

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2009 0286

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: ABDI HASAN**

Delivered On: 29 January 2013

Delivered At: Level 11, 222 Exhibition Street  
Melbourne 3000

Hearing Dates: 29, 30 October 2012

Findings of: JUDGE JENNIFER COATE, CORONER

Representation: Mr C. Kiliyas for the Family  
Ms N. Hodgson for the Chief Commissioner of Police

Counsel Assisting the Coroner Ms S. Hinchey of Counsel

I, JUDGE JENNIFER COATE, Coroner having investigated the death of ABDI HASAN

AND having held an inquest in relation to this death on 29 and 30 October 2012  
at MELBOURNE

find that the identity of the deceased was ABDI HASAN

born on 1 January 1980

and the death occurred on 19 January 2009

at Royal Melbourne Hospital, Grattan Street, Parkville 3050

**from:**

1 (a) ACUTE SUBDURAL HAEMATOMA

**in the following circumstances:**

**Background:**

1. Abdi Hasan was born on 1 January 1980 in Mogadishu. He lived with his parents and family until war broke out in the region. The family recounted<sup>1</sup> how people fled from the neighbourhood as people were dying all around them. Abdi and his family sought refuge with some distant relatives in Kismayo until fighting reached that region and then the family fled towards the Kenyan border. Upon discovering the border closed, the family described a journey to Ethiopia of “indescribable pain and heartache” as many people died of thirst and exhaustion or were eaten by lions. After a few weeks of travel Abdi’s family made it to Jigjiga in Ethiopia where an aunt assisted them to Addis Ababa.
2. The family had become separated from their father and learned only three years later that he had been killed whilst crossing the border between Somalia and Ethiopia.
3. The family described Abdi as the one who took responsibility for looking after the family in Ethiopia, in the absence of their father.
4. In 1988 the family was accepted into Australia and settled in Melbourne. Abdi attended school and completed his schooling and commenced employment. He sent money back to Ethiopia to assist family still there.

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<sup>1</sup> Counsel for the family read a statement to the Court prepared by Abdi’s brother Mohamad (Ex 12) describing some aspects of Abdi’s life and his personal qualities.

5. Abdi was described by his family as mature, polite and respectful and a warm and kind hearted person who would go out of his way to help a stranger.

### **Summary**

6. On the evening of Saturday 17 January 2009, Abdi visited his sister in Collingwood, staying for a short time at her place and thereafter he went to visit a friend in the Elizabeth Street flats in Richmond. During that visit to Richmond an argument occurred resulting in Abdi being ejected from his friend's flat. In the course of being ejected, a physical fight occurred between Abdi and his friend at the base of the flats.
7. The security staff, observing this altercation, called the police. The security staff stated that Abdi appeared drunk and had an apparent injury to his eyebrow and head. Police attended in response to the call and upon arrival also noted that Abdi appeared drunk and that he was unsteady on his feet to the extent that he fell, even after being placed in a seated position.
8. The attending police arrested Abdi for being drunk in a public place and thereafter took him in the rear of the divisional van to Fitzroy Police Station. Abdi was lodged in the cells at about 3.00am on the morning of Sunday 18 January 2009. There is CCTV footage of Abdi being placed in a cell at 3.06am wherein he is seen to lose his footing as he is trying to sit down on a bench in the cell. Abdi is seen to fall in a gap between the benches and hit the left side of the back of his head against the cell wall. This wall was made of concrete.
9. At about 7.00am Sunday 18 January 2009 Abdi was noted to be apparently sober, and was released from police custody. His release is also captured on CCTV footage. The police held no concerns for Abdi's welfare at that point.
10. A short time later there is evidence that Abdi approached some maintenance workers at the corner of Moor Street and Young Street. He was observed to be collecting half empty bottles of beer and other alcohol and drinking the contents. The workers became annoyed by Abdi such that one of the workers went to Fitzroy police station to seek assistance. The police were unable to locate Abdi at that time.
11. Shortly after 8.00am Abdi was observed outside the Tankerville Arms hotel on the corner of Johnston and Nicholson Street Fitzroy. He had a bottle of alcohol in his hand which he left outside as he entered the Tankerville Arms. A short time after he entered the hotel, he was

asked to leave by the staff. He was noted to be “impaired” at that time but the staff were unable to discern whether it was as a result of alcohol or drugs.

12. At about 8.40am, Abdi was observed walking through the grounds of the Ministry of Housing complex located at 140 Neill Street, Carlton. He appeared to be alcohol affected by an eyewitness account.
13. Abdi was observed to sit on a grass area, and a short time later was observed to be lying on his back at that location. He was observed to be in this same position by various witnesses throughout the morning.
14. At approximately 11.15am, Metropolitan Ambulance Paramedics attended this location after being called by people concerned for Abdi’s welfare. A short time later Abdi was conveyed to the Royal Melbourne Hospital where he was admitted with what was found to be a subdural haematoma. Despite surgical intervention by a team led by a neurosurgeon, Abdi passed away on Monday 19 January 2009 at 4.45am.

#### **The issues**

15. Before turning to the issues identified during the investigation into Abdi’s death, the coroner’s statutory obligations are set out in S.67 of the *Coroners Act 2008*. (“the Act”)
16. S.67 of the Act sets out the tasks which the Coroner must undertake. That section provides as far as relevant as follows :

#### *67. Findings of coroner investigating a death*

*(1) A coroner investigating a death must find, if possible-*

*(a) the identity of the deceased; and*

*(b) the cause of death; and*

*(c) unless subsection (2) applies, the circumstances in which the death occurred; and*

*(d) any other prescribed particulars.*

*(3) A coroner may comment on any matter connected with the death, including matters relating to public health and safety or the administration of justice.*

## **Identity**

17. Abdi's identity was established by a visual identification by his brother Khadra Mahamed.<sup>2</sup>

## **Cause of death**

18. It was not contentious that Abdi died as a result of a subdural haematoma. However, what was in issue was what caused the subdural haematoma. This is dealt with below.

## **Circumstances in which the death occurred**

19. The nub of this investigation focussed on the circumstances in which Abdi's death occurred and what evidence there was of a causal connection between the fatal subdural haematoma which caused his death and the events leading up to his death. I have been greatly assisted by the written closing submission of Counsel Assisting who has carefully summarised the evidence. I note that Counsel for the family accepted this summary as comprehensive and accurate. Counsel for the Chief Commissioner of police did not take issue with the summary but did raise some separate issues.

## **The police investigation**

20. In the wake of Abdi's death, a report of a potentially fatal assault upon him was made to Victoria Police who thereafter conducted a homicide investigation, taking statements from eyewitnesses and collecting a range of other pieces of evidence.
21. On 19 January at 8.45pm, a potential suspect, Mr Abdiwali Farah, was spoken to by police and agreed to participate in a video taped interview with police.<sup>3</sup> Mr Farah told the police he had been in a physical altercation with Abdi and during the time of that altercation he (Mr Farah) had been holding a metal dumbbell. He identified that dumbbell to the police. Upon completing the interview, Mr Farah returned to his house with police and provided police with the clothes he had been wearing at the time.

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<sup>2</sup> Statement of identification made on 19 January 2009 at Royal Melbourne Hospital by Khadra Mahamed.

<sup>3</sup> He was the friend that Abdi had gone to visit and with whom Abdi had a witnessed physical fight in the course of being ejected from Mr Farah's premises. Evidence of this fight was captured on CCTV footage from various locations and also some eye witness accounts were obtained.

22. In his statement<sup>4</sup> Detective Sergeant Trichias of the Homicide Squad set out the list of enquiries and investigations he conducted and actions he took including conducting a media release requesting assistance from the public as to any other eyewitness accounts or information that may assist police. The result of the police investigation was a decision not to proceed with any prosecution of any person, although the investigating member advises that the criminal case is not closed whilst it remains unsolved.
23. Thereafter the police conducted an investigation for the coroner and produced a two volume Brief of Evidence of 433 pages. The original Brief contained statements from 66 witnesses. This Brief was added to after it was produced to the Court some months prior to the inquest commencing. The court obtained an independent opinion from Associate Professor Gavin Fabinyi as to the cause of Abdi's head injury and the treatment he received from the Royal Melbourne Hospital. There were also a number of Exhibits including CCTV footage from various locations, attendance register sheets, medical files, DNA reports and transcripts of records of interview included in the material provided to the Court.

#### **The coronial investigation**

24. Apart from all of the Brief material and Exhibits that came into evidence during the Inquest, three police witnesses gave oral evidence together with a staff member from the Tankerville Arms and the investigating member. As to the medical evidence, four experts gave concurrent oral evidence on the issue of the possible causes of Abdi's subdural haematoma. The family, through their Counsel, sought the opportunity to make submissions after being in possession of the transcript of the inquest. Written submissions were received from the family, the Chief Commissioner of Police ("CCP") and Counsel Assisting.

#### **Circumstances preceding Abdi's death**

25. As indicated above, a very helpful and detailed summary of the evidence as to Abdi's movements in the hours before his death were contained in the written submissions from Counsel Assisting. I have largely adopted that summary which is set out in the following paragraphs.

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<sup>4</sup> P. 266 Inquest Brief

### **Saturday 17 January 2009**

26. Some time between 9.30pm and 10.00pm on 17 January 2009, Abdi visited his sister, Laylo Kaarshe in Collingwood. He stayed for approximately 10 minutes.<sup>5</sup> CCTV footage obtained from the Ministry of Housing shows Abdi attending 10.05pm and leaving at 10.18 PM.

### **Sunday 18 January 2009**

27. There is no evidence of Abdi's movements that night and early morning until about 1.00am on Sunday morning, when he is seen in the vicinity of the Ministry flats at 110 Elizabeth Street, Richmond. There is evidence that Abdi entered and exited 110 Elizabeth Street, Richmond on several occasions.<sup>6</sup>
28. Abdi went to visit his friend Abdiwali Farah who lived in those flats. However, it would appear that Abdi was affected by alcohol and not behaving appropriately in his friend's home. Consequently, the evidence of Abdiwali Farah is that an argument occurred between Abdiwali Farah and Abdi over Abdi urinating on the lounge room floor.<sup>7</sup> As a result, Mr Farah took Abdi outside the flat where he left him.<sup>8</sup>
29. Sometime later, Abdi returned to the flat screaming and yelling outside the door of his friend's place. Mr Farah took Abdi down in the lifts and into the foyer.<sup>9</sup> Mr Farah also took with him a metal dumbbell.<sup>10</sup> He said that he just wanted to scare Abdi.<sup>11</sup> In the foyer, a struggle took place and Mr Farah claimed that Abdi began to punch him. Mr Farah denied that when he left Abdi, Abdi had any injuries or damage to his head. He said that he left Abdi and just went

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<sup>5</sup> Statement Kaarshe, p69 of EX 11

<sup>6</sup> CCTV footage (which forms part of Ex 11, balance of Inquest brief)

<sup>7</sup> Statement Mahamad Farah, p73 of Ex 11; ROI AbdiWali Farah, p 393 of Ex 11

<sup>8</sup> ROI AbdiWali Farah, p 394 of Ex 11

<sup>9</sup> ROI AbdiWali Farah, p 394 of Ex 11

<sup>10</sup> ROI AbdiWali Farah, p 394 of Ex 11

<sup>11</sup> ROI AbdiWali Farah, p 402 of Ex 11

back upstairs.<sup>12</sup> Mr Farah claims that he ejected Abdi out of his flat and informed security, who then contacted police to attend.<sup>13</sup>

30. There are some eyewitness accounts of the altercation in the downstairs foyer which are contained in statements from various security personnel who were present at that time.
31. In summary these accounts are that at approximately 2.30am, Abdi and Mr Farah were observed by security guard Eric Fleuriot fighting in the foyer at 110 Elizabeth Street, Richmond. Mr Fleuriot noticed that Abdi appeared to be affected by alcohol, that he was unsteady on his feet and falling over.<sup>14</sup> Security guards Mohamoud Abdirahman and Theodoros Chitsos attended and assisted Mr Fleuriot. Mr Abdirahman observed that Abdi was drunk, and that he had an injury to his eyebrow and head.<sup>15</sup> Mr Chitsos observed that Abdi was either drunk and/or drug affected, and that he had some blood on his upper lip. As a result of this fight, police were called to attend the scene.<sup>16</sup>

#### **Police custody**

32. At approximately 2.40am, several police units attended the location and spoke to Abdi. The police officers who attended included Senior Constable Merrett<sup>17</sup> who was in company with Senior Constable Clint McGrath.<sup>18</sup> Senior Constable Merrett noted that Abdi had a graze on his left elbow and a small graze on the bridge of his nose.<sup>19</sup> He was unsteady on his feet and had to support his weight against a pole. At one stage Abdi, became more unsteady on his feet and Senior Constable Merrett sat him on wooden poles which framed a nearby garden bed. Whilst sitting there, Abdi fell backwards into a garden bed.<sup>20</sup> Senior Constable Merrett

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<sup>12</sup> ROI AbdiWali Farah, p 39393-396 of Ex 11

<sup>13</sup> ROI AbdiWali Farah, p 394 of Ex 11

<sup>14</sup> Statement Fleuriot, pges 75-76

<sup>15</sup> Statement Abdirahman, pges 80-81 of Ex 11

<sup>16</sup> Statement Chitsos, pges 83-85 of Ex 11

<sup>17</sup> Now Detective Senior Constable Merrett

<sup>18</sup> Statement Merrett, Ex 1, T16

<sup>19</sup> Statement Merrett, Ex 1, T16

<sup>20</sup> Statement Merrett, Ex 1; T18



said that the distance Abdi fell was a short distance. He said that it was a slow fall.<sup>21</sup> He said that Abdi did not injure himself or hit his head as a result of this fall.<sup>22</sup>

33. The attending police members, including Senior Constable Merrett, formed the opinion that Abdi was drunk, and he was subsequently arrested for being found drunk in a public place.<sup>23</sup> At 2.55am, Abdi was put into the rear of the police van and taken to the Fitzroy Police Station.<sup>24</sup> Senior Constable Merrett stated that he constantly monitored Abdi while he was in the back of the divisional van and did not see any incidents during the trip.<sup>25</sup>

### **Fitzroy Police Station**

34. At about 3.00am, Abdi was placed in the cells at the Fitzroy Police Station by Sergeant Thomas Wilkinson. Sergeant Wilkinson observed that Abdi was drunk, and that he had an abrasion to the left elbow,<sup>26</sup> which he described as being “*relatively fresh*”.<sup>27</sup> Sergeant Wilkinson assessed Abdi and did not find any matter that would have made him unsuitable for lodgement in the cells.<sup>28</sup>
35. When Abdi was placed in a cell at Fitzroy, CCTV footage shows that he walked to the benches which are located in the cell and, upon attempting to sit down, lost his footing and fell in a gap between the beds. He appears to have hit the left side of the back of his head on the wall as he fell. The evidence was that this wall was made of concrete blockwork.<sup>29</sup> Sergeant Wilkinson recalls hearing a small “thud” type noise at that point.<sup>30</sup> He asked Constable Megan Brown about the noise and was informed that Abdi had appeared to lose his balance and to sit heavily on the bench in the cell.<sup>31</sup> Constable Brown recalls seeing this occur *via* the

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<sup>21</sup> T22

<sup>22</sup> Statement Merrett, Ex 1; T18; T22

<sup>23</sup> Statement Merrett, Ex 1; T17

<sup>24</sup> Statement Merrett, Ex 1; T18

<sup>25</sup> Statement Merrett, Ex 1; T18; TT23-24

<sup>26</sup> Statement Wilkinson, Ex 2; T37

<sup>27</sup> T44

<sup>28</sup> T45-46

<sup>29</sup> T58

<sup>30</sup> Statement Wilkinson, Ex 2; T37-38

<sup>31</sup> Statement Wilkinson, Ex2; T38

CCTV monitor.<sup>32</sup> The CCTV footage shows that after this stumble, Abdi got up and sat on one of the benches.<sup>33</sup> At approximately 3.09am, Abdi can be seen putting his head on his knees.

36. A short time later, another male, Nuar Dei Wal was placed in the same cell as Abdi. Sergeant Wilkinson gave oral evidence that given he placed these two together in the same cell, that was indicative of the fact that Abdi was assessed as of no risk to himself or others, and that his demeanour was pleasant and he was jovial.<sup>34</sup>
37. Mr Dei Wal observed that upon entering the cell, Abdi had a cut to his nose and that he had some swelling to the face. Abdi informed Mr Dei Wal that he got the injury during a fight, but did not elaborate further.<sup>35</sup>
38. There are records of welfare checks being conducted on Abdi while he remained in custody. Details of those welfare checks appear in the brief.<sup>36</sup> Sergeant Wilkinson was confident that welfare checks took place as recorded in the document produced to the court.<sup>37</sup>
39. Police statements as to the evidence of Abdi's movements at and in the police station are consistent with the CCTV footage obtained from the police station. There is CCTV footage which shows Abdi arriving at the Fitzroy Police Station at 2.55am. There is CCTV footage which shows that at 3.06am, Abdi walks to the benches and loses his footing when attempting to sit down.
40. The remaining CCTV footage shows Abdi during his entire time in custody, with nothing of note to explain Abdi having or sustaining a head injury whilst in police custody.<sup>38</sup>
41. Sergeant Wilkinson, upon viewing the CCTV footage stated that the CCTV footage generally accorded with his memory of the events surrounding Abdi being placed in the cell.<sup>39</sup> He said

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<sup>32</sup> Statement Brown, pge 115 of Ex 11

<sup>33</sup> CCTV footage (which forms part of Ex 11, balance of Inquest brief)

<sup>34</sup> T47; T53

<sup>35</sup> Statement Dei Wal, pge 130 of Ex 11

<sup>36</sup> Pges 294 & 295, Ex 11

<sup>37</sup> T49

<sup>38</sup> CCTV footage (which forms part of Ex 11, balance of Inquest brief)

<sup>39</sup> T41

that following the stumble and hearing the “thud”, he did not notice any change in Abdi.<sup>40</sup> In fact, it was his evidence that toward the end of Abdi’s time in custody, he became more energetic, consistent with him sobering up.<sup>41</sup> When questioned about what he would have done had he been concerned for Abdi’s condition he stated that he “*absolutely*” would have intervened if a prisoner became unexpectedly drowsy or their behaviour changed in any adverse way while they were in custody. He said that “*to the contrary, ... I actually found an improvement in his welfare*” during the time he was lodged in the cells.<sup>42</sup>

### **Release from Fitzroy Police Station**

42. At approximately 7.20am, Sergeant Anthony Martin collected Abdi from his cell, in order to release him. He said that at this time, Abdi’s speech “*appeared to be concise and was audible at a normal level.*” He said that Abdi’s speech was “*not slurred or slow*” and that “*he appeared steady on his feet and had no visible trouble keeping his balance.*”<sup>43</sup>
43. At 7.25am, Sergeant Martin released Abdi from custody. On his release, Sergeant Martin observed that Abdi had a scab on the bridge of his nose, a scab on his left hand/thumb, and a scratch/cut on his elbow. When questioned about these injuries, Abdi told Sergeant Martin that it ‘*happened a while ago*’, but did not elaborate further.<sup>44</sup> CCTV footage shows Abdi leaving the Fitzroy Police Station at 7.26am.<sup>45</sup> Sergeant Martin said that he had no concerns for Abdi’s welfare at that time.<sup>46</sup>
44. A short time after he was released from custody, Abdi approached some maintenance workers, who were working at the intersection of Moor Street and Young Street Fitzroy. Abdi was observed to collect half empty bottles of beer and other alcohol lying on the road and drink the contents. Abdi began to annoy the maintenance workers at the site and one of the workers, Gus Nijamin, attended at the Fitzroy Police Station requesting police assistance.

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<sup>40</sup> T55

<sup>41</sup> T50

<sup>42</sup> T61

<sup>43</sup> statement Martin, Ex 3; T63-64

<sup>44</sup> statement Martin, Ex 3; T65 & 66

<sup>45</sup> CCTV footage (which forms part of Ex 11, balance of Inquest brief)

<sup>46</sup> statement Martin, Ex 3; T67 & 73

45. On returning to the site, Nijamin informed Abdi that he had notified police. Abdi then walking north along Young Street, Fitzroy.<sup>47</sup> Police were unable to locate Abdi when they attended.<sup>48</sup>
46. The next pieces of significant evidence as to Abdi's movements that morning are captured by both eyewitness accounts and CCTV footage. Between 8.01am and 8.06am, Abdi was observed at the Tankerville Arms hotel, on the corner of Johnston Street and Nicholson Street, Fitzroy by hotel staff, Bashir El-Shiek and Paul Erougian. Prior to entering the hotel, Abdi was observed to be carrying a champagne bottle, which he left outside the hotel prior to entering.<sup>49</sup>
47. Abdi entered the hotel and approached other patrons in the hotel.<sup>50</sup> A short time later, Abdi was approached by hotel staff and asked to leave, which he did.
48. The hotel staff gave evidence that they believed that Abdi was either alcohol or drug affected.<sup>51</sup> The more senior staff member, Mr Erougian said that Abdi "*knew what he was doing, but it's like he still was impaired with something. There was something that wasn't right with him...drunk or drug affected, I wasn't sure.*"<sup>52</sup> Mr Erougian said that Abdi did not complain at any stage that he was in pain.<sup>53</sup> He recalls that "*he was sort of bending his head around and his eyes were sort of going side to side...he was walking and sort of rocking a little bit on the side.*" He said he had been at the Tankerville Arms for ten years and that he had "*a fair experience*" with people affected by alcohol over the years.<sup>54</sup> He said that he had seen intoxicated people who look "*exactly the same*" as how he observed Abdi to be.<sup>55</sup> He said that Abdi's condition was the same from when he entered the hotel to when he left it.<sup>56</sup>

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<sup>47</sup> statement Nijamin pgs 134-135 of Ex 11; T65-66

<sup>48</sup> T65-66

<sup>49</sup> Statement Erougian (Ex 4), pgs 151-152 of Ex 11; T87

<sup>50</sup> CCTV footage (which forms part of Ex 11, balance of Inquest brief)

<sup>51</sup> Statement Erougian (Ex 4) pages 151-152 of ex 11; T88

<sup>52</sup> T88

<sup>53</sup> T89

<sup>54</sup> T90

<sup>55</sup> T91-92

<sup>56</sup> T89

49. CCTV footage has Abdi located outside the Tankerville Arms on the corner of Nicholson Street and Johnston Street, Fitzroy<sup>57</sup> at 8.07am.
50. The next sighting of Abdi is at approximately 8.40am, where he is observed by Farrah Hassen walking through the Ministry of Housing complex at 140 Neill Street, Carlton. Abdi was observed to have come from the direction of the All Nations Church, located on the corner on Palmerston Street, near Drummond Street. Abdi was seen walking through the park area and towards the basketball court area. He appeared drunk. He was observed to sit down on a grass area near the basketball courts, and a short time later he was observed to lie down at this spot.<sup>58</sup> A number of witnesses observed Abdi in this position throughout the morning.<sup>59</sup>
51. At approximately 11.00am, two people who had become concerned about Abdi lying out in the sun called '000' and requested an ambulance to attend and assist Abdi.<sup>60</sup>

#### **Medical treatment of Abdi**

52. At approximately 11.15am, Metropolitan Ambulance Paramedics attended the location, and examined Abdi. No evidence of a major head injury or assault was observed, however a small amount of bruising and a graze was evident to Abdi's left eye region.<sup>61</sup> Abdi was conveyed by the ambulance paramedics to the Royal Melbourne Hospital, where he was treated for a severe head injury and decompression of a sub-dural haematoma.<sup>62</sup>
53. No issue was raised as to the medical treatment that Abdi received. There was no evidence or opinion which emerged during the investigation or inquest or during final submissions, that Abdi received anything other than optimal treatment at the Royal Melbourne Hospital.<sup>63</sup> The

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<sup>57</sup> CCTV footage (which forms part of Ex 11, balance of Inquest brief)

<sup>58</sup> Statement Hassen, pgs 160-161 of Ex 11

<sup>59</sup> See for eg. statements of Kevin Smith, pgs 163-165 of Ex 11; Abdulkakim Ayeh, pgs 168-170 of Ex 11; Canh Diep, pgs 171-172 of Ex 11

<sup>60</sup> Statements Serbrhan, pages 184-185 of Ex 11; Harrison, pages 174-175 of ex 11

<sup>61</sup> Statement Hauserman, pages 190-191 of Ex 11

<sup>62</sup> See the Clinical Summary within the "Death Report to Coroner" which appears within the Medical records from Royal Melbourne Hospital and was part of the brief to the medical experts (Ex 8)

<sup>63</sup> A/P Gavin Fabinyi observed in his expert report (Ex 6): "*The deceased was treated at Royal Melbourne Hospital expediently by a very competent trauma Neurosurgeon.... I cannot think of any form of treatment that was overlooked or inadequate.*"

medical evidence indicates that upon arrival of the ambulance and later at the hospital, there was little, if any prospect of Abdi surviving his injury.<sup>64</sup>

### **Cause of head injury to Abdi**

54. As noted above, the nub of the investigation into Abdi's death has been the examination of whether the evidence summarised above, together with the expert opinions obtained based on the evidence available, allows me to draw any conclusions to the requisite standard as to how Abdi sustained his fatal head injury. To this end, there was particular concentration on two incidents in the hours leading up to Abdi's death; that is, the scuffle between Abdi and Abdiwali Farah at the Elizabeth Street flats and Abdi banging his head on the wall of the police cell when he lost his footing as he tried to sit down on one of the benches in his cell.
55. Four medical experts were assembled to give evidence concurrently at the Inquest to assist with the question of causation. Those experts were Neurosurgeon Mr John Laidlaw, Professor Gavin Fabinyi, Director of Neurosurgery at the Austin Hospital, Professor Stephen Cordner, forensic pathologist, standing in for forensic pathologist Dr Paul Bedford, who was not available during the Inquest and Dr Morris Odell, a specialist clinical forensic medical practitioner with expertise in the area of the impact of drugs and alcohol upon behaviour and cognitive abilities.
56. Prior to their attendance at Court, Neurosurgeon Mr John Laidlaw, who treated Abdi on his admission to the Royal Melbourne Hospital, provided a written statement as did Professor Gavin Fabinyi, who provided a written opinion at the request of the Court. Forensic pathologist Dr Paul Bedford also provided a post mortem examination report.
57. All of the medical experts were supplied with a folder of materials containing relevant material from the Brief including each other's reports<sup>65</sup> and a document entitled "*Materials*

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<sup>64</sup> See statement Hauserman, pge 191 which notes that upon placing Abdi into the ambulance, he had gone into "*respiratory arrest*"; see also MAS records pages 192-193 which note in relation to Abdi's presentation: "*Unknown problem, life status questionable*"; see report of Professor Gavin Fabinyi (Ex 6) which states: "*The deceased had extensive cerebral oedema and despite adequate excision of his intracranial haematoma he did not survive. I cannot think of any form of treatment that was overlooked or inadequate. The fact that the deceased was found in respiratory arrest portended a very bad outcome*"

<sup>65</sup> The folder was tenewas marked as Ex 8

*for Concurrent Expert Evidence*” which contained a factual summary of the case and a number of questions which the experts were asked to consider.<sup>66</sup>

58. Those questions were as follows:

1. What are the possible causes of the sub-dural bleeding observed in Abdi’s brain?
2. Is there any possibility that Abdi’s sub-dural bleed was spontaneous in nature – in other words, not caused by any external factor?
3. How much force is required to cause the subdural bleeding and swelling evident in Abdi’s brain at the time of operation?
4. During the operation, Abdi’s brain was observed to be herniating through the dura. What is the cause of this swelling? Are you able to estimate how long it would take for this level of swelling to occur within the brain?
5. In your collective experience and looking at the literature, what is the longest known period between the application of force and death in a person suffering from sub-dural bleeding? What is the least amount of force known to have caused a sub-dural bleed?
6. Is it possible to predict with any accuracy the rate at which untreated sub-dural bleeding will lead to:
  - (a) compromise in gait, co-ordination, speech etc;
  - (b) drowsiness and loss of consciousness;
  - (c) death?
7. Looking particularly at the period of about 2.30-2.40am (during the scuffle referred to by Dr Fabinyi above), and about 3.00-3.10am (ie when Abdi was first admitted to the police cell), is there any event depicted on that portion of CCTV footage which could have led to sufficient application of force to Abdi’s head to cause a sub-dural haematoma?

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<sup>66</sup> Ex 9.

8. Is there any portion of Dr Fabinyi's opinion with which any other expert disagrees? If so, why? Is there any part of Dr Fabinyi's opinion which he now wishes to amend?

#### **A Summary of the written medical opinions**

1. Counsel assisting provided a summary of the essence of the written medical opinions as set out below which was non controversial and accepted by each of the interested parties as a helpful and accurate summary. I agree that it is both helpful and accurate and have adopted it.
2. Neurosurgeon, Mr John Laidlaw, treated Abdi at the Royal Melbourne Hospital. Mr Laidlaw's medical opinion in this case was as follows:<sup>67</sup>

Considering all the information provided to me, my opinions are that:

1. The head injury initiating the subdural bleeding was likely to be a blunt injury, and may well have been a relatively minor injury at the time. This could well have been a fall or knocking head on a wall, but I cannot rule out other blunt injury.
2. The injury initiating the bleeding is most likely to have occurred within 12 hours of his arrival at the hospital.
3. It is possible that the fall at 0306 causing the patient to hit his head on the wall may have been the precipitating injury. However, it also could have been a subsequent injury occurring after 0810 (which was the last time he was reported as appearing relatively intact from a neurological perspective).
4. If the injury at 0306 initiated the intracranial bleeding we can reasonably assume (because of the person's subsequent activities) that the amount of bleeding which had occurred prior to him leaving the police cells was relatively small and not causing significant mass effect at the time of release, and had subsequently enlarged significantly.
5. It is likely that the intracranial bleeding started causing significant mass effect between 0830 and 0900, when the patient appeared drunk/drugged and lay down, and was not seen to be conscious after that time.

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<sup>67</sup> Dr Laidlaw's report is Ex 7



4.3 Post Mortem Examination: A post mortem examination was conducted at the Victoria Institute of Forensic Medicine on 19 January 2009, by Forensic Pathologist Dr Paul Bedford.<sup>68</sup> Cause of death was found to be “Head Injury.” The following comments were made in relation to the death:

1. Trauma to the head has resulted in a large bleed to the brain (subdural hematoma) which was surgically treated. Damage to the brain was marked with very high intracranial pressures and resultant death.
2. No definite injury pattern is identified on the scalp or skull at post mortem.
3. Review of watch house tapes indicates the deceased appeared to have a normal conscious state and level of function on release at approximately 0730 hours on the day of his death.
4. A blood alcohol level of 0.16 g/100mL is noted on a hospital sample taken at 12.00 hr which was a short period after admission.
5. It is unlikely that his fatal injuries have been sustained before or during custody. It is most likely that injury has occurred in the period immediately preceding his admission to hospital. In general, in someone of the deceased’s age, symptoms of changing conscious state are likely to develop in a reasonably short time frame (minutes to a few hours). Further discussion of timeframes with a neurosurgeon may be worthwhile.
6. Abrasions to the bridge of the nose and face raise the possibility of an assault to that area but could also arise with a fall across an object.

4.4 Professor Gavin Fabinyi, Director of Neurosurgery at the Austin Hospital. Professor Fabinyi was the Court Appointed Expert in this matter. In his report, Professor Fabinyi expresses the following opinions:<sup>69</sup>

1. The deceased was treated at Royal Melbourne Hospital expediently by a very competent trauma Neurosurgeon. The deceased had extensive cerebral oedema and despite adequate excision of his intracranial haematoma he did not survive;

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<sup>68</sup> the Post Mortem report is Ex 5

<sup>69</sup> Professor Fabinyi’s report is Ex 6

2. I cannot think of any form of treatment that was overlooked or inadequate. The fact that the deceased was found in respiratory arrest portended a very bad outcome;
3. The deceased's injury was most consistent with direct trauma to the head. In the absence of obvious external bruising this might suggest a relatively mild contact or contacts with subsequent brain swelling due to a combination of venous bleeding in the subdural space as well as malignant cerebral oedema. Such oedema can occur after trauma, particularly in young patients;
4. Generally speaking, it would require significant trauma to cause subdural bleeding and subsequent oedema of the degree suffered by this subject. It is however, possible, and indeed probable in this instance, that a relatively mild injury could initiate bleeding, perhaps by tearing of a cerebral vein, which did not cause immediate effects but was compounded by cerebral oedema. The oedema could have been exacerbated by hypoxia, further mild injury or intoxication;
5. An injury severe enough to cause subdural bleeding would normally be manifest shortly afterwards. However, if the main effect of the injury was the development of brain swelling, this may take some time to cause symptoms, as would the gradual accumulation of bleeding;
6. There were clearly contributing factors in this case, in particular the consumption of alcohol. This may have masked the symptoms of raised intracranial pressure, leading these symptoms to be misdiagnosed as intoxication. When the deceased finally "went to sleep" in the park, it is probable that his brain swelling had progressed to coma. Subsequently he developed respiratory insufficiency and the MICA team found him in respiratory arrest. This would have had the compounding effect of greatly worsening his brain swelling to the point of irreversible damage. Young patients may be more susceptible to cerebral oedema after head injury;
7. It seems that the primary injury was of a relatively minor degree and it is feasible that if a diagnosis of intracranial bleeding had been made prior to his decline into coma, he might have survived with very prompt medical care, including surgery;
8. Given that he was conversing and mobilizing without apparent injury or complaint of severe headache or other symptoms, and that he was apparently intoxicated, it would

have been very difficult for any of the participants in this saga (security guards, police, hotel staff or passersby) to be suspicious enough of head injury to initiate medical referral before the deceased was found in a coma;

9. It is not possible to state with certainty which of the events noted caused the subsequently fatal outcome. I consider it most probable that the deceased incurred a head injury of some sort during the fight which may not have been fully captured on video.
10. I note the opinion of the pathologist that the injury would have occurred “shortly before admission to hospital”, but the circumstances do not quite fit this.
11. It is worth making the point that the appearance of intoxication can sometimes mean that brain swelling or bleeding can be overlooked. Having said this however, the actions of the Police would seem reasonable as the subject appeared to be rational at the time of his discharge from the cells. He was certainly intoxicated with a blood level of 0.16% at the time of admission.

#### **The oral evidence from the experts**

59. The experts were not only provided with each other’s reports but also a number of statements from eye witnesses as to Abdi’s movement and behaviour at various locations and also given the opportunity to see the various pieces of CCTV footage of him in the various locations including the foyer of the Elizabeth Street flats, the cells at Fitzroy and the Tankerville Arms.
60. Counsel assisting also produced a written summary of the oral evidence of the experts given concurrently. This written summary of the evidence has been adopted by the family as accurate and accepted. No issue has been taken with this summary by the Counsel for the Chief Commissioner of Police. It is therefore a useful summary to rely upon, accepting also that it is an accurate one.
61. As to each of the questions posed, the overall substance of what the experts had to say<sup>70</sup> is as follows:
  - (a) The specific site of the bleed in Abdi’s brain could not be identified;<sup>71</sup>

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<sup>70</sup> Taken from the written submissions of Counsel Assisting

- (b) It does not seem that there is any simple or obvious or single explanation for the bleed, other than that Abdi suffered some blunt force trauma to his head;<sup>72</sup>
- (c) Spontaneous acute subdural haematoma with no trauma is very rare and very uncommon in younger people.<sup>73</sup> There was no abnormality of a blood vessel identified on CT scan, which would make a spontaneous bleed “very unlikely”;<sup>74</sup>
- (d) The swelling observed in Abdi’s brain is likely to have been secondary to the intracranial bleed;<sup>75</sup>
- (e) Most cases of acute subdural haemorrhage are associated with a very severe high impact injury, such as a high-speed motor vehicle accident. Usually the patients are unconscious right from the time of impact.<sup>76</sup> Mr Laidlaw said that his guess would be more than 90% of acute subdural haematomas present with an obvious severe external and observable injury with an altered conscious state;<sup>77</sup>
- (f) It is a somewhat unusual case to have an acute subdural haematoma in a young person where there was not any severe external, physical trauma identifiable;<sup>78</sup>
- (g) Regarding the longest time which could occur between the trauma occurring and the extensive bleeding and swelling seen at operation, it was unlikely to be days, more likely to be hours, but as to whether it would be one hour or ten or 12 hours, the experts were unable to say;<sup>79</sup>

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<sup>71</sup> T103

<sup>72</sup> T103

<sup>73</sup> T128

<sup>74</sup> T104, 128

<sup>75</sup> T104-105

<sup>76</sup> T105

<sup>77</sup> T148-149; Professor Fabinyi put the figure at 95%;

<sup>78</sup> T105

<sup>79</sup> T106

- (h) It is not possible to predict with certainty the rate at which an untreated subdural bleed will lead to a compromise in neurological functioning such as compromised gait, coordination and speech,<sup>80</sup>
- (i) Regarding the CCTV footage of the scuffle at 110 Elizabeth Street, Richmond, Mr Laidlaw said:

*“I think there’s...no specific incident that I can see there that I would expect that would be likely to cause an acute subdural...there were multiple instances where it does seem that he quite possibly struck his head on the floor or other areas which perhaps may have been a cause, but I can’t say specifically.”*<sup>81</sup>

Later Mr Laidlaw agreed that it was possible that Abdi had sustained the injury even prior to the scuffle at Elizabeth Street.<sup>82</sup>

- (j) Mr Laidlaw thought it was “possible” but “wouldn’t think it was likely” that Abdi’s injury occurred when he fell and knocked over a pot plant.<sup>83</sup> Similarly, he thought it was “very unlikely” that the incident where Abdi fell backward into the garden bed could have caused the injury.<sup>84</sup> He said that if, when Abdi fell to the ground, he hit the ground forcibly with his head, then that certainly could be a cause of the subdural haematoma.<sup>85</sup> He said that it was possible that Abdi had sustained the original injury at about 2.30 in the morning, “but if that was the case it’s probably more likely that a tear may have occurred and some bleeding but then he had small repeated bleeds during that time....[if there is] bleeding from any blood vessel then it can just stop just by a little bit of clot forming in that hole in the blood vessel. Repeated minor traumas could potentially open that up again, particularly if it’s a thin walled vein... things like shaking your head violently, sitting down heavily...”<sup>86</sup> Mr Laidlaw said that if Abdi

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<sup>80</sup> T106

<sup>81</sup> T108

<sup>82</sup> T144

<sup>83</sup> T108-109

<sup>84</sup> 109

<sup>85</sup> T115

<sup>86</sup> T139-140

*“was starting to bleed or re-bleeding in the hotel at that time then it’s quite possible that within half an hour or so he could have significant problems.”*<sup>87</sup>

- (k) Mr Laidlaw did not think there was anything about Abdi’s gait, coordination, presentation or demeanour while he was at Elizabeth Street, which would tell a medical expert whether he had sustained a head injury at that time, or was merely affected by alcohol;<sup>88</sup>
- (l) Dr Odell said that it was very hard to tell the difference between general changes in function caused by head injury and by intoxication.<sup>89</sup> He said however, that a seasoned drinker such as Abdi develops a tolerance to alcohol, so it was possible that Abdi had quite a high BAC reading when he left Fitzroy police station, but was not showing any outward signs of that;<sup>90</sup>
- (m) Professor Fabinyi said that if the head injury had have occurred at Elizabeth Street, he would have expected Abdi’s conscious state to get worse as the night wore on, which did not seem to have happened.<sup>91</sup> Professor Cordner said that the further you recede into the past (from the time that unconsciousness sets in), the less likely it is that the initiating event occurred at that point.<sup>92</sup>
- (n) In relation to how likely the “stumble” and “thud” in the police cells at Fitzroy Police station was to have been the cause of the injury, Mr Laidlaw said:

*“I don’t...think we can say with any certainty at all. There was blunt force to the head when it struck the wall. That’s not the type of force we would usually expect to be associated with an acute subdural, but as I said, this is not a typical case. The fact that he didn’t seem to deteriorate as a result of that, didn’t lose consciousness because of that, would make it unlikely, but we certainly can’t rule it out as a cause of the subdural,*

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<sup>87</sup> T141

<sup>88</sup> T109

<sup>89</sup> T110

<sup>90</sup> T135-136

<sup>91</sup> T111

<sup>92</sup> T145

*the same as we can't rule out some of the other minor impacts that we spoke about previously.*"<sup>93</sup>

- (o) Mr Laidlaw said that there was nothing about Abdi's appearance on the CCTV footage taken at the Tankerville Arms *"that would have raised a suspicion to me that he had serious intracranial problems...at that time"*<sup>94</sup> he said that he could not, however, rule out the fact that Abdi may have suffered a minor incident, associated with a slow bleed at that time, which only took effect some 40 minutes later.<sup>95</sup>
- (p) Professor Cordner said that the relatively minor injuries observed at autopsy added *"some objective evidence to the relatively minor nature of whatever trauma it was that initiated the bleeding over the brain."*<sup>96</sup> He said that with the CCTV footage of the scuffle at Elizabeth Street, he thought *"the Court seems to have right in front of it the maximal sort of traumas that might have resulted in the injuries seen"*, albeit that he could not pinpoint any one incident.<sup>97</sup> He said that *"you don't need to posit any other substantial event other than what we've seen in the video to account for the injuries that are present...at the autopsy."*<sup>98</sup>
- (q) Professor Fabinyi said that alcohol can worsen the problem for a patient suffering from a subdural haematoma, by worsening the swelling which takes place;<sup>99</sup>
- (r) Professor Fabinyi thought that the fact that Abdi was walking and talking at the Tankerville Arms was incompatible with him having severe pressure problems at that time. He said that the fact that Abdi appeared to improve while at the Fitzroy Police station may be indicative of the alcohol wearing off, but did not *"preclude the possibility that there had been some continuing occult bleeding going on, albeit at a low level..."*<sup>100</sup>

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<sup>93</sup> T112; Professor Cordner expressed a similar view (T146) as did Professor Fabinyi (T146)

<sup>94</sup> T119

<sup>95</sup> T120

<sup>96</sup> T121

<sup>97</sup> T121

<sup>98</sup> T137

<sup>99</sup> T122

<sup>100</sup> T122-123

Professor Fabinyi said just because Abdi did not have obvious pain, one could not conclude that he did not have bleeding at that time;<sup>101</sup>

- (s) Given that it was unlikely that Abdi ingested any further alcohol after he was observed to lie down on the grass, the Court ought add 0.3-0.6% to Abdi's blood alcohol reading that was measured when he arrived at hospital;<sup>102</sup>
- (t) Professor Cordner said that there was nothing from the injuries evident at autopsy to suggest that Abdi had been subjected to any significant or sustained assault. He said that while it is unusual, it is well understood that a relatively minor trauma can have this result;<sup>103</sup>
- (u) Finally, Mr Laidlaw said that all of the experts had raised the possibility that Abdi was assaulted shortly before or while lying in the park. He did not say that this was a likely cause, but thought that it needed to be considered. He said that how rapidly the bleed progressed was dependent upon which vessel the bleed was coming from.<sup>104</sup>

#### **Conclusions as to the cause of Abdi's head injury**

- 62. Given all of the above, the state of the evidence is that Abdi Hasan died on 19 January 2009 from an acute subdural haematoma, despite sound medical interventions to save his life. The fatal intra cranial bleed which caused Abdi's death was caused by one or more episodes of blunt force trauma to his head. It is not possible to pinpoint the timing of that blunt force trauma or to assign any one of the observed events of minor trauma to his head in the last 24 hours of his life as the likely cause.
- 63. The evidence from the experts is that this is an unusual situation where the source of the trauma is not able to be identified and there is no physical evidence on the body of Abdi as to the site of the infliction of trauma to his head or body, or evidence at autopsy of the internal location of his intra-cranial bleed.

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<sup>101</sup> T147

<sup>102</sup> T124

<sup>103</sup> T125-126; T138

<sup>104</sup> T126-127



64. Finally, it is not possible to rule out that another unwitnessed event or events was the cause of the trauma which tragically took Abdi's life.

## COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comment(s) connected with the death:

### **Family's call for a new and detailed investigation**

1. The family submitted that there should be a new and detailed investigation into the circumstances in which Abdi's death occurred as "*it is quite possible that a cloak of silence has descended over the true events that occurred at Elizabeth Street flats that evening between Abdi and Mr Farah.*" The family submitted in particular that Abdiwali Farah may have used the metal dumb-bell on Abdi to cause his head injury at an unwitnessed time, for example before entering the lifts. The difficulty with that submission is that there is no evidence of an injury to Abdi's head consistent with being struck on the head with a dumb-bell.
2. Whilst it is understandable that the family seek to find absolute answers to what happened to Abdi on this evening, there is no reasonable basis to conclude either (a) that an inadequate investigation has been done; or (b) that further questioning of the same witnesses would produce any further illumination as to what caused Abdi's head injury; or (c) that there has been "*a cloak of silence*".
3. Abdiwali Farah co-operated with the police upon their approaches to him. He allowed the police into his home voluntarily, gave them his clothes he was wearing at the time of the incident and the metal dumb-bell he told them he was carrying. He participated in an interview back at the police station where he did not seek to exercise his right to remain silent but rather answered every one of the more than 320 questions put to him during that interview.
4. The investigating police member set out his investigation in the 2 Volume Brief he provided to the coroner and his actions including conducting a media release requesting assistance from the public as to any other eye witness accounts or information that may assist police.

5. The police produced a two volume Brief of Evidence of 433 pages with statements from 66 witnesses together with a number of pieces of CCTV footage and other documents including photos.
6. The state of the medical evidence set out above is that the timing and cause of Abdi's head injury is not capable of any more clarity than was articulated during the inquest. There is no basis in the material to come to conclusions that the police investigation was deficient, that further investigation or the re-interviewing of witnesses would elicit any further or different evidence upon which the medical experts could or would come to a different view.

**The period of police custody including in the cells at Fitzroy**

7. In final written submissions, the family acknowledged the "care and professionalism" with which Abdi was treated by the police who originally arrested him in Richmond and delivered him to Fitzroy.
8. It was the submission of the family that when Abdi lost his footing in the cell as he was sitting down on the bench and hit his head on the wall, this incident was "misreported" by the member monitoring the CCTV when questioned about what happened and, had it been accurately reported, the Station Sergeant would have investigated the welfare of Abdi.
9. Counsel for the CCP and the police members involved submitted this was not an accurate representation of the evidence. I agree. The evidence was that as the Station Sergeant left Abdi in the cell, he heard a thud which was consistent with someone sitting down heavily on the fibreglass bench in the cell. The sergeant's evidence was that when he checked with a member who was monitoring the CCTV, he was advised that Abdi appeared to lose his balance and sit down heavily on the bench. There is no basis to conclude that the member monitoring the CCTV footage saw Abdi hit his head or advise the Sergeant that she saw him hit his head.
10. Further, upon viewing the CCTV footage, the bump to Abdi's head is not particularly noticeable as he sits down. The evidence is that his condition improved after he had spent time in the cells and had a sleep. There was no evidence upon which it could be concluded that the police should have been concerned about deterioration in Abdi's speech, ability to walk or level of alertness or complaints of pain. This is corroborated by the CCTV footage of Abdi as he is leaving the station the next morning and apparently having a conversation with the police member and then walking off down the street apparently surefooted and purposeful and

responsive. There was no evidence that Abdi was confused, complaining of any pain, blurred vision or that he was drowsy or unsteady on his feet. Finally, I note that the medical evidence was that whilst the bump on the head in the cells could not be ruled out as the cause of the head injury, it was considered unlikely as the cause.

11. The family submitted that recommendations should be made that, if the equipment in the cells had the capacity to “playback” incidents, then in circumstances where the member observing was unsure of what happened or the superior officer wanted to check what had happened, they could playback the video footage.
12. It was further submitted by the family that the watch house staff should be able to monitor any complaints of pain or distress or physical discomfort of people lodged in the cells.
13. The evidence from the police cells is that Abdi was being monitored twice hourly in the cells.<sup>105</sup> There was nothing about his presentation in the cells, whilst sobering from the effects of alcohol that would have caused any person to become concerned that he may be suffering some form of head injury. There is no evidence that Abdi made any complaint of head pain at any time during his period in the cells or indeed on his release from the cells, during which time he had reasonably lengthy interaction with the police members processing him upon his release.
14. Given the above sad and somewhat unexplained circumstances, I neither propose to comment any further or make any recommendations.

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<sup>105</sup> Inquest Brief P. 295

I direct that a copy of this finding be provided to the following:

Ms Emma Bradley, Leanne Warren & Associates for the family

Mr Daniel Jones, Victorian Government Solicitor's Office for the Chief Commissioner of Police

Dr Morris Odell, Victorian Institute of Forensic Medicine

Associate Professor Gavin Fabinyi

Mr John Laidlaw

Professor Stephen Cordner

Senior Sergeant Peter Trichias, Investigating Member

Signature:



JUDGE JENNIFER COATE  
CORONER  
Date: 29 January 2013

