



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2016 5821

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

Findings of:	<b>Simon McGregor, Coroner</b>
Deceased:	<b>STEPHEN JAMES JOHNSTON</b>
Delivered on:	12 February 2020
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Hearing date:	4 June 2019
Counsel assisting the Coroner:	Mr. Rishi Nathwani
Catchwords:	Suspected homicide, no person charged with an indictable offence in respect of a reportable death, mandatory inquest

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## **HIS HONOUR:**

### **BACKGROUND**

1. Stephen Johnston (**Mr Johnston**) was a 57-year old man who had resided alone in Warrnambool for approximately ten years before his death on 8 December 2016.
2. Mr Johnston was married to Catherine Johnston, with whom he had two children. They divorced in 2006 but Mr Johnston maintained a friendly relationship with his ex-wife and remained close with his two children. During his marriage, Mr Johnston struggled to gain employment and heavily consumed alcohol.
3. Mr Johnston's medical history included chronic back pain, depression, obesity and ischaemic heart disease for which he sought help from his General Practitioner.<sup>1</sup> He was instructed on various occasions to reduce his alcohol intake which he struggled with and was finding it difficult to control.
4. On 7 December 2016 at approximately 5.00pm, Kevin Knowles (**Mr Knowles**) and Amanda Bourke (**Ms Bourke**) travelled to Suzanne Crescent, Warrnambool to visit their friend Dwayne Clarke (**Mr Clarke**). Mr Clarke resided in the neighbouring unit of Mr Johnston's home. When Mr Knowles and Ms Bourke arrived, they noticed Mr Clarke was not home. Hearing Mr Johnston over the fence, Mr Knowles asked Mr Johnston where Mr Clarke was. He said he went to visit his mother but invited Mr Knowles and Ms Bourke to his house for a drink.
5. All three sat in the backyard and consumed alcohol. It is unconfirmed what Mr Johnston was drinking but it was believed to be some form of straight spirit. At 7:00pm, Denis Gleeson (**Mr Gleeson**) was walking his dog and found Ms Bourke in the front yard of Mr Johnston's house. She was upset with Mr Knowles but invited Mr Gleeson to the backyard to join them all for a drink, which he did.<sup>2</sup>
6. At approximately 7.30pm, Mr Gleeson left the backyard to return home. It appeared that Mr Johnston, Mr Knowles and Ms Bourke were all intoxicated. Mr Johnston was quiet, but according to Mr Gleeson, this was not out of character for him.

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<sup>1</sup> Coronial brief, statement of Dr Ohide Otome, page 436.

<sup>2</sup> Coronial brief, statement of Denis Gleeson, page 52.

7. At 7.48pm, Mr Knowles and Ms Bourke left Mr Johnston's home,<sup>3</sup> by their accounts leaving Mr Johnston intoxicated but unharmed.<sup>4</sup>
8. At approximately 11:00pm, Mr Knowles and Ms Bourke returned to Mr Clarke's house to stay there for the night. Whilst walking past Mr Johnston's house, they saw him naked on the front lawn and covered in bruises and blood.<sup>5</sup>
9. Mr Knowles and Ms Bourke helped carry Mr Johnston inside his house and lay him on the lounge room floor. Mr Knowles offered to call Mr Johnston an ambulance, but he refused. Mr Johnston was intoxicated but responsive. Mr Knowles and Ms Bourke helped Mr Johnston to the bathroom where he fell over multiple times being unable to support his own weight.
10. After laying Mr Johnston back on the floor in the lounge room, Ms Bourke asked if she could use Mr Johnston's car to purchase some cigarettes. He said yes and Mr Knowles and Ms Bourke took the car and Mr Johnston's wallet. The pair left Mr Johnston's home at 3:02am on 8 December 2016 and drove to McDonalds and a service station to purchase items using Mr Johnston's bank card. They later drove the car to their own home for the remainder of the night.
11. Mr Knowles and Ms Bourke returned to Mr Johnston's home at approximately 1:30pm on 8 December 2016. They noticed Mr Johnston had not moved from the position on the floor where they left him. Mr Knowles and Ms Bourke contacted emergency services.
12. Police and paramedics attended the residence, and Mr Johnston was transported via ambulance to Warrnambool Base Hospital.<sup>6</sup>
13. At 9:00pm 8 December 2016, Mr Johnston was pronounced deceased.<sup>7</sup>

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<sup>3</sup> CCTV footage.

<sup>4</sup> But see analysis below.

<sup>5</sup> Coronial brief, statement of Detective Senior Constable Craig Wastell, page 134.

<sup>6</sup> Coronial brief, statement of Senior Constable Luke Hunter, page 97.

<sup>7</sup> Coronial brief, statement of First Constable Tim Chester, page 102.

## THE PURPOSE OF A CORONIAL INVESTIGATION

14. Mr Johnston's death constituted a "reportable death" under the *Coroners Act 2008* (Vic) (**the Act**), as his death occurred in Victoria, and was unexpected, violent and not from natural causes.<sup>8</sup>
15. The jurisdiction of the Coroners Court of Victoria is inquisitorial.<sup>9</sup> The Act provides for a system whereby reportable deaths are independently investigated to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.<sup>10</sup>
16. It is not the role of the Coroner to lay or apportion blame, but to establish the facts.<sup>11</sup> It is not a coroner's role to determine criminal or civil liability arising from the death under investigation, or to determine disciplinary matters.
17. The term "cause of death" refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
18. For coronial purposes, "the circumstances in which death occurred" refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all of the circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.
19. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the "prevention" role.
20. Coroners are also empowered:
  - (a) to report to the Attorney-General on a death;
  - (b) to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and

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<sup>8</sup> Section 4 *Coroners Act 2008*.

<sup>9</sup> Section 89(4) *Coroners Act 2008*.

<sup>10</sup> See Preamble and s 67, *Coroners Act 2008*.

<sup>11</sup> *Keown v Khan* (1999) 1 VR 69.

(c) to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice. These powers are the vehicles by which the prevention role may be advanced.

21. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.<sup>12</sup> The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.
22. Section 52(2) of the Act provides that it is mandatory for a coroner to hold an inquest into a death if the death or cause of death occurred in Victoria and a coroner suspects the death was as a result of homicide (and no person or persons have been charged with an indictable offence in respect of the death), or the deceased was immediately before death, a person placed in custody or care, or the identity of the deceased is unknown.
23. While Mr Johnston's identity was not in dispute and he was not a person placed in "*custody or care*" as defined by section 3 of the Act, his death is considered to be a homicide. Therefore, it is mandatory to conduct an inquest into the circumstances of his death as no person or persons have been charged with an indictable offence in respect of the death.

## INQUEST HEARING

24. My investigation phase preceded, and informed, my decision about whether to hold an inquest. I decided to do so, and by my direction, the scope of the oral evidence at the Inquest into the death of Mr Stephen Johnston, was restricted to the following topics:
  - (i) Did Mr Johnston die as a result of third-party involvement, or did he die by virtue of self-inflicted injuries and/or existing comorbidities?
  - (ii) If a third party was involved, does the evidence available lead to the identification of the third party?
25. For completeness, I observe that I formed the view that the balance of my statutory tasks could be completed to the requisite standard of proof without an inquest.

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<sup>12</sup> (1938) 60 CLR 336.

26. By the end of the Inquest, I was satisfied that the evidence before me established to the requisite standard that:
- (i) Mr Johnston died as a result of blunt force trauma, coupled with hypothermia, that led to his body shutting down. His injuries, in particular to his head, were not caused by falls, rather by an assault upon him.
  - (ii) It follows that a third party was involved. The evidence demonstrates that Kevin Knowles and Amanda Bourke were both involved in the assault and subsequent neglect of Mr Johnston that ultimately led to his death.
27. Having reached this conclusion, I will refer the matter to the Director of Public Prosecutions to consider whether criminal charges ought to be laid against Mr Knowles only, as Ms Bourke is now deceased herself.

### **The Evidence**

28. At the inquest, the only witness who gave evidence was Mr Darren Mitchell, an acquaintance of Mr Knowles.
29. Mr Knowles was summonsed to give oral evidence at the inquest. He answered that summons but sought a certificate against self-incrimination under the *Evidence Act 2008*. Mr Knowles had counsel representing him. The indemnity was not granted to Mr Knowles, but following the refusal of the indemnity, Mr Knowles was excused by me from further compliance with his summons. Mr Knowles did not seek to voluntarily give evidence without the protection of a certificate.
30. A signed statement from Mr Knowles, a police interview with him, letters written by him to Ms Bourke and comments made by him to independent witnesses were received into evidence during the hearing.
31. Ms Bourke was not available to give evidence, as she died in the presence of Mr Knowles in 2018. However, a letter written by her, a statement signed by her, and her police interview and comments made by her to independent witnesses were in evidence before me. More on that later.

32. The remainder of the Coronial Brief was also admitted into evidence.

*Did Mr Johnston die as a result of third-party involvement, or did he die by virtue of self-inflicted injuries and/or existing comorbidities?*

33. There was a significant amount of evidence relating to the medical cause of Mr Johnston's death.

34. Mr Johnston's medical history included chronic back pain, depression, obesity and ischaemic heart disease, for which he had already sought help from his General Practitioner. This GP instructed Mr Johnston on various occasions to reduce his alcohol intake. Whilst Mr Johnston also had chronic pain in his knee there was no reported history of falls.<sup>13</sup>

35. On 8 December 2016, MICA paramedics arrived at Mr Johnston's home address of Suzanne Crescent at 1.25pm. On attending to Mr Johnston, they observed him to have a left forehead laceration, a large bruise to the left eye, bruising to the left humerus, bruising to the right shoulder and complaining of pain to the abdomen that was aggravated by movement and palpitation. Other bruises were noted to his abdomen and thigh. Mr Johnston was reported to be groaning and combative. He was treated at the scene to stabilise him. A blanket was placed over Mr Johnston in an attempt to warm him. A thermal blanket was also used. He was transported to the hospital when his Glasgow Coma Score increased.<sup>14</sup>

36. At the hospital, Mr Johnston received treatment, but his condition soon deteriorated. He was placed on life support with a poor prognosis. He passed away at 9pm.

37. At the hospital, he was noted to have ongoing hypotension and hypoxia and was unable to explain what had happened. Mr Johnston suffered a respiratory arrest and became unstable, with worsening hypotension and hypoxia. It was postulated that the possible cause of death at that time was "multi-trauma leading to multi-organ failure."<sup>15</sup> His care there was reasonable and timely.

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<sup>13</sup> Coronial Brief, Warrnambool Medical Clinic Records of Stephen Johnston, page 341.

<sup>14</sup> Coronial Brief, Statement of Troy David Neal dated 24 December 2016, page 34-36.

<sup>15</sup> Coronial Brief, E-Medical Deposition Form, Dr Belchi Chiezey, dated 8 December 2016, page 454.



38. On 9 December 2016, a post mortem examination was conducted upon the body of Mr Johnston by a pathologist at the Victorian Institute of Forensic Medicine, Dr Linda Iles.<sup>16</sup> She concluded the cause of death to be Complications of multiple blunt force injuries in a man with ischaemic heart disease and alcoholic liver cirrhosis which was contributed to by hypothermia.<sup>17</sup>
39. Dr Iles noted 101 individual injuries on external examination. She found that there was significant blunt head injury comprising a laceration to the left frontal scalp associated with underlying base of skull fracture extending across the left middle cranial fossa into the right.<sup>18</sup>
40. Toxicology evidenced that Mr Johnston had alcohol in his system with a concentration of 0.07%. That would have been higher the previous evening had he stopped drinking after receiving the injuries he had. Oxycodone, atenolol and sertraline was also present in his blood specimen.<sup>19</sup>
41. Dr Iles concluded that Mr Johnston had sustained a number of blunt force injuries to his torso, limbs and head, the latter of which was associated with skull fracture and significant injury to underlying brain tissue. It was not possible to determine the exact cause of these blunt force injuries at autopsy. She concluded however that given the concentration of bruising to Mr Johnston's back and the back of his legs, it was unlikely that the totality of the injuries could be attributed to falls. An assault could not be excluded.<sup>20</sup>
42. Dr Iles provided a supplementary report<sup>21</sup> within which she was asked to further consider whether the injuries to Mr Johnston were caused by a fall(s). She commented that:
- (i) Injuries to the back of the body and back of the thighs are less commonly sustained in falls;<sup>22</sup>
  - (ii) The multiplicity of injuries to multiple planes of Mr Johnston's body in areas less commonly injured in simply falls (e.g. back, back of thighs, genitalia) that has led to her conclusion that it is unlikely that the totality of Mr Johnston's injuries can be

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<sup>16</sup> Coronial Brief, First Statement of Dr Linda Iles, Pathologist at VIFM, dated 10 April 2017, page 147-172.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Coronial Brief, Supplementary Statement of Dr Linda Iles, Pathologist at VIFM, dated 4 March 2019

<sup>22</sup> Ibid, para 1.

attributed to falls. She observed that there is the suggestion of tram-track like appearance to bruising on the back of the thigh (although indistinct). Tram track bruising is caused as a result of impact with a long, relatively thin implement, that could be caused by being struck with such an implement, or falling onto a long, thin surface.<sup>23</sup>

- (iii) Mr Johnston suffered a blunt head injury that manifested in different forms of injury to the scalp, skull, brain and its covering. The head injury was due to blunt force trauma and was not multifactorial.<sup>24</sup>

- 43. I pause here to explain that Dr Iles was not provided with the other evidence I possessed about how Mr Johnston may have received the injuries. This was a deliberate choice on my behalf, so that her conclusions were drawn purely from what was evident during her post-mortem examination.
- 44. Dr Iles concluded that the large number of injuries to several parts of Mr Johnston's body in various areas led her to conclude it was unlikely that the totality of injuries were caused by falls. There were 101 of these identified injuries on external examination alone. Dr Iles concluded there had been significant blunt head injury and that the head injury was due to blunt force trauma (and not multifactorial).
- 45. Other medical evidence before the Court demonstrates that Mr Johnston had no reported history of falls, nor of self-harm, even though he would regularly see his General Practitioner. I therefore conclude that Mr Johnston's injuries, which caused his death, were not self-inflicted nor the result of falls.
- 46. The only plausible explanation, which becomes satisfactorily probable in the absence of any real alternative, is that the relevant injuries were caused by the actions of a third party. This conclusion is also consistent with significant amounts of other evidence.

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid, para 2.

*If a third party was involved, does the evidence available lead to the identification of that third party?*

47. Since I am satisfied that Mr Johnston's injuries, which ultimately caused his death, were not the result of falls or self-infliction, it logically follows that those injuries must have been caused by a third party. The balance of this evidence has satisfied me, to the *Briginshaw* standard, that that person was Mr Knowles, with Ms Bourke being present, and potentially involved, as well. I will now survey that evidence.

#### *Last Known Movements of Stephen Johnston*

48. At approximately 5pm on 7 December 2016, Mr Knowles and Ms Bourke, who were in a relationship,<sup>25</sup> travelled to Suzanne Crescent, Warnambool to visit Dwayne Clarke. Mr Clarke was Mr Johnston's next-door neighbour. As it happened, Mr Clarke was out visiting family. Mr Knowles and Ms Bourke stood in Mr Clarke's backyard. Whilst there, they heard Mr Johnston, who told them Mr Clarke was visiting his mother. According to Mr Knowles and Ms Bourke, Mr Johnston invited them over for a drink, which they accepted. Ms Bourke had a bottle of vodka that they all then consumed.<sup>26</sup>
49. Denis Gleeson, a friend of Mr Clarke, decided to walk his dog to Mr Clarke's home address. His telephone GPS indicated he arrived at 6.01pm. He noted Mr Clarke was not home and so walked to another friend's address where he stayed for an about an hour. He walked back past Mr Clarke's house at around 7pm when he saw Ms Bourke in front of Mr Clarke's unit, with her head between her knees whilst sitting on a low fence. Mr Gleeson enquired what was wrong. Ms Bourke replied that Mr Knowles was an arsehole. She invited Mr Gleeson to Mr Johnston's backyard for a drink. Mr Gleeson accepted, and he and his dog went into the backyard.<sup>27</sup>
50. Mr Gleeson noticed Mr Knowles and Mr Johnston in the backyard by the shed. He noted that Mr Knowles was "very drunk" and described Mr Johnston as being "drunk" also. He saw them tipping a bottle into glasses noting it was not wine. Mr Gleeson drank two cans of beer but did not stay long as the others were all pretty drunk. Whilst there, Mr Gleeson described

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<sup>25</sup> Coronial Brief, Statement of Kevin Knowles, dated 8 December 2016, pages 24-29.

<sup>26</sup> Ibid.

<sup>27</sup> Coronial Brief, Statement of Denis Gleeson, dated 9 December 2016, pages 50-54.

Mr Knowles as very affectionate towards him, trying to kiss and cuddle him whilst also telling him that he loved him. Mr Knowles also fell off the milk crate he was sitting on. Later, as Mr Gleeson left, Mr Knowles again fell over on his back. Mr Gleeson formed the view that this was because he was drunk, although he also considered he may have taken drugs before he arrived. Throughout, he noted that Mr Johnston was quiet (as he usually was) and that Ms Bourke mainly played with his dog; she did not say anything else about the problems between her and Mr Knowles. He left them in the backyard at 7.29pm arriving at his home at 7.31pm. He had not noticed any animosity between any of them. When he left, Mr Johnston was wearing shorts and was not wearing a top.<sup>28</sup>

51. At some point between 7-7.30pm, Ms Theresa Bouchier was at home in Suzanne Crescent in her bedroom at the front of her house when she heard yelling just out the front that caused her to look out of the window. It was still light enough to see. She saw Mr Johnston walking back down his driveway; she also saw a male yelling at Mr Johnston who was in the company of a female who was laughing at Mr Johnston, making fun of him. The male and female walked off towards Morris Road.<sup>29</sup>
52. Mrs Bouchier described the male as having a dark short cropped hair, 50-55 years old, thin/skinny with tight fitting clothes. The female had dark hair. She commented that she didn't take much notice of the female as Mr Johnston was walking back down his driveway. He appeared to be unsteady on his legs. She had known Mr Johnston for 12 years and that in that time, he had never caused any problems.<sup>30</sup> She later recalled that Mr Johnston had a hammer in his hand when the male and female were walking away.<sup>31</sup>
53. CCTV from 17 Suzanne Crescent depicted Ms Bourke and Mr Knowles leaving Suzanne Crescent at 7.48pm. Both appear unsteady on their feet. Ms Bourke did not appear to have any blood on her white dress at this time. Both walked towards Morris Road.<sup>32</sup>
54. Given the timing, the CCTV and descriptions, I am satisfied that the two people seen by Ms Bouchier yelling and laughing at Mr Johnston were Mr Knowles and Ms Bourke. The incident was such that it caused Mr Johnston to arm himself with a hammer.

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<sup>28</sup> Ibid.

<sup>29</sup> Coronial Brief, Statement of Theresa Bouchier, dated 8 December 2016, pages 37-41.

<sup>30</sup> Ibid.

<sup>31</sup> Coronial Brief, Statement of Theresa Bouchier, dated 16 December 2016, pages 42-44.

<sup>32</sup> Coronial Brief, CCTV from 17 Suzanne Crescent; Statement of Katie Johnston, pages 121-133.

55. The CCTV from 17 Suzanne Crescent shows Ms Bourke returning to Suzanne Court later that evening. She is seen to walk past 17 Suzanne Crescent at 11.12pm.<sup>33</sup> The CCTV coincided with the statements of Mr Knowles and Mr Bourke who stated that they had returned to Suzanne Crescent around 11pm with a view to staying at Mr Clarke's house and both suggest they came across Mr Johnston in his front drive, naked and injured.<sup>34</sup>
56. There is no evidence from any neighbour between 7.48pm – 11pm that indicates any noise was heard by any neighbours, that their attention was drawn to Mr Johnston's property or that anything untoward had occurred. Not one other person noticed Mr Johnston allegedly seriously injured on the floor by his car during this period. There is no CCTV that suggests an alternative assailant attended the scene and injured Mr Johnston and then fled. The only evidence available that suggests Mr Johnston was discovered injured, in his own driveway, at 11pm, comes from Ms Bourke and Mr Knowles. Other evidence shows their accounts to be littered with inconsistency and ultimately, not to be truthful.

#### *The Accounts of Bourke and Knowles*

57. Ms Bourke and Mr Knowles provided statements to the police, were interviewed as suspects and also made comments to the police/others not contained in their statements. They also wrote letters relevant to this Inquest. That evidence is inconsistent with their own accounts at differing times as well as being inconsistent as between each other.
58. The major inconsistency is that Mr Knowles denies that he assaulted Mr Johnston at all. This is completely contrary to the stance taken by Ms Bourke, who at various times says Mr Knowles pushed, slapped and/or punched Mr Johnston, so much so she felt it necessary to remove the CCTV from Mr Johnston's house.
59. Mr Knowles' LEAP criminal history was in evidence.<sup>35</sup> It runs for approximately 50 pages, and details hundreds of prior convictions, many of which contain elements of dishonesty or violence. As a generalisation, I do not accept his evidence, save for those aspects of it which can be independently corroborated.

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<sup>33</sup> Ibid.

<sup>34</sup> Coronal Brief, Statement of Kevin Knowles dated 8 December 2016, pages 24-29; Statement of Amanda Bourke dated 8 December 2016, pages 30-33.

<sup>35</sup> Coronal brief, pages 832-884.

60. Mr Knowles' statement to the police contained the usual perjury warning and declaration within it and was signed by him.<sup>36</sup> Notwithstanding this, he has probably committed the offence of perjury within this statement. He initially told police that he and Ms Bourke got a lift home in Mr Johnston's ute and did not want to say who gave them a lift and that the next day they got a lift back to Mr Johnston's property. He subsequently accepted that was a lie. Mr Knowles later acknowledged that Ms Bourke had driven, and he had lied in the statement so as not to reveal this occurrence, as neither he nor Ms Bourke had a valid licence.<sup>37</sup>
61. Additionally, his police statement does not mention the taking of Mr Johnston's car, wallet, the bank cards nor the later use of the bank card at a service station and McDonalds. Further, no mention is made as to the removal of a modem by Ms Bourke. When asked about these matters in his record of interview, Mr Knowles suggests Mr Johnston lent them the car.<sup>38</sup> He then detailed how they went to the shops/home and bought cigarettes, McDonalds, a pie and chicken strips.<sup>39</sup> In fact, bank records show purchases of \$126.20 at the petrol station (in 2 purchases) and \$19.35 at McDonalds. The \$126.20 at the station is worth far more than the items Mr Knowles suggested they purchased. It demonstrates more dishonesty on his behalf.
62. On his own admission, he had lied in his statement and more importantly is someone willing to lie when it suit his needs. He is also prepared to withhold information that would implicate him (e.g. the bank cards, car etc).<sup>40</sup> This is reinforced by Mr Knowles' antecedent criminal history which includes a number of dishonesty offences.<sup>41</sup> Finally, within letters he wrote to Ms Bourke from prison whilst this matter was under investigation, he confirms he is prepared to lie on oath if such a course of action suits his needs.<sup>42</sup> Consequently, Mr Knowles is a most unreliable witness.
63. Mr Knowles has consistently denied that he assaulted Mr Johnston. However, there exists a body of evidence that contradicts him:

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<sup>36</sup> Coronial brief, Statement of Kevin Knowles, dated 8 December 2016, pages 24-29.

<sup>37</sup> Coronial brief, Record of Interview of Kevin Knowles, pages 558-692, Q90; Q518-Q519; Q923-Q925.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid, Q923-Q925.

<sup>40</sup> Compare his statement and interview responses to Exhibit B, 4 Letters from Kevin Knowles to Amanda Bourke.

<sup>41</sup> Coronial brief, Criminal Priors of Kevin Knowles, pages 832-871.

<sup>42</sup> Exhibit B, 4 Letters from Kevin Knowles to Amanda Bourke and 1 letter from Ms Bourke to her mother, provided for by the family of Amanda Bourke.

- (i) Forensic evidence at the home address of Stephen Johnston does not indicate the presence of any other person at that address apart from Mr Knowles and Ms Bourke;
- (ii) Mr Knowles and Ms Bourke were the last known people to see Mr Johnston alive;
- (iii) The last sighting by an independent witness, Ms Bouchier, indicated there had been an incident where Mr Knowles was shouting at Mr Johnston with Ms Bourke laughing.<sup>43</sup> Mr Johnston had felt it necessary to arm himself with a hammer;<sup>44</sup>
- (iv) Mr Knowles had an injury to his head. He was wholly inconsistent as to how that occurred. He did not mention it at all in his statement to police. He told the police in interview at one point that he had fallen off a bench.<sup>45</sup> Mr Gleeson recalled in his second statement he had fallen off a crate. Mr Knowles suggested in his interview and to police at the scene that he had been hit on the head by Ms Bourke.<sup>46</sup> She denied this;<sup>47</sup>
- (v) Ms Bourke in her contact with police set out that Mr Knowles did assault Mr Johnston.<sup>48</sup> She said Mr Johnston did not fight back, as he could not really stand. When Mr Knowles punched Mr Johnston, she walked off. When she returned, there was dry blood on Mr Johnston and it had been caused by Mr Knowles.<sup>49</sup> When they later left Mr Johnston, she described him as having been beaten;<sup>50</sup>
- (vi) Ms Bourke reported to Darren Mitchell on 8 December that Mr Knowles “may have” smacked Mr Johnston and that as a consequence she removed the CCTV (to hide that fact);<sup>51</sup>
- (vii) Ms Bourke saw the injuries to Mr Johnston and accepted they had not all been caused by falls.<sup>52</sup> This is supported by the expert opinion of Dr Iles;
- (viii) When interviewed by the Police, Mr Knowles stated he had in fact asked the neighbour (obviously Ms Spikin by context) if anything had happened;<sup>53</sup> this is contrary to Ms Spikin’s statement and memory, where she in fact asked Mr Knowles if Mr Johnston had had a heart attack, to which Mr Knowles replied in the negative and added that Mr Johnston had been “bashed up.”<sup>54</sup> I find that this prompt rejoinder

<sup>43</sup> Coronial Brief, Statement of Theresa Bouchier, dated 8 December 2016, pages 37-41.

<sup>44</sup> Coronial Brief, Statement of Theresa Bouchier, dated 16 December 2016, pages 42-44.

<sup>45</sup> Coronial brief, Record of Interview of Kevin Knowles, pages 558-692, Q238

<sup>46</sup> Ibid Q83 and Q250

<sup>47</sup> Coronial brief, Statement of Luke Hunter, dated 26 December 2016, pages 96-100.

<sup>48</sup> Coronial brief, Interview of Amanda Bourke, pages 693-819; Statement of D/S/C Hughes, dated 12 June 2017, pages 113-120; Statement of Darren Mitchell, 15 December 2016, pages 45-49.

<sup>49</sup> Ibid, Interview of Amanda Bourke, pages 693-819, Q253.

<sup>50</sup> Ibid, Q262.

<sup>51</sup> Coronial brief, Statement of Darren Mitchell, 15 December 2016, pages 45-49.

<sup>52</sup> Interview of Amanda Bourke, pages 693-819, Q160.

<sup>53</sup> Above, n45, Q91; Q409-413

<sup>54</sup> Coronial Brief, Marilyn Spikin, dated 9 December 2016, pages 59-62

indicated that Mr Knowles had insight into what had actually happened to Mr Johnston;

- (ix) Ms Bourke told police that she told Mr Knowles to stop but he gets into a psychosis;<sup>55</sup>
- (x) Ms Bourke told Detective Hughes on 8 December 2016 that Mr Knowles had pushed Mr Johnston and that there may have been a fight over how Mr Knowles treated Ms Bourke and that Mr Knowles had punched Mr Johnston in his back yard;<sup>56</sup>
- (xi) A/Sergeant Chatfield had noticed two large patches of blood approximately 1m by 1.5m in size on the grass behind the gate into the backyard, with drips of blood visible on the gate.<sup>57</sup> This is consistent with where Ms Bourke said the incident occurred;
- (xii) Mr Knowles and Ms Bourke had apparent injuries on their bodies when examined by Dr Schreiber whilst in police detention;<sup>58</sup>
- (xiii) Letters written by Mr Knowles to Ms Bourke lead to the inference that both Ms Bourke and Mr Knowles are aware of what happened to Mr Johnston. See paragraphs 75 and 76 below.

64. Mr Knowles was known to be violent, and was aggressive on the 7 December 2016:

- (i) Mr Knowles has a significant history of convictions for violence;<sup>59</sup>
- (ii) Mr Knowles was known to local police as a family violence recidivist;<sup>60</sup>
- (iii) Mr Knowles accepted in his interview that he had previously assaulted Ms Bourke;<sup>61</sup>
- (iv) There are entries in Mr Johnston's diary that on two occasions he drove Ms Bourke to the police station so she could report Mr Knowles for assaulting her;<sup>62</sup>
- (v) On 21 November 2016, an intervention order was made against Mr Knowles. On 26 January 2017, Ms Bourke was seen with a black eye and reported that Mr Knowles had caused it the previous night. She said that he grabbed her around the throat, covered her mouth, tried to stop her breathing, threatened to kill her with a knife, threatened to bury her. She said he was becoming more erratic when taking

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<sup>55</sup> Coronial brief, Interview of Amanda Bourke, pages 693-819, Q330.

<sup>56</sup> Coronial Brief, Statement of D/S/C Hughes, dated 12 June 2017, pages 113-120

<sup>57</sup> Coronial Brief, Statement of Jarrod Chatfield, dated 11 December 2016, pages 87-89.

<sup>58</sup> Coronial Brief, Statements of Dr Schreiber dated 19 December 2016, pages 70-77.

<sup>59</sup> Coronial Brief, Criminal Priors of Kevin Knowles, pages 832-871.

<sup>60</sup> Coronial Brief, Statement of Luke Hunter, dated 26 December 2016, pages 96-100.

<sup>61</sup> Coronial Brief, Record of Interview Kevin Knowles, pages 558-692, Q105.

<sup>62</sup> Coronial Brief, Appendix, Diary of Stephen Johnston, entries on 20 June 2016 & 19-21 November 2016;



methylamphetamine ('Ice'). Mr Knowles was charged and remanded into custody. He later pleaded guilty to the offence;<sup>63</sup>

- (vi) Whilst in prison awaiting resolution of this matter, Mr Knowles wrote several letters to Ms Bourke within which he admitted the violence and suggested his behaviour was due to 'Ice' use;<sup>64</sup>
- (vii) On 7 December 2016, after leaving Mr Johnston's home address after 7.48pm, Mr Knowles and Ms Bourke found themselves in contact with police, including Officer Patrick Day. He was arresting Ms Bourke. Mr Knowles became aggressive. He had an unusual amount of blood around the front of his neck but not on his clothing. The wound had no blood on the back of the neck and looked damp, smelling of alcohol. Officer Day, who had had contact with Mr Knowles previously, formed the view that Mr Knowles was showing recent signs of drug use – agitated, white paste around his mouth, nervous and jumpy.<sup>65</sup>
- (viii) Prior to leaving Mr Johnston's home, Mr Gleeson had seen Ms Bourke upset outside the home of Mr Johnston and when he enquired why, she indicated that Mr Knowles was being an arse.<sup>66</sup> In her interview, Ms Bourke said that Mr Knowles was a jealous person.<sup>67</sup> Mr Johnston had challenged why Mr Knowles had begun dating Ms Bourke when her partner, Deon Clarke, was still in prison.<sup>68</sup> She described how Mr Knowles became defensive at this;<sup>69</sup>
- (ix) Ms Bourke also told police that Mr Johnston did not like Mr Knowles as he thought Mr Knowles used and abused people.<sup>70</sup> He refers to Mr Knowles in his diary at times as "the devil," so the two men had a troubled relationship to say the least;<sup>71</sup>
- (x) Mr Gleeson, a friend of Mr Knowles who Mr Knowles had known for years, believes that Mr Knowles is the type of person to get jealous. He also opined that Mr Knowles was so drunk that he was not sure if he had also taken drugs.<sup>72</sup> Mr Mitchell confirmed in his evidence that Mr Knowles can get jealous;<sup>73</sup> and

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<sup>63</sup> LEAP Report of Mr Knowles' assault of Amanda Bourke on 25 January 2017.

<sup>64</sup> See paragraph 75 below.

<sup>65</sup> Coronial Brief, Statement of Sergeant Patrick Day, dated 16 December 2016 pages 106-110.

<sup>66</sup> Coronial Brief, Statement of Denis Gleeson, dated 9 December 2016, pages 50-54.

<sup>67</sup> Coronial Brief, Interview of Amanda Bourke, pages 693-819, Q74

<sup>68</sup> Ibid, Q146, Q152, Q156, Q454.

<sup>69</sup> Ibid, Q163.

<sup>70</sup> Ibid, Q314.

<sup>71</sup> Coronial Brief, Appendix, Diary of Stephen Johnston, see for example, entries on 1-2 June 2016;

<sup>72</sup> Coronial Brief, Statement of Denis Gleeson, dated 9 December 2016, pages 50-54.

<sup>73</sup> Inquest evidence, Darren Mitchell, page 25, Lines 23-31.

- (xi) Letters written by Mr Knowles from prison evidence his strength of feelings for Ms Bourke.<sup>74</sup>

65. In his police statement, Mr Knowles said that he had returned to Mr Johnston's home address after 11pm on 7 December 2016 as Ms Bourke wanted to break into Dwayne Clarke's place and stay there the night. This is contradicted by:

- (i) His interview, in which Mr Knowles stated that they returned to the property as Ms Bourke had left a bag at Mr Johnston's;<sup>75</sup>
- (ii) The CCTV of 17 Suzanne Crescent only shows Ms Bourke returning at 11.12pm. She is dropped off in a car. The owner of that car provided a statement that only Ms Bourke was dropped off. Mr Knowles was not present in that vehicle;<sup>76</sup> and
- (iii) Ms Bourke told police that they returned to the property that evening as they were concerned for the welfare of Mr Johnston.<sup>77</sup>

66. Mr Knowles has also been inconsistent about his reasons for returning to Mr Johnston's home on the 8 December 2016:

- (i) In his statement, Mr Knowles simply stated he had received a lift back to Mr Johnston's home;
- (ii) In police interview, he initially stated that he returned to Mr Johnston's home as he was worried Mr Johnston would say that his car had been stolen;<sup>78</sup>
- (iii) Mr Knowles had told Ms Spikin that they had returned to Mr Johnston to return the beer drunk by them the night before;<sup>79</sup>
- (iv) In her statement, Ms Bourke states that she and Mr Knowles returned to Mr Johnston's home address to "check on Steve;"<sup>80</sup> and
- (v) In interview, Ms Bourke stated they returned to give back Mr Johnston's car<sup>81</sup> and that Mr Knowles felt bad (about the car) so they returned it.<sup>82</sup>

67. Mr Knowles accepts moving relevant evidence. For example, he accepts moving Mr Johnston's bloody shorts into a wheelie bin. There was also a statue within that bin to which

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<sup>74</sup> See paragraph 75-76 below.

<sup>75</sup> Coronial Brief, Record of Interview Kevin Knowles, pages 558-692, Q86-Q87

<sup>76</sup> Coronial Brief, Statement of Louise Wackett, 10 December 2016, pages 65-69.

<sup>77</sup> Coronial Brief, Interview of Amanda Bourke, pages 693-819, Q277.

<sup>78</sup> Coronial Brief, Record of Interview Kevin Knowles, pages 558-692, Q722

<sup>79</sup> Coronial Brief, Statement of Marilyn Spikin, dated 9 December 2016, pages 59-62.

<sup>80</sup> Coronial Brief, Statement of Amanda Bourke, dated 8 December 2016, pages 30-33.

<sup>81</sup> Coronial Brief, Interview of Amanda Bourke, pages 693-819, Q171

<sup>82</sup> Coronial Brief, Interview of Amanda Bourke, pages 693-819, Q302.

Mr Knowles referred.<sup>83</sup> Ms Bourke also suggested that Mr Knowles put Mr Johnston's phone in her bag,<sup>84</sup> where it was later found, covered in blood.

68. Ms Bourke also admitted to removing the CCTV hard drive from Mr Johnston's property. She said she did this because Mr Knowles had punched Mr Johnston once or twice.<sup>85</sup> I accept this evidence.
69. It follows then that if the assault of Mr Johnston had been trivial, there would have been no need to remove CCTV. The removal of CCTV satisfies me that something more serious occurred that night. It leads me to the conclusion that a serious assault had occurred, so much so the pair believed it was necessary to remove any evidence of who had committed it, or the circumstances of how it had been committed. This conclusion is consistent with Ms Bourke admitting to returning on the 8 December to check on Mr Johnston's condition. This course of action would only be necessary if the condition they had last seen him the night before had been more serious than either Mr Knowles or Ms Burke were admitting. Finally, there was evidence that on 8 December 2016, Ms Bourke returned to the crime scene with police in attendance with a view to obtaining her bag from the back of Mr Johnston's car. That was refused.<sup>86</sup> Ms Bourke believed that bag contained the CCTV hard drive that incriminated Mr Knowles and herself. In the event, that hard drive was analysed and unfortunately did not contain any relevant material.
70. Senior Constable Luke Hunter knew Mr Knowles, as he worked closely with him as a recidivist family violence offender.<sup>87</sup> On attending upon Mr Knowles and Ms Bourke on 8 December 2016 in Suzanne Crescent, he believed that Mr Knowles and Ms Bourke were acting suspiciously. He noted that there was no blood on either Mr Knowles or Ms Bourke despite both saying they had found Mr Johnston and moved him, which would ordinarily have resulted in some blood transfer on to them. He was so suspicious that he took pictures of Mr Knowles and Ms Bourke. It was then that he noticed that Mr Knowles had shaved his legs. He did not note any blood on Mr Knowles' neck or legs. Mr Knowles denied he had had a shower.<sup>88</sup> I conclude this is not true.<sup>89</sup>

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<sup>83</sup> See for example Coronial Brief, Statement of Luke Hunter, dated 26 December 2016, p96-100.

<sup>84</sup> Coronial Brief, Interview of Amanda Bourke, pages 693-819, Q706-712.

<sup>85</sup> Coronial Brief, Interview of Amanda Bourke, pages 733, 736.

<sup>86</sup> Coronial Brief, Statement of First Constable Melissa Gray, dated 12 December 2016, pages 90-92.

<sup>87</sup> Coronial Brief, Statement of Luke Hunter dated 26 December 2016, pages 96-100.

<sup>88</sup> Ibid.

<sup>89</sup> See paragraph 71 as to the evidence that contradicts the suggestion Mr Knowles did not clean himself.

71. Further, Mr Gleeson (a good friend of Mr Knowles) had provided evidence that Mr Knowles had rubbed blood on his leg the night previous.<sup>90</sup> The next day, Officer Hunter saw no blood. Further, Officer Day had also seen Mr Knowles the night before and he also noted blood on Mr Knowles; he provided evidence that Mr Knowles had “*an unusual amount of blood around the front of his neck but not his face or clothing*”. Mr Knowles, when asked, showed a cut to the back of his head that he suggested had been caused by Ms Bourke (and not falling over). Officer Day commented on seeing this wound that it was not bleeding and smelt of alcohol.<sup>91</sup> None of this blood was seen by Officer Hunter the next day. I find that Mr Knowles and Ms Bourke had in fact cleaned and shaved as Officer Hunter suspected. This finding is fortified by the evidence of both Ms Bourke and Mr Knowles who accepted that they cleaned blood off Mr Johnston’s car. What is it they were trying to hide? It is relevant that Mr Knowles gave differing accounts as to the wound to his head – either Ms Bourke caused it with a bottle, or on the other hand, it had been caused by falling off a crate. Mr Mitchell also gave incredible oral evidence relating to this injury. In the end, that evidence only diminished his own credit.
72. In his police interview, Mr Knowles sought to use Mr Mitchell as means of confirming the existence of the injury to the back of the head of Mr Knowles, having not mentioned it at all in his statement. He suggested he attended Mr Mitchell’s home address and showed Mr Mitchell this wound, as well as Mr Mitchell’s mother.<sup>92</sup> Mr Mitchell did not mention this at all in his statement.<sup>93</sup> In his oral evidence, Mr Mitchell was also unconvincing on this point. He suggested he had recalled this fact 2 ½ years after making his statement, despite on several other occasions during his evidence indicating he could not past recall matters due to drug use. However, he gave evidence that he had cleaned the wound to Mr Knowles with water and put a band aid on it.<sup>94</sup> He had described blood on the back of Mr Knowles’ neck and not anywhere else.<sup>95</sup> Further, this is inconsistent with the evidence of Sergeant Patrick Day when he saw Mr Knowles around the same time. Sergeant Day noted blood on the front and not back of the neck. He also recalled the wound smelt of alcohol.<sup>96</sup> There was no band aid. There is no evidence of anyone seeing Mr Knowles with a band aid. I find that Mr Mitchell’s oral

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<sup>90</sup> Coronial Brief, Statement of Denis Gleeson, dated 16 December 2016, pages 55-58.

<sup>91</sup> Coronial Brief, Statement of Sergeant Patrick Day, dated 16 December 2016, pages 106-110.

<sup>92</sup> Coronial Brief, Record of Interview Kevin Knowles, pages 558-692, Q83.

<sup>93</sup> Coronial Brief, Statement of Darren Mitchell, dated 15 December 2016, pages 45-49.

<sup>94</sup> Inquest evidence, Darren Mitchell; page 30, lines 18-29; page 31, line 2-14; page 38, line 30 – page 39, line 24.

<sup>95</sup> Ibid, page 38, line 9-21;

<sup>96</sup> Coronial Brief, Statement of Sergeant Patrick Day, dated 16 December 2016 pages 106-110

evidence at the inquest was not reliable and the material in his statement of 15 December 2016 is to be preferred. Mr Mitchell was evidently very close to Mr Knowles. He lied about anonymously calling the police with a false alibi for Mr Knowles. Police enquiries have revealed the anonymous call made in 2017 was made by the mobile phone number provided by Mr Mitchell at the inquest in evidence.<sup>97</sup> Any evidence he provides to exculpate Mr Knowles should be seen in light of these matters. He admitted travelling to this Court for the inquest with Mr Knowles and was in his company regularly in the week before the hearing. It is telling that when pushed, he could not give an account as to how Mr Knowles received the injury to his head but could only say Ms Bourke caused it.<sup>98</sup>

73. There is also evidence that someone had tried to break into Mr Johnston's safe.<sup>99</sup> More likely than not, both Mr Knowles and Ms Bourke were responsible for this. As I have already set out, there is no evidence of anyone else having entered Mr Johnston's property. On this evening, Mr Knowles and Ms Bourke were down to their last few dollars. Ms Bourke had borrowed clothes from Mr Johnston.<sup>100</sup> Days before Mr Johnston's death, Officer Day had arrested Mr Knowles for theft of a car. Mr Gleeson's statement explains that about a week before the death, his friend Mr Knowles had wanted to borrow some money from him. On the day of the incident, Mr Knowles had \$4 on him.<sup>101</sup> Ms Bourke had earlier in the day stolen some alcohol from a shop. Letters between Mr Knowles and Ms Bourke reveal that they argued over his inability to provide money for them.<sup>102</sup> At the scene, two screw drivers had been removed from the shed where Mr Johnston kept his tools.<sup>103</sup> Those two screwdrivers were located in his bedroom around his safe.<sup>104</sup> The safe had damage around it consistent with the forceful application of those two screwdrivers. Mr Knowles did not mention at all, at any time, the damage to the safe. He later made admissions in one of his jail letters to Ms Bourke about stealing items.<sup>105</sup> In contrast, Ms Bourke did mention the safe in her interview.

74. Finally, when Mr Johnston must have been seriously injured, Mr Knowles and Ms Bourke drove Mr Johnston's car to a McDonalds and to a service station, where Mr Johnston's bank

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<sup>97</sup> See additional Statement of Detective Senior Constable Richard Hughes, dated 28 August 2017, confirming Mr Mitchell's phone number was used to make the call he denies.

<sup>98</sup> Inquest evidence, Darren Mitchell; page 38, line 9-21.

<sup>99</sup> Coronial Brief, Statement of Acting Sergeant Carrick, 31 January 2017, pages 84-86.

<sup>100</sup> Coronial Brief, Appendix, Diary of Stephen Johnston, see entries on 12 January, 1 February, 3 July, 5 July, 23 April, 15 June, 11 May, 12 May, 14 May, 1 June, 2 June, 21 July, 7 September.

<sup>101</sup> Coronial Brief, Record of Interview Kevin Knowles, pages 558-692, Q119

<sup>102</sup> Exhibit B

<sup>103</sup> Above n 99.

<sup>104</sup> Ibid.

<sup>105</sup> Exhibit B.

card was used.<sup>106</sup> They both suggest that Mr Johnston allowed them to use his car and cards.<sup>107</sup> The amounts spent on the cards is not consistent with what Ms Bourke and Mr Knowles say they purchased. This evidence, albeit circumstantial, satisfies me that Mr Knowles and Ms Bourke attempted to break into Mr Johnston's safe. They also took his car and wallet without his genuine consent. Mr Johnston's phone, as well as stolen bank cards in the names of other victims, were found in Ms Bourke's possession on the 8 December 2016.<sup>108</sup> Both either failed to mention these matters when asked or later lied about them. My conclusion here is consistent with their antecedent history of repeated acquisitive crime.<sup>109</sup>

75. Ms Bourke subsequently died, by drowning, on 18 January 2018. Mr Knowles was present. The coronial inquest into her death is ongoing. Her family provided my investigator with copies of handwritten letters by Mr Knowles to Ms Bourke from jail, and also a letter from her to her mother.<sup>110</sup> The letters contain a number of relevant admissions, literally from the hands of Mr Knowles:

- (i) He had wanted a relationship with Ms Bourke for years and was not going to lose her now;
- (ii) That he used Ice and did not want Ms Bourke telling the police that he was on Ice;
- (iii) That he was encouraging Ms Bourke to say she was drunk or medicated when she made a statement against him so he would not be convicted based upon what she had already told police;
- (iv) He also put pressure on her not to give evidence against him as she was not a "dog" and she should not talk to the police ("jacks")
- (v) That he was prepared to lie in the witness box to get Ms Bourke off her other charges;
- (vi) That he promised they would never be broke again;
- (vii) That he stole a car to get Ms Bourke to court;
- (viii) That he alleged Ms Bourke struck him in the head with a bottle;
- (ix) He admitted assaulting Ms Bourke, including choking her;

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<sup>106</sup> CCTV and bank statement confirm Ms Bourke and Mr Knowles both drove Mr Johnston's car and made purchases on 8 December 2016.

<sup>107</sup> Coronial Brief, Record of Interview Kevin Knowles, pages 558-692, Q 518-519; Q923-925; Coronial Brief, Interview of Amanda Bourke, pages 693-819, Q302.

<sup>108</sup> Coronial Brief, Statement of First Constable Melissa Gray, dated 12 December 2016, pages 90-92.

<sup>109</sup> Coronial Brief, Prior Criminal History of Kevin Knowles, pages 832-871; Prior Criminal History of Amanda Bourke, pages 872-884.

<sup>110</sup> Exhibit B.

- (x) That “I have never put anyone on the Jacks in my life and will never ever put you in when I say that I am talking about the shit at Steve’s I done wrong, I am sorry but don’t put me out to dry I know you don’t mean what happened but don’t trust jacks.”<sup>111</sup>
- (xi) Mr Knowles told Ms Bourke that the police are trying to get them for Mr Johnston’s house and that they want him in jail so they can get to her. He repeatedly warned her not to go to the police; and
- (xii) That he had not mentioned to anyone “the money taken at Stev’s bank, cashed in coins, bankcards, paywave, safe on the wall and bottle on the head”;
- (xiii) He was stressed about the “Stev shit”.

76. Ms Bourke’s letter to her mother indicated that:<sup>112</sup>

- (i) Mr Knowles “got *real* nasty many times” after he choked her and she made a police complaint against him;
- (ii) The police feared he would kill her, and so wanted to put an intervention order in place, and for her to go into “Witness Protection” immediately, but thereby be separated from her child, which she would not do.

### **Mr Knowles’ right to silence and what inferences may be drawn**

77. Generally, in the criminal arena, in a circumstantial case, it is for a prosecuting body to exclude all reasonable hypotheses consistence with innocence. In *Weissensteiner v The Queen* (1993) 178 CLR 217 at [227]-[228], the High Court stated that,

*in a criminal trial, hypotheses consistent with innocence may cease to be rational or reasonable in the absence of evidence to support them when that evidence, if it exists at all, must be within the knowledge of the accused*

78. *Weissensteiner* was quoted with approval in *RPS v the Queen* (2000) 199 CLR 620. It was also considered more recently in *The Queen v Baden-Clay* [2016] HCA 35, where at [51] the court held that,

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<sup>111</sup> Exhibit B, pp2-3.

<sup>112</sup> *Ibid.*

*Weissensteiner* was not simply a case in which the accused failed to contradict direct evidence of other witnesses. It was a case in which, if there were facts which explained or contradicted the evidence against the accused, they were facts which were within the knowledge only of the accused and thus could not be the subject of evidence from any other person or source.

79. The Victorian Court of Appeal has recently held that *Weissensteiner* remains applicable to appellate consideration of the “unsafe” verdict ground.<sup>113</sup> In such circumstantial cases, it is permissible for the tribunal of fact to hold an accused’s silence against that accused where no evidence of an innocent hypothesis is put forward by the accused person, despite those facts being uniquely within the knowledge of the accused. Of course, this Court’s standard of proof is not as high as that of the criminal courts, so this reasoning pathway is all the more readily available in this jurisdiction.
80. The facts relating to Mr Johnston’s death are mostly circumstantial. As noted above, Mr Knowles sought a certificate against self-incrimination and was content to be excused from having to give evidence at the Inquest. He could have voluntarily given oral evidence, then asked again for a certificate of indemnity anyway.<sup>114</sup> Accordingly, there is no innocent hypothesis in evidence, beyond his contradictory and unreliable interview and statement, surveyed above. The contradictions are not only internal, but also apparent in reference to other evidence before me. There are facts only within the knowledge of Mr Knowles that cannot now be the subject of evidence from any other source. Consequently, this is a case where I will use the failure of Mr Knowles to give evidence against him, in the sense that there is no creditable evidence of an alternative, innocent hypothesis put forward at the Inquest.

## CONCLUSION

81. In the unanimous *Baden-Clay* decision, the High Court of Australia held at [47] that for an inference to be reasonable in a circumstantial case,

*...it must rest upon something more than mere conjecture. The bare possibility of innocence should not prevent a jury from finding the prisoner guilty, if the inference*

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<sup>113</sup> *Molfese v The Queen* [2018] VSCA 297 at footnote [15].

<sup>114</sup> Subsection 128(5) of the *Evidence Act 2008*.



*of guilt is the only inference open to a reasonable man upon a consideration of all the facts in evidence.*

82. With this guidance in mind, I conclude that that:

- (i) Most, if not all, of the 101 documented injuries that caused Mr Johnston's body to shut down, were caused by an assault;
- (ii) Mr Johnston did not receive immediate care and so suffered from hypothermia. This contributed to his death, as did his pre-assault physical condition and medical ailments;
- (iii) Mr Knowles and Ms Bourke were the last people to see him alive;
- (iv) Mr Knowles and Ms Bourke both lied and omitted significant material in sworn statements to the police and then contradicted each other in their respective records of interview;
- (v) The evidence reveals that Mr Knowles and Mr Johnston argued over Mr Knowles' relationship with Ms Bourke, who had been in a relationship with another incarcerated man at the time;
- (vi) Mr Knowles, when drug affected, assaulted Mr Johnston. His criminal history indicates he is predisposed to use violence. He and Ms Bourke left the scene at 7.48pm;
- (vii) Mr Knowles and Ms Bourke were seen by police that evening. Both were aggressive. Mr Knowles had cleaned a wound to his head;
- (viii) Sometime after 11pm, both were at Mr Johnston's home again. At some point, they tried to break into his safe but were unsuccessful;
- (ix) Mr Knowles and Ms Bourke stole Mr Johnston's car, wallet and phone. They both had limited funds at the time and had committed other theft in the days prior. They used the stolen car and cards to purchase items for themselves;
- (x) Ms Bourke removed the CCTV hard drive to cover up the assault of Mr Johnston. The removal of the CCTV indicated the assault was more than trivial;
- (xi) Mr Knowles and Ms Bourke returned to another location where Mr Knowles shaved, before he and Bourke showered or otherwise cleaned away forensic evidence;
- (xii) They returned to Mr Johnston the next day due to concerns about his condition and only considered calling the ambulance service at that time.

83. I conclude that Kevin Knowles was responsible for the injuries and subsequent neglect that caused Mr Johnston's death.

84. To date, no charges have been laid by Victoria Police against anyone in relation to the death of Mr Johnston. As a result of the above investigation and inquest however, I will now refer this matter to the Director of Public Prosecutions to consider charges against Mr Knowles.

85. I convey my sympathy to Mr Johnston's family and friends.

## **MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE**

### **Identity of the Deceased pursuant to section 67(1)(a) of the Act**

86. On 8 December 2016, Catherine Johnston visually identified the body of the deceased to be her ex-husband, Stephen Johnston, born 29 April 1959.

87. Identity is not in dispute and requires no further investigation.

### **Medical cause of death pursuant to section 67(1)(b) of the Act**

88. On 9 December 2016, Dr Iles, a Forensic Pathologist practising at the Victorian Institute of Forensic Medicine, conducted an examination upon Mr Johnston's body and provided a written report, dated 10 April 2017.

89. In the report, Dr Iles concluded that a reasonable cause of death was "*Complications of Multiple Blunt Force Injuries in a Man with Ischaemic Heart Disease and Alcoholic Liver Cirrhosis with a Contributing Factor of Hypothermia*".

90. Dr Iles commented Mr Johnston suffered multiple blunt force injuries to the head causing skull fracture. Extensive bruising was found on the deceased's chest, arms, and legs and a laceration on the left frontal scalp. Dr Iles also found evidence of ischaemic heart disease with critical narrowing of the left anterior artery.

91. Dr Iles commented that the blunt force injuries, pre-existing health issues and the environment the deceased was found (causing hypothermia) contributed to the multifactorial death of Mr Johnston. Dr Iles ruled out the possibility the totality of the injuries sustained by the deceased were caused by multiple falls but could not rule out the injuries may have been caused in an assault setting.<sup>115</sup>

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<sup>115</sup> Coronial brief, statement of Dr Linda Iles, page 171.

92. Toxicological analysis of post-mortem specimens taken from the deceased identified the presence of Oxycodone to treat severe pain, anti-hypertensive drug Atenolol and anti-depressant Sertraline in therapeutic concentrations.
93. Dr Iles noted that the deceased had an alcohol concentration of 0.07% at 2:14pm on 8 December 2016. If Mr Johnston had not consumed more alcohol after sustaining his injuries, his blood alcohol concentration at the time of the altercation would have been significantly higher.
94. I accept the cause of death proposed by Dr Iles.
95. Having investigated the death of Mr Johnston, and having held an inquest in relation to his death on Tuesday, 4 June 2019 in Melbourne, I am satisfied of the following matters to the required standard:
- (a) The identity of the deceased was Mr Stephen James Johnston, born 10 July 1955;
  - (b) Mr Johnston died on 8 December 2016 at Warrnambool Base Hospital, Warrnambool from complications of multiple blunt force injuries in a man with ischaemic heart disease and alcoholic liver cirrhosis;
  - (c) That, despite there being no evidence as to the exact circumstances of Mr Johnston's death, his death was the result of homicide; and
  - (d) That Mr Knowles was responsible for the injuries and subsequent neglect that caused Mr Johnston's death.
96. I make the findings set out above pursuant to section 67(1) of the Act.
97. I note that in the future, if new facts and circumstances become available, section 77 of the Act allows any person to apply to the Court for a determination that some or all of these findings be set aside. Any such application would be assessed on its merits at the time of application.
98. I direct the principal registrar of this Court to notify the Director of Public Prosecutions pursuant to section 49(1) of the Act.<sup>116</sup>
99. Pursuant to section 73(1) of the Act, I order that this Finding be published on the internet.
100. I direct that a copy of this finding be provided to the following:

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<sup>116</sup> See paragraph [84] above.

- (a) Jay Johnston, Senior Next of Kin;
- (b) Catherine Johnston, ex-wife of Mr Johnston;
- (c) Lesa Casey, sister of Mr Johnston;
- (d) Naomi Milburn, Victims of Crime Assistance Tribunal;
- (e) Joanne Brown, Southwest Healthcare; and
- (f) Rishi Nathwani, Counsel Assisting the Coroner
- (g) Gordon Porter, Counsel representing Mr Knowles
- (h) Detective Senior Constable Craig Wastell, Coroner's Investigator, Victoria Police.

Signature:



**SIMON MCGREGOR**  
**CORONER**

Date: 12 February 2020