



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Edin Smajovic
Hearing dates:	18 June 2018
Date of findings:	18 June 2018
Place of findings:	State Coroner's Court, Glebe
Findings of:	Deputy State Coroner Teresa O'Sullivan
Catchwords:	CORONIAL LAW – Cause and manner of death Homicide
File number:	2009/469730
Representation:	Dr Peggy Dwyer, Counsel Assisting, instructed by Alex Jobe, Office of General Counsel, Department of Justice Mr Michael Spartalis for Commissioner of Police, instructed by Ms Sinead Westaway, Makinson d'Apice Lawyers Ms Julia Hickleton for Nathan Reddy, instructed by Galloways Solicitors and Attorneys Ms Lucy Nguyen, solicitor, Law Australia for Anthony Tan
Findings:	Edin Smajovic died on 9 January 2009, at the Macarthur Auto Centre, Blaxland Road, Campbelltown as a result of a gunshot wound to the chest, caused by another person.

Recommendation:	That the Police investigation into the death of Edin Smajovic be thoroughly investigated by the Law Enforcement Conduct Commission (LECC), including so as to identify whether the actions of certain officers caused evidence to be lost.
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The Coroners Act 2009 (NSW) in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the death of Edin Smajovic.

Introduction:

On the afternoon of 9 January 2009, Edin Smajovic was shot dead at the Macarthur Auto Centre in Blaxland Road, Campbelltown. He was only 23 years old and his death was a tragic waste of a young life.

The Inquest:

The primary function of an inquest is provided by s. 81 of the Coroners Act 2009 (NSW) (the Act). It is to make findings as to:

- (a) The identity of the deceased
- (b) The date and place of the person's death
- (c) The manner and cause of the person's death.

An inquest into Mr Smajovic's death is mandatory.

Section 27 of the Act states that an inquest is required to be held if it appears to the Coroner that the person died or might have died as a result of homicide.

There is no controversy in this case as to identity, date and place of death or the medical cause of death. According to the pathologist, Dr Van Vuuren, Mr Smajovic died as a result of a gunshot wound to the chest.

The real controversy is to manner of death, or in other words, what were the circumstances leading up to that death.

However the powers of the Coroner are circumscribed in an important way. Any record of findings made under s.81 of the Act must not indicate, or in any way suggest, that an offence has been committed by any person.

A secondary, but equally important function is created by s. 82 of the Act. This section enables the Coroner to make any recommendations that are necessary or desirable in relation to any matter connected with Mr Smajovic's death.

The Evidence:

Background:

Before coming to the issues related to manner of death, I propose to outline briefly something about Edin Smajovic as a young man.

Mr Smajovic was born on 23 March 1985 in Sarajevo. His early life was happy and safe and he was part of a loving extended family. His father was employed by the Ministry of Internal Affairs and his mother worked in the city hospitals. The family lived in a flat in the city and spent time in the country at a weekend house with extended family. Mr Smajovic and his brother loved sport and grew up skiing in winter, visiting beaches in summer and participating in soccer, basketball, bike riding and Tae Kwon Do. As children both Edin and his brother aspired to be police officers, like their father.

Like so many other innocent parties, Mr Smajovic and his family were victims of the Bosnian war. In 1992 their city was attacked by extremists and when Edin was just a child aged 6 or 7 he was shot by a sniper and suffered 8 shrapnel wounds as a result. His mother was wounded three times in the head by shrapnel. The war had a terrible traumatising effect on Mr Smajovic and the entire family and they lost a number of family members and friends.

In 1994 the Smajovic family left Sarajevo bound for Croatia using an underground tunnel dug by the Army. They were granted a temporary permit in the Netherland and given permanent residency in Australia in 1995. The family returned to Bosnia for a short time in 2002 before returning to Australia.

Both Edin Smajovic and his brother decided that they would leave their studies and get work so that they could help their parents with a mortgage. After leaving school, Edin initially worked for a construction company and was apparently a very hard worker, often working to the point of exhaustion and contributing much of his money to his family.

Mr Smajovic completed a security course and obtained a license, and then began work in the security industry, and obtained work in night clubs as a security guard. He then began to socialize in the city with new friends. According to family members, it was through this change in life style that Mr Smajovic became acquainted with members of the Rebels Motorcycle gang.

His association with the Rebels caused great stress in the family and eventually led to Mr Smajovic moving out of home even though his family wanted him to stay. His brother Kenan was incredibly worried but felt powerless to stop him. According to police, at the time of his death, Mr Smajovic lived at "The Rebels" residence located in Picton. He had several tattoos identifying him as a member of the Southern Highlands Chapter of the Rebels. At the time of his death he was wearing a Rebels belt with Rebels insignia on the buckle.

Even after he moved out, Mr Smajovic visited family and his brother writes movingly in his statement about Edin's love for his niece, Kenan's child. According to his brother, Kenan, Edin looked tough but he had a soft heart and was always ready to help family and friends. He was a loveable person. He was well respected in the Sydney Bosnian community and was a wonderful brother. He is described by another family member as having a larger than life personality- loud and laughing.

Kenan Smajovic writes: *His death has affected many and he will always be missed. The only thing I can say is that he was the best brother anyone could wish for, and when he was buried a part of me has gone to that grave with him.*

According to Kenan, it was a shock that a man as kind and generous as his brother would be involved in any alleged criminal activity. He writes: *I cannot explain what had happened at the car yard in Campbelltown, but what I can say is that knowing my brother, the whole thing just doesn't make sense.*

Edin Smajovic had a limited criminal history, with no matters of violence. Police intelligence reports allege that he was involved in criminal activity associated with the Rebels motor cycle gang, including sale of drugs. I raise that not to critique his character or denigrate from his loss, and not as a criticism of the Rebels, none of whom are parties of interest in these proceedings. I raise it merely because it appears to be relevant to the circumstances of his death, which I come to now.

Circumstances leading up to the death:

The incontrovertible facts

The facts in this matter that are uncontroversial are that Edin Smajovic and his friend, David Maetaui, drove to the Auto Centre in a maroon Ford some time around 2.30pm on 9 January 2009.

In 2009, the Macarthur Auto Centre, located at 1/49 Blaxland Road Campbelltown, was operated as a motor vehicle retailer involved in the repair and sale of vehicles. The business was owned and operated by Anthony Tan and Nathan Reddy, both aged around 24. They employed Henry Nicholls as a motor mechanic and Aaron

Reddy (younger brother of Nathan) as a vehicle detailer. Mr Tan and Mr Reddy have significant criminal histories, including for homicide and serious assaults.

When Mr Smajovic and David Meataui arrived there were a small number of people already at the Auto Centre, including Anthony Tan, Nathan Reddy and Henry Nicholls.

There was some conversation between Mr Smajovic and Mr Tan and within the space of a few minutes, Erin Smajovic was shot dead.

At about 2:43pm, police and ambulance received a number of phone calls to attend Macarthur Auto Centre. At 2:40pm Rozlyn Gisborne, the manager of Fork Talk, the next door business, called and requested an ambulance.

At 2:43pm, triple O received a call from Anthony Tan who said "*I need the ambulance, I just got shot*". Seconds later Tan can be heard to say "*just take me*" and the call was terminated.

About 2:45pm, ambulance officers were dispatched.

At 2:51pm, an employee from the nearby business Tyre Power called triple 0.

The first ambulance officers arrived at 2:52pm. They located Edin Smajovic on the ground 3-4 metres from the entrance, in a prone position and with his head towards the rear of the workshop. His right arm was above his body and his left arm was underneath his body. The barrel of a gun was protruding from underneath his body just near the right arm pit. An ambulance officer cut off his shirt to use the heart monitor, and confirmed that he was deceased.

At around 3pm, police responded to a radio transmission and attended the scene soon after. There were three ambulances in the car park by the time they arrived. Police secured the scene and began talking to witnesses.

Conflicting stories

The stories of what happened after Edin Smajovic walked in to the Macarthur Auto Centre vary significantly between the key witnesses, and so each will be detailed below.

Nathan Reddy

Nathan Reddy returned to the Auto Centre after dropping Mr Tan at the Hospital and he spoke to police at the scene. He initially told police that he was upstairs in his office, heard some shouting and heard gunshots. He went downstairs and saw a guy lying on the floor, saw his mate was bleeding and then drove him to the Hospital.

Mr Reddy was arrested and participated in a record of interview at around 5.30pm on 9 November. At that time, he maintained that he was sitting in his office working, when he heard a car pull up. A group of males walked into the workshop, he heard yelling and screaming and then approximately 3-4 gunshots. He ran downstairs to see one man on the ground and Mr Tan shot and then he called Triple O and drove Mr Tan to hospital. Mr Reddy was released from custody at 8:15pm.

On 14 January Mr Reddy called investigators and asked to speak to police, saying that he feared for the safety of himself and his family. He made an arrangement to attend on Campbelltown police and be re-interviewed. This time, Mr Reddy said that he had not told police a correct story when first interviewed, because he feared for himself and his family. He said that his truthful recollection of what occurred was that he heard a vehicle entering the business and he and Mr Tan raced downstairs to see who could sell the next car. He saw an Islander male (known now to be David Meatuai) and a Lebanese male (Mr Smajovic) inquiring about a Harley Davidson motorcycle and when he told them it was not for sale, they intimated that they were going to take it anyway.

Mr Reddy told police that Meatuai lifted his shirt to reveal a black hand gun and Mr Tan walked away from their position to a vehicle hoist. Mr Smajovic followed Mr Tan and pulled out a silver or chrome handgun and racked the firearm slide, before pointing it at the left temple of Mr Tan. Mr Meatuai walked towards Mr Tan and Mr Smajovic. Mr Smajovic fired his gun and Mr Tan took a few steps back as the bullet hit him in the shoulder. About 2 seconds later, Mr Meatuai fired his gun and hit Mr Smajovic in the chest, before running out and getting in the car. Mr Reddy suggested that Meatuai had meant to hit Tan, but accidentally hit his friend.

Mr Reddy declined to take part in a walkthrough with police to point out where these things had occurred.

Henry Nicholls

Henry Nicholls was interviewed by police around 10:30pm on 9 November. Mr Nicholls told police that several months previously a group of bikies had attended the Auto Centre and argued with Mr Tan and Mr Reddy about property and money. He said the bikies, Mr Tan and Mr Reddy were equally aggressive. The bikies appeared to be stand over men. Mr Nicholls recognized Edin Smajovic as having been at the Auto Centre previously.

Henry Nicholls said that at around 2:30pm he was fixing a car and heard two loud bangs. He looked out of the vehicle and saw Mr Tan who was saying "I've been shot" and removing his shirt. He saw someone, a male of Islander appearance, drive away in a car; he saw Mr Reddy call triple O and later saw Mr Tan and Mr Reddy drive away.

In relation to the Islander male, Mr Nicholls said he didn't say anything as he was leaving and he appeared scared as a result of the shooting. He didn't see him carry a gun.

Anthony Tan

Anthony Tan arrived at Campbelltown hospital in the car driven by Mr Reddy at 2.50pm. He presented to nursing staff walking unaided. He had a bullet wound to the back of his neck left of his cervical spine and informed nursing staff that he had been shot. Mr Tan was admitted to the emergency department at 4:04pm on 9 January and underwent a number of medical procedures to treat the wound in his neck. He had CT scans and x-rays. He was transferred to Liverpool Hospital.

At about 5.30pm, two detectives attended Liverpool Hospital and spoke to Mr Tan. He was alert and in pain. He declined to answer any questions. About 8:20pm, the detectives spoke with Mr Tan, who declined to consent to a forensic procedure to swab his hands. They left to make an application to a Magistrate and two constables remained to ensure that he did not wash his hands. At 10:10pm, one of the constables received a phone call from an Inspector with an instruction to cease guarding the room and return to Campbelltown. A few minutes later they received a call to tell them to go back. When they did, they were informed by a nurse that Mr Tan had washed his hands; his hands appeared to them to be noticeably cleaner.

On 10 January, Mr Tan signed himself out of Liverpool Hospital against medical advice and without waiting for the bullet in his neck to be removed.

On 16 January, Mr Tan departed Australia and flew to Vietnam without having provided a version to police. Whilst in Vietnam, Mr Tan attended the Ho Chi Minh City hospital and had the projectile removed from his shoulder. Prior to Mr Tan leaving, a Passenger Analysis Clearance and Evacuation System (PACE) alert had been requested which would have informed Police if Mr Tan attempted to leave Australia. The PACE was not put in place.

On 14 March 2009, the then officer in charge, Detective Bristow, received a phone call from Nathan Reddy to say that he had the bullet from Mr Tan's shoulder. He then took the bullet to police. At around 7pm that night, police received a call from Mr Tan overseas and he told them that the bullet had been taken out, placed in a bag with the x-ray and provided to police in Australia. Further, Mr Tan indicated that he would come back and speak with police.

The projectile handed to police was submitted for forensic testing, which identified the DNA profile of Mr Tan and confirmed that the projectile was fired from the Tokarev firearm located under Mr Smajovic.

David Meatuai

David Meatuai had been friends with Mr Smajovic for a number of years. He was at some point a member of the Liverpool chapter of the Rebels and he has a criminal history including for offences of violence. With the assistance of a solicitor, Mr Meatuai prepared a statement outlining what he says took place, and it is very different to what is asserted by Mr Reddy.

Mr Meatuai initially told police that at lunchtime on 9 January, his friend Edin Smajovic, known to him as "Boz" attended his home and asked him to go for a drive. He thought the plan was to get car parts from Campbelltown and then get something to eat. Mr Meatuai was not armed.

They drove to the Macarthur Auto Centre and got out. Mr Smajovic entered the workshop and Mr Meatuai stood at the roller door talking to a staff member when he heard a “click, click”. He turned towards the shop, heard two bangs, and immediately ran from the workshop and into his car. He said that he was scared and shaking.

Police later put to Mr Meatuai that Mr Reddy alleged that he had shot Mr Smajovic. He denied it and appeared angered by the suggestion. He said “*Why would I shoot my brother. I have known him for five years*”.

On 19 August 2009, Mr Meatuai provided police with a verbal account of what he witnessed which was different to his original version. He was apparently visibly upset while doing so. On 20 August Mr Meatuai was interviewed and provided a second statement. In summary, he said that when Mr Smajovic picked him up on 9 January he said “We just go and speak to this guy” and they proceeded to Macarthur Auto Centre. They had a conversation with Mr Reddy outside the workshop doors. Mr Tan walked into the workshop and walked to a white vehicle without speaking. Mr Tan said to Mr Reddy “Where is it?” And Mr Reddy said it was under the seat.

Mr Tan leant inside the car; he walked away from the vehicle and racked the side of the firearm. Mr Smajovic then walked towards Mr Tan and produced a firearm from under his shirt, he held it against the head of Mr Tan and said “put the gun down, put the gun down”. Mr Tan shook his head, turned his body to the left and shot Mr Smajovic, who shot back straight away. He thought that Mr Smajovic went onto one knee and fired his gun again towards Mr Tan who fired again towards him. Mr Smajovic fell face down on the floor and Mr Tan walked up to him, push kicked him with the bottom of his foot, called him a “fucking dog” and then kicked him in the head. Mr Meataui then ran away.

On 20 December 2009 Mr Meataui took part in an electronically recorded walk through with police and that video forms part of the brief of evidence.

Police interviewed other witnesses and their statements are contained in the brief of evidence. There were no other direct witnesses to the incident.

An extensive forensic and crime scene investigation was undertaken. The results of the DNA revealed some significant information:

- The DNA of Mr Smajovic was identified on the 9mm Tokarev self-loading pistol found underneath him at the scene. The investigation revealed that this was a gun he owned.
- The DNA of a friend of Mr Smajovic’s, and a former member of the Rebels, was identified on the ammunition, but it is not suggested that he was involved in the incident.
- The DNA of the Mr Smajovic was located on the left shoe worn by Mr Tan. It was not blood DNA.

- There was one cartridge case located next to Mr Smajovic, consistent with the Tokarev firing one bullet.

Cause of death:

According to the forensic pathologist, Dr Van Vuuren, Mr Smajovic died as a result of a single gunshot wound to the chest. Mr Smajovic had a number of other fresh injuries including a laceration to the right upper brow and an abrasion to the right cheek.

History of criminal proceedings:

In 2011, Mr Tan returned from NSW and attended on police.

In 2012 he was charged with the murder of Edin Smajovic and Nathan Reddy was charged with being an accessory after the fact to that crime.

In 2013, charges against both men were withdrawn by the DPP.

Police reconstruction and conclusion:

In an effort to determine which scenario was most likely, for the purposes of these proceedings police completed a reconstruction using factors such as available measurements of those involved and the known trajectory of the bullet. Whilst the investigating officer did come to a conclusion as to who shot who and in what sequence, I do not propose to make such a finding. A formal finding as to who shot who is not necessary in order to reach a limited conclusion about the manner of death and such a finding might be against the spirit of the legislation (S.81(3)).

Findings required by s81(1)

As a result of considering all of the documentary evidence, I am able to confirm that the death occurred and make the following findings in relation to it:

Edin Smajovic died on 9 January 2009, at the Macarthur Auto Centre, Blaxland Road, Campbelltown as a result of a gunshot wound to the chest, caused by another person.

Recommendation:

There are a number of factors about the police investigation that are of serious concern, and may indeed have impacted on the court's ability to determine the manner of death.

Those matters have now been outlined to the Law Enforcement Conduct Commission (LECC).

As a result, I make the following recommendation:

That the Police investigation into the death of Edin Smajovic be thoroughly investigated by the Law Enforcement Conduct Commission (LECC), including so as to identify whether the actions of certain officers caused evidence to be lost.

I close this inquest.

**Teresa O'Sullivan
Deputy State Coroner**

18 June 2018