



TELEPHONE: (03) 61657110
FAX: 6173 0221
DX: 130, Hobart
www.magistrates.court.tas.gov.au

MAGISTRATES' CHAMBERS
PO Box 354
Hobart
Tasmania 7001

1 April 2022

Glynn Williams Legal
Barrister & Solicitor
Incorporating Kay & Ruddle Lawyers

Dear Mr Williams

In relation to your clients, Mr and Mrs Westbrooks's, application pursuant to s58 of the *Coroners Act 1959* to re-open the investigation into the death of their daughter Eden Jayde Westbrook, I have considered the matters you have raised and for the reasons attached I have determined that the investigation will not be re-opened.

Please convey my sincere condolences to Mr and Mrs Westbrook who have experienced a great loss.

Yours faithfully

A handwritten signature in blue ink, appearing to be "Catherine Geason".

Catherine Geason
CHIEF MAGISTRATE

Application Pursuant to s58 of the Coroners Act 1995
In relation to Eden Jayde Westbrook

Mr and Mrs Westbrook seek to have the investigation into the death of their daughter Eden re-opened and the findings re-examined. Coroner McTaggart handed down her findings on 30 September 2016 and the application to reopen was made on 5 August 2020.

In her findings Coroner McTaggart concluded that the investigation into Eden's death was conducted competently and that she had received all available evidence that could reasonably assist to determine the matters required in s 28 (l) of the *Coroners Act 1995* (the 'Act'). Coroner McTaggart found that Eden died as a result of asphyxia which was a result of hanging, an action taken voluntarily by Eden with the intention of ending her life on 17 February 2015.

It was submitted in the application that the investigation could be reopened and the findings re-examined as I could be satisfied that:

1. The investigation was not sufficiently thorough or was compromised by evidentiary or procedural irregularity, s58 (l) (b) of the Act.
2. New factual evidence affecting the findings has come to light, s 58 (l) (d) of the Act.
3. There is another compelling reason to re-open the investigation, s 58 (l) (f) of the Act.

Section 58 (l) (b) of the Act – the investigation was not sufficiently thorough or was compromised by evidentiary or procedural irregularity.

Mr Williams on behalf of Mr and Mrs Westbrook submitted that Constable Chris Smithurst advised Mr and Mrs Westbrook that Eden was seen alive at 2.00am on 18 February 2015 under the skate park cameras in St Helens with an unknown older female, which potentially leads to a conclusion that Eden must have died on 18 February 2015. It is asserted that Inspector Darren Hopkins who reviewed the matter did not interview Constable Smithurst.

In the material provided to Coroner McTaggart there is a document titled 'Issues surrounding the investigation into the death of Eden Jayde Westbrook', I understand that document was made by Inspector Hopkins. In that document he indicates that there was a report of a young female crying hysterically but the description of the female was completely different to Eden. The female observed was large, with dark hair and in her early 30's. Police spoke to this female who indicated that she did not have any contact with Eden and did not recall seeing her.

Inspector Hopkins also indicated that the security cameras from the skate park were checked and viewed by Constable Porter, and that there was no evidence depicting Eden or Eden in the company of an older female.

Mr Williams also submitted that Ms Kelsi Riley was not interviewed by Inspector Hopkins despite him advising Mr and Mrs Westbrook that he was talking to Ms Riley throughout his investigations. Mr Williams submitted that Ms Riley approached the Westbrook's eldest daughter, Bobbi Lee, a few days after the incident and said that she could have saved Eden as she was with Eden. He says that Ms Riley also told Mr Westbrook that she was with Eden that night and that she was the first person who told police, who was Constable Gordon and that was before 7.00am on 18 February 2015.

Whether or not Constable Smithurst expressed the mentioned information to Mr and Mrs Westbrook it is apparent that the report of a female in the area crying was investigated, Eden was excluded as being the female, and available CCTV footage was viewed and did not identify Eden in the area. Not interviewing Constable Smithurst does not amount to a conclusion that the investigation was not sufficiently thorough.

Further, whether or not Ms Riley was interviewed does not amount to a conclusion that the investigation was not sufficiently thorough. It is clear from the material before Coroner McTaggart that Ms Riley was not the first person to tell Constable Gordon about Eden. Constable Gordon swore an affidavit on 28 May 2015, he said the following:

".....

On Wednesday 18 February 2015 I was at home at the Police owned residence which is next to the St Helens Police Station.

Shortly after 7.00 am I was awoken by a knock on my front door. I answered it and was met by Siobhan Marie MEAD who is a Registered nurse at the St Helens District Hospital.

She informed me that there was a young female hanging from a tree in the Fishermans Memorial Park. I called Radio Dispatch Services and informed them of the incident.

I attended the park in the company of RN MEAD....."

Ms Mead confirms this in her affidavit sworn on 27 February 2015. In her affidavit she says:

".....

On Wednesday 18 February 2015 I started work at the St Helens District Hospital at

7.00am.

At about 7.05am a lady came to the Hospital and walked up to the counter and she told that (sic) she had found a young girl hanging in a tree in a park near the Salty Seas Road.

She said that she had called emergency services and that it would be a while until someone arrived at the scene.

We (Narelle RANSLEY and I) were working day shift. Two other staff were still at the hospital so Narelle and I drove in her car to where the young girl was and went to check if there were signs of life, in case there was something that we could do to help her. A staff member called triple zero and spoke to emergency services to ensure they were aware of the incident.

We drove past Medea Park which is the back way to Fisherman's Memorial Park. We parked the car when we saw her and got out of the car and approached the girl.

.....

I went to the Police House at the back at the St Helens Police Station and spoke to Constable Tom Gordon and informed him of what had happened.

Constable Gordon and I went around to the scene and Narelle and I stayed for about half an hour. We helped police with blocking the road with Narelles (sic) car near Salty Seas....."

The female who came into the St Helens Hospital was Kim Woodcock. Ms Woodcock swore an affidavit on 18 February 2015 in which she said the following:

".....

On Wednesday the 18 February 2015 at about 6.50am I was leaving St Helens via Cecilia Street in my work vehicle, an ISUZU truck, Registration No. EH1405, I was the sole occupant of the vehicle. I have looked to my right and have seen a female human body hanging by a rope from the tree. The tree was next to a gazebo that was next to the Seafarers Memorial about four metres from the road.

I have pulled over as soon as I have seen this and have gone towards the tree where the female body was hanging. I was unsure initially if it was a real human body or if it was just a mannequin.

.....

Once I have realised it was a real body I have gone straight back to my truck and have driven straight to the police station.

The police station was unattended so I have pressed the buzzer and have been put through to the police radio room. I do not recall who I spoke with over the phone but I informed the operator that I had found a body hanging from a tree. The operator has confirmed to me that there were no police at the St Helens police station so they would have to arrange for someone to come up. I have provided the operator with my details before driving to the St Helens hospital.

I entered the hospital and have informed a nurse of what I had seen and the location of the body.

.....”

Ms Riley was not the first person to advise Constable Gordon, it is clear from the affidavits that Ms Mead alerted Constable Gordon to the situation with Eden. In my view not formally interviewing Ms Riley does not lead to a conclusion that the investigation was not sufficiently thorough. Police had reviewed CCTV of the area which did not identify Eden and Ms Riley would appear to be unreliable in her account that she was the first person to alert Constable Gordon which impacts on the general veracity of her version of events and her version is highly unlikely to impact on the findings made by Coroner McTaggart.

Mr Williams also submitted that the investigation was deficient because of the lack of effort to shield Eden's body from the public whilst hanging. This is not a matter relevant to whether the investigation could be considered sufficiently thorough.

Further Mr Williams submitted the investigation into the whereabouts of Eden in the 12 hours preceding her death were flawed. The investigation involved obtaining affidavits from Eden's family and friends to try and establish Eden's movements prior to her death. It was apparent that Eden at about 8.30pm on 17 February 2015 was at home with her parents and siblings, Eden had a disagreement with her parents and went outside to sit in a vehicle. Eden was left outside to 'cool down'. Her sister Hunter then went outside at about 8.45pm and Eden had gone. Her family searched their property, drove around the surrounding streets, the central business area of St Helens and the waterfront area, and checked with another family member but were unable to locate Eden. Coroner McTaggart noted that there was 'no available evidence regarding the route taken by Eden to the location of her death or the origin of the rope.' The investigation did attempt to identify Eden's movements but as noted by Coroner McTaggart there was not any available evidence which would have reasonably assisted with Eden's movements or the origin of the rope.

Mr Williams attached five statutory declarations which are not declared due to Covid-19 restrictions at the time. Mr Williams purports that the declarations contradict Tasmanian Police timeline of events which relates to the issue of Eden's body not being shielded from public view. As I have mentioned above the issue of Eden's body being shielded from the public view is not a matter that impacts on whether the investigation was sufficiently thorough. The issue of whether their statements contradict the police timeline has marginal relevance.

The statements in summary disclose the following:

Ms Jenkinson makes no mention of times other than saying the morning of 18 February 2015 was a typical morning, with her daughters catching the school bus and she headed off to see her granddaughter and as she passed over the bridge towards Fishermans Park she noticed people gathering and saw who she now knows was Eden hanging from the tree which upset her immensely.

Her statement does not impact on the investigation or reasonable conclusions as to timelines.

Ms Carroll says that on 18 February 2015 her son rang her at 7.00am and told her he had some bad news and had seen a young woman hanging from a tree at the park near St Helens wharf entrance. She also says that her son told her he had been on the road between 6.30 – 6.45am and seen a young woman run across the road and a policeman chasing her, which was towards the body hanging in the tree.

Ms Carroll also says that her son told his boss he had called 000 when he had seen the body at around 6.00am. There is not a statement from Ms Carroll's son or his boss. Also it seems highly unlikely that her son's boss saw Eden and phoned 000 at 6.00am. The police records indicate that the first call to police was at 6.57am. I do not regard Ms Carroll's statement as impacting on the thoroughness of the investigation.

Ms Hennessy says in her statement that in February 2015 she was working at the Big Four Caravan Park in St Helens starting at 7.00am. Her routine before starting work was to go to Banjo's in St Helens at about 6.30am, order a coffee and a toasted sandwich, drive to the wharf, have her coffee and sandwich, smoke a cigarette and then at about 6.50am head to work. On 18 February she followed her normal routine and as she was leaving the wharf she looked across to Fishermans Memorial park and saw a person hanging from a tree in the park. Ms Hennessy said she did not get out of her car, she was very distressed by what she had seen and drove to work. Ms Hennessy told her boss and due to her distress went home. Ms Hennessy had lost her husband to suicide so this incident had triggered flashbacks.

Ms Hennessy's statement does not impact on time lines or the investigation. It seems likely

Ms Hennessy saw Eden just before Ms Woodcock did, Ms Hennessy's reaction was to drive to work and then go home, however Ms Woodcock took steps to alert the police.

The other two statements are from Robert and Daniel Rigby, father and son and friends of the Westbrook family. Robert Rigby says he and his son were aware from Mr Westbrook that Eden was missing and they were driving into the St Helens Township and about 6.55am on 18 February and he saw police on the side of the road opposite the Memorial park and then could see Eden hanging from a tree in the park. He made the decision to go straight to the Westbrooks. Daniel Rigby supports the timeline and events given by his father.

There are some variations in the times that people say they saw police at the scene but in my view those variations do not impact on the consideration of whether the investigation was sufficiently thorough. In my view it is clear from the material that the police responded as soon as they received the information and differences in times that others recall do not impact on the finding that Eden suicided.

Mr Williams submits that the statements establish Eden's body was visible from the road before 7.00am and police were present prior to 7.00am. Given that police do not receive a call until 6.57am it is unlikely they were present at the scene before 7.00am but even if it is accepted that police arrived at the scene prior to 7.00am it does not flow that that investigation was not sufficiently thorough. Peoples' recollections as to times can and do vary, the differences would not justify the reopening of the investigation and re-examination of the findings.

Section 58 (1) (d) of the Act - new facts or evidence affecting the findings have come to light.

Mr Williams submits that Mr and Mrs Westbrook have identified a person who would, if compelled, give evidence that an older woman was arguing with Eden on the evening of 17 February in the street at Thompson Court. He submits that this person was never interviewed, nor were any residents interviewed along the pathways through St Helens that Eden took and was reported as being seen at. There is no information as to who this person is and in any event there is no suggestion from the Post Mortem Report that Eden died by any other means other than hanging. There were no signs of trauma and the cause of death was asphyxia death following hanging. I do not regard the reference to this unknown person as a new fact or evidence that is capable of affecting the findings.

Also under this heading Mr Williams submits that Kelsi Riley gave a painting to Mr and Mrs Turner to give to the Westbrooks. The Turners were apparently given the painting by Ms Riley when they came to collect their daughter from the Launceston Clinic and that Ms Riley

had been admitted to the Clinic a few days after Eden died. Mr Williams submits that the reason for Ms Riley's admission is not known and the painting was given to police by Mr Westbrook but has never been seen since. The reason for Ms Riley's admission to the Launceston clinic is personal to Ms Riley and the location of the painting is not a new fact or evidence capable of affecting the findings.

Mr Williams refers to Deputy Commissioner Tilyard writing to the Westbrooks on 29 January 2016 advising them that the matter was before the coroner and that the coroner will be provided with a copy of the investigation report undertaken by Inspector Hopkins. As mentioned previously I believe that report was part of the material before Coroner McTaggart and therefore is not a new fact or evidence capable of affecting the findings.

Section 58 (l) (f) of the Act - there is another compelling reason to reopen the investigation.

Under this heading Mr Williams refers to a letter written by the then Police Minister, Rene Hidding to the Independent Member for McIntyre, Tania Rattray MLC on 9 October 2017 and enclosed a copy. It does not appear the letter has been enclosed, there is a letter from Ms Rattray to Mr Hidding dated 26 September 2017 and there is a letter from the Premier, Peter Gutwein to Mr Westbrook dated 11 September 2020 and a handwritten note from Ms Rattray which appears to be addressed to Mr Westbrook and post marked 12 November 2017. In any event the issue raised is that Mr and Mrs Westbrook have requested copies of correspondence between Tasmania Police and the Coroner's Office concerning any investigations carried out in relation to the release of the report to Mr Hidding and that correspondence has not been provided. This is not a matter which could be regarded as another compelling reason to reopen the investigation. This relates to issues raised about the release of the report not whether the investigation should be reopened and the findings re-examined.

Mr Williams further submits that in summary Mr and Mrs Westbrook remain critical of the efforts undertaken by police, including road closures, restricted access to the area and the erection of shielding Eden's body from the public. As I understand the situation these matters have been extensively canvassed with Tasmanian Police and addressed and are not relevant to my consideration as to whether the investigation should be reopened and the findings re-examined.

In conclusion for the above reasons I refuse the application pursuant s58 of the Act to reopen the investigation into the death of Eden and re-examine some or all of the findings made by Coroner McTaggart.