse the situation, protect Mr Brown and provide him with first aid.

Police and an ambulance were called. Mr Brown was taken from the scene by the ambulance to the Launceston General Hospital. It was realised that his condition was critical and as a consequence he was transferred by air ambulance to the Royal Hobart Hospital. He did not regain consciousness and died in the Royal Hobart Hospital the next day.

### **Forensic pathology evidence**

Experienced forensic pathologist Dr Donald McGillivray Ritchey performed a post-mortem examination upon Mr Brown's body at the mortuary of the Royal Hobart Hospital on 22 July 2013. He found that Mr Brown had suffered significant blunt trauma of the head and neck. He expressed the opinion, which I accept, that the cause of Mr Brown's death was traumatic head injury. I note that alcohol was detected as having been present in samples taken from Mr Brown's body at autopsy.

### **Subsequent proceedings**

Blazely and Dowling were charged with various crimes arising out of the incident on 17 July 2013 at the Mowbray Hotel. Blazely was found guilty of one count of committing an unlawful act intended to cause grievous bodily harm and two counts of assault. Dowling

was found guilty of one count of committing an unlawful act intended to cause grievous bodily harm and one count of assault. Both were sentenced to periods of imprisonment.

### **Comments and Recommendations**

The circumstances of Mr Brown'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 Tony David Brown.

**Dated** 21 January 2019 at Hobart, Tasmania.

**Simon Cooper**  
**Coroner**