

IN THE CORONERS COURT  
OF VICTORIA  
AT WANGARATTA

Court Reference: COR 2008 / 001148

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: DANIEL MICHAEL BRENDAN THOMAS**

Delivered On:	3rd July 2014
Delivered At:	Coroners Court of Victoria Level 11, 222 Exhibition Street Melbourne, Victoria 3000
Hearing Dates:	10 <sup>th</sup> December 2013 to 18 <sup>th</sup> December 2013
Findings of:	JACINTA HEFFEY, CORONER
Representation:	Sarah Thomas of Counsel – Counsel assisting the Coroner Diana Price of Counsel – Acting for Donna Thomas Mr Peter Chadwick S.C. – Acting for Mandy Martyn

I, JACINTA HEFFEY, Coroner having investigated the death of DANIEL MICHAEL BRENDAN THOMAS

AND having held an inquest in relation to this death from 10<sup>th</sup> December to 18<sup>th</sup> December 2013  
at WANGARATTA CORONERS COURT

find that the identity of the deceased was DANIEL MICHAEL BRENDAN THOMAS

born on 2<sup>nd</sup> February 2001

and that his death occurred on or about the 13<sup>th</sup> October 2003

at 122 Standish Street, Myrtleford 3737

**from:**

1 (a) UNASCERTAINED CAUSES

**in the following circumstances:**

1. Daniel was aged 2 years and 8 months at the time of his death. He was the only child of a short term de facto union between Donna Thomas and Kevin Ruffels. His parents separated when he was 12 months old, with his father moving to Myrtleford. Ms Thomas also moved to the same town early 2003 and into public housing at 53 Lawrence Street, Myrtleford. From late July 2003, she and Daniel started staying overnight at the home of Mandy Martyn, at 122 Standish Street, whom she had met via the Mungabeena Aboriginal Corporation. In September 2003, they moved to that address permanently.
2. Early in the morning on Wednesday the 15<sup>th</sup> October, 2003, Ms Thomas left 122 Standish Street and travelled to Shepparton alone to commence a TAFE course in nursing. She did not return until the afternoon of Friday 17<sup>th</sup> October, notwithstanding that the plan had been for her to return each afternoon during the course. On the afternoon of the 17<sup>th</sup> October she telephoned Ms Martyn's home and was told by her that Daniel was missing. Friends of Ms Martyn, David Williamson and Tina Shannon, to whose home she had gone to report Daniel missing that afternoon, had advised her to telephone the police to report it. She did this, telling police that Daniel had been playing in the front yard and had gone missing after she had gone to the back yard to discipline her children. She made no mention of having travelled to Wangaratta with her own children that afternoon.
3. The following day Ms Martyn made two *written* statements to police. In her first statement,<sup>1</sup> she said that she had left Daniel at home alone that day whilst she went to Wangaratta for a medical appointment with her children, leaving home at 12:30pm. When she got home she

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<sup>1</sup> Inquest Brief P. 257.

had made lunch for Daniel and then let him out of the house to play in the front yard; that she was then distracted by her children fighting in the rear yard and left Daniel alone; that when she returned 15-20 minutes later, Daniel was no longer there. She had gone to tell her friends who encouraged her to phone police and report Daniel missing. She later made a further statement<sup>2</sup> in which she acknowledged that she had lied about Daniel being home when she returned from Wangaratta. Instead, she said that she had found the front door unlocked and Daniel was nowhere to be found. By this stage, Ms Martyn had provided three different versions to police in relation to Daniel's disappearance.

4. A huge ground and air search was conducted over a number of days in the Myrtleford area by State Emergency Services and various police departments including the Air Wing, Dog Squad, Search and Rescue Squad, Force Response Unit and Mounted Branch. The searchers included volunteers as well as police and together they covered the Myrtleford township, surrounding farmland, bushland and waterways. Daniel was not located.
5. On the 9<sup>th</sup> November 2003, a meeting between Ms Martyn and one Kaye Cooper was secretly recorded with police assistance. During this meeting – bearing in mind that this was in 2003, before Daniel's remains had been found, and he was still officially "missing"- Ms Martyn told Ms Cooper that she believed Daniel's father, Kevin Ruffels may have taken him.
6. On the 18<sup>th</sup> March 2008, almost 4 ½ years later, human skeletal remains were dug up by dogs from under the house at 53 Lawrence Street, the former home of Ms Thomas. Subsequent anthropological and dental examinations revealed that the remains belonged to a child aged between 28 months and 3 years. DNA comparisons between specimens taken from the femur and Daniel's Guthrie card taken shortly after birth leave little doubt that the remains were those of Daniel Thomas.
7. Daniel's remains were examined at the Victorian Institute of Forensic Medicine. Professor Stephen Cordner had also been present at the scene when they were found and assisted in identifying and classifying body parts and clothing. Associate Professor Christopher Briggs, Forensic and Anatomical Anthropologist prepared a report in which he noted that one piece of skull bone was missing. He found no evidence of fracture or traumatic injury to the rest of the skull or to the rest of the skeleton. Ultimately no cause of death could be ascertained.

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<sup>2</sup> Inquest Brief P. 263.

8. The circumstances as articulated above give rise to two main areas for consideration:
- The disposal of Daniel's remains; and
  - The circumstances in which his death had occurred.

### **THE DISPOSAL OF THE REMAINS OF DANIEL THOMAS**

9. On the afternoon of the day Daniel's remains were found, Ms Martyn, who was still living in Myrtleford, was in contact by mobile phone with Jane Richards. Ms Richards was her forensic drug diversion worker employed by the Ovens and King Community Health Service. Ms Martyn told her that she was in her car with her children driving away from Myrtleford to avoid the media who were outside her house. She said that a helicopter was overhead and she was worried about having an accident. Ms Richards advised her to drive to Wangaratta and she would meet her there. This occurred. Whilst Ms Richards was trying to find alternative accommodation for the family, the two women had a conversation over a period of two hours in the presence of Ms Martyn's children.
10. Ms Richards, now a member of Victoria Police (since December 2010), told the Inquest that in the course of this conversation, Ms Martyn told her that on a particular day in October 2003 Ms Thomas had gone to Shepparton to do a course and she, Ms Martyn was minding Daniel. Ms Martyn said that "on that evening" Ms Thomas had turned up "when she wasn't expected", had strangled Daniel in a rage and left the house.<sup>3</sup> Ms Martyn indicated that she had tried to perform CPR but there was no response and "she knew that Daniel was dead". She went on to tell Ms Richards that after bathing and cuddling him she put him in a bed and the following morning placed him under her house. Later that evening, she put the body in a pusher covered in a blanket and walked him to Ms Thomas' unoccupied house in Lawrence Street and put his body under the house.<sup>4</sup>

I found Ms Richards to be a very credible witness. She was even-handed in her descriptions of Ms Martyn. She stated that she had never seen Ms Martyn raise a hand to her children; that she had no problem with alcohol. There was nothing in Ms Richards' demeanour before the court to suggest that she was in any way antipathetic towards Ms Martyn. She expressed

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<sup>3</sup> Statement – Exhibit J; Transcript of evidence of Jane Richards -P131-139; P 205-230

<sup>4</sup> It was submitted by Counsel for Mandy Martyn that there would be issues of admissibility in relation to Ms Richards' evidence in any criminal trial of Ms Martyn in that it arguably breaches the Health Records Act 2001 and the Health Privacy principles under that Act. Section 62 (1) Coroners Act 2008 specifically states that a coroner is not bound by the rules of evidence and may be informed in any manner the coroner reasonably thinks fit.

regret that she had not told the police about the disclosure at the time and about the fact that she had destroyed the copy she had made of a letter Ms Martyn had given her to pass on to her solicitor, Peter Dunn. In both instances, this was relying on advice she had received from her superiors to the effect that she was not *obliged* to tell police and her own beliefs about client confidentiality. In evidence, in answer to a question in cross-examination about whether her “loyalty to the police force” might be behind her decision to now disclose this information to police, she responded:

*“The reason why I’ve made the statement is that it had been on my mind for the last five years and as time went on I believe I should have disclosed that information. I thought I did the right thing at the time that I didn’t disclose the information. As time went on, I believed that I’d done the wrong thing so I made the statement.”*<sup>5</sup>

Her statement was made on 9<sup>th</sup> November 2012. She was confident of the correctness of her recollection notwithstanding the passage of time.<sup>6</sup>

In her statement, she said that Ms Martyn, upon handing her a letter addressed to her solicitor, told her she could read it if she liked. This supports her evidence about the level of trust between Ms Martyn and herself to that point, which continued for some years afterwards. She said that she did read the first page of the letter (as she was worried it might suggest contemplation of suicide, Ms Martyn having been very distressed whilst making the disclosure) and that the contents accorded with the disclosure Ms Martyn had made to her.<sup>7</sup>

11. The Inquest also heard evidence from Judith Anne Majors who made a statement to the Coroners Investigator Acting Senior Sergeant Russell Sheather on the 9<sup>th</sup> December 2013.<sup>8</sup> She had been an assigned carer of Ms Martyn. They had met about six weeks after Daniel’s disappearance and Ms Majors had spent a period of over 6 ½ years being paid by Centrelink to help Ms Martyn organize appointments and other jobs of that nature. After she ceased doing this, they had lost touch, until Ms Martyn contacted her some time later to meet up at McDonalds in Wangaratta. Without any preamble, according to Ms Majors, Ms Martyn announced: “I’ve got something to tell you. I was the one who put him under the house”. Ms

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<sup>5</sup> Transcript P. 163.

<sup>6</sup> She told the court “The reason why I can remember that conversation so vividly is that I remember – I pictured it in my mind step by step what Mandy told me and I’ve sort of relived that over and over again for the last probably five years.” Transcript P.157.

<sup>7</sup> She later handed this letter to Mr Dunn. A Crimes Act warrant was executed to seize relevant files from Mr Dunn’s former office. No letter answering this description was found. Mr Dunn is now a Magistrate.

<sup>8</sup> Exhibit V Inquest Brief.

Majors said this conversation took place about 2 years after Daniel's body had been found. She said that Ms Martyn said that her solicitor knew about it and that she, Ms Majors, was not to tell anyone else.

12. Madeline Kelly is another person to whom Ms Martyn allegedly admitted some role in disposing of Daniel's body. They had become friends after Daniel went missing as they had children the same age. She had accompanied Ms Martyn to Wangaratta in another car on the day Daniel's body was found. In her statement made the 16<sup>th</sup> December 2013, Ms Kelly told the Coroner's Investigator that a day or two after the trip to Wangaratta, Ms Martyn had volunteered to her that Ms Thomas had strangled Daniel, and that she, Ms Martyn, had cleaned him up in the bath, dressed him and wrapped him in a blanket. She told her that she then took him out of the house but refused to say where she took him.<sup>9</sup>

#### **Conclusion as to the disposal of Daniel's body**

13. As will emerge in the course of this Finding, Ms Martyn has given varying accounts in respect of a number of matters concerning the actual *circumstances* of Daniel's death. In none of those accounts did she admit to any involvement or make any admissions against interest in that she laid the blame for the death squarely on Ms Thomas. As outlined above, she also gave various versions of the circumstances of Daniel's alleged "disappearance"- all of which were substantially contradictory. In 2008, however, shortly after the discovery of Daniel's remains, she gave an identical account to three people, to all of whom she admitted responsibility for disposing of the body.
14. To admit to disposing of his body amounts to an admission that she had lied to police and had played an active part in concealing the deceased body of a child she had reported as missing. It is an admission against interest to which significant weight should be attached.
15. I am therefore satisfied that Ms Martyn disposed of Daniel's body. It seems likely that she did this on the evening of Wednesday 15<sup>th</sup> October in the manner she described to Ms Richards. I have been to the area and it is not difficult to see how this could have been done under cover of darkness by leaving from Standish Street, diagonally traversing a large park and the hospital grounds and walking a short distance along Lawrence Street. It is most unfortunate that notwithstanding the huge effort undertaken to search for Daniel in the days after he went missing, insufficient attention was paid to the possibility that Daniel could be

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<sup>9</sup> Exhibit Z Inquest Brief.

buried under the rented unoccupied house at Lawrence Street.<sup>10</sup> I think it is highly unlikely that Daniel's body was buried elsewhere and then conveyed to Lawrence Street after the official search had been abandoned. Indeed, Ms Martyn told Ms Richards she had taken it from her place directly to Lawrence Street. Had Daniel's body been found at that point, a cause of death would almost certainly have been established and a productive and effective homicide investigation undertaken.

## **THE CIRCUMSTANCES OF DANIEL'S DEATH**

16. As part of my investigation into the circumstances of Daniel's death I have considered two separate but inter-related issues. I therefore propose to deal with this section in two parts:

- Daniel's treatment in the weeks leading to his death.
- The competing accounts in relation to Daniel's death.

### **Daniel's treatment in the weeks leading to his death.**

17. From September 2003, when his mother took him to live with Ms Martyn until his death about 7 weeks later, Daniel was exposed to cruelty amounting to torture.

18. Daniel was born with eczema and had episodes of asthma. The Court heard evidence of paediatrician Dr Terrence Stubberfield that this condition required his mother to undertake certain strategies to manage it. He could not eat certain foods. He frequently required his legs and arms to be bandaged in damp bandages and topical cream applied. He was admitted a number of times to Wangaratta Base Hospital between June 2002 and 2003 due to asthma and eczema problems.

On the 23<sup>rd</sup> April, 2003 a multi-disciplinary meeting had been arranged with Ms Thomas to discuss support services available to assist her both in respect of Daniel and in respect of her own needs. Dr Stubberfield last saw Daniel at his rooms in Wangaratta on the 21<sup>st</sup> July 2003. He told the court that on that day, Daniel was in the best shape he had seen him. His eczema and asthma were well under control and he seemed "bright within himself".<sup>11</sup> A further appointment was made for the 14<sup>th</sup> October. Nobody attended the appointment and no call was received to cancel it. I consider it more than likely that Daniel was dead by that date.

From the 12<sup>th</sup> February 2003, Daniel attended one day a week at the home of Elizabeth Evans who provided family day care. Ms Evans told the court that he rarely missed a Wednesday.

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<sup>10</sup> See Extract from Submission of Counsel Assisting in relation to this matter-pages 30-33 (which is attached to this Finding). I consider it an accurate summary of the evidence in this regard.

<sup>11</sup> See Transcript P 148 lines 23-29.

She described Daniel as a very active 2 year old who enjoyed playing outdoors and with toys. Ms Thomas always dropped him off and picked him up. She, however, got into arrears in the payments at around the start of September and although agreement was reached to let her pay by instalments, she ceased any engagement.

Daniel during this time was also attending the Mountain View Children's Centre in Myrtleford on Mondays and Fridays between 10 AM and 5.30 PM. According to the team leader, Carla Rizzato, Daniel fitted in well with the other children and she saw no signs of abuse. She last saw him on the 19<sup>th</sup> September 2003 and he looked in good health and "appeared his normal self". That was the last time he attended the Centre.<sup>12</sup>

As stated above, it was in September 2003 that Ms Thomas and Daniel moved in to live with Ms Martyn.

Detailing the statements made concerning the horrific treatment to which Daniel was exposed during his last 6-7 weeks is a distressing exercise. I have divided reports of these episodes into two sections: accounts given of observations *outside* of Standish Street and accounts given of observations *inside* Standish Street.

#### ***Accounts given by non-residents of Standish Street.***

##### Evidence of Rosemary Loader<sup>13</sup>

19. Ms Loader described a visit from Ms Martyn, Ms Thomas and Daniel and the Martyn children on the 3<sup>rd</sup> October 2003. She observed that Daniel had a very large bruise down the left side of his face. Ms Martyn told her that he had bitten her so she had belted him. Ms Loader had to leave for a while but her partner *David Munro* remained.

##### Evidence of David Munro<sup>14</sup>

20. Mr Munro in his statement said that at a certain point during that visit, Ms Thomas told Daniel to go behind the couch on which the Martyn children were sitting and told him to stay there and to spread-eagle himself. He had not observed any behaviour on the part of Daniel to warrant any punishment. Ms Martyn later told Daniel to sit on the floor beside her on the lino and to stare at one of the squares of lino, saying "Look at the square. Don't take your eyes off it." This account is largely supported by evidence of *Sarah Johnson* who was also present.

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<sup>12</sup> See Statement of Carla Rizzi.- Inquest Brief P. 89-90.

<sup>13</sup> See Statement of Rosemary Loader – Inquest Brief P 137-140 Transcript P245-277

<sup>14</sup> See Statement of David Munro-Inquest Brief P141-144. Transcript P. 293-317



#### Evidence of Sarah Johnson<sup>15</sup>

21. Ms Johnson described the “spread-eagle incident” although she stated that it was Ms Martyn who ordered Daniel “to lie on the lounge floor like a starfish and not move.” She said that “Daniel did what they said and did not move for ages”. Later she said that Ms Martyn told Daniel to sit by her feet and watch a spot on the floor without moving. This he did although at one point, he ended up at his mother’s feet and she “yelled at him to do the same as what Ms Martyn had told him”.
22. Ms Johnson was living in NSW about 700 kilometres from Myrtleford at the time and only visiting Victoria. When she saw Ms Thomas on TV at home on the morning of the 21<sup>st</sup> October asking the public for information about Daniel’s whereabouts, she said she “felt sick in the stomach” and guilt that she should have reported what she had witnessed. She attended a police station that day and made a statement.

#### Evidence of Lee Rowe and Riley Hancock<sup>16</sup>

23. Both witnesses described having a conversation with Ms Martyn in which she described Daniel having bitten her finger and how she had “whacked” him. She said to both of them that she had then thrown him in a cold bath.

#### Evidence of Kathleen Felmingham<sup>17</sup>

24. This was another witness to whom Ms Martyn related the finger biting episode which she said occurred whilst she was bathing Daniel. For punishment, she said “I made him lay on the bathroom floor. He had to learn somehow”.

#### Evidence of Brenda Black<sup>18</sup>

25. Ms Black gave evidence about meeting Ms Martyn and Ms Thomas at a friend’s home in September 2003. Daniel was there sitting in front of the television. At one time, she saw Ms Thomas lean towards Daniel and “flick” him on the side of his right temple with her fingers. She heard her say to him “Don’t look around. If you look around again I’ll flick you again”. She witnessed Ms Martyn swearing at Daniel and threatening to “put him in the bathroom again.” An indication of Ms Martyn’s attitude towards Daniel was when Ms Black first saw Daniel that day and said “What a beautiful little boy. What’s your name?” To this, Ms Martyn

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<sup>15</sup> See Statement of Sarah Johnson-Inquest Brief P. 155-158. Transcript

<sup>16</sup> See Statements in Inquest Brief pp. 159 and 162 respectively

<sup>17</sup> See Statement in Inquest Brief P.130-136

<sup>18</sup> See Statement in Inquest Brief P. 151-154. Transcript P323-333.

countered “Don’t be fooled, he’s a little cunt”. Language of this nature being used by Ms Martyn is contained in the statements of nearly all the witnesses that detail meeting her. I have chosen not include it in the Finding except in this one instance in which somebody said something kind to Daniel, only for him to hear this response from Ms Martyn.

*Accounts given by residents of Standish Street.*

26. A number of residents of Standish Street gave accounts of incidents which had been witnessed by them including:

- The children of Ms Martyn;
- Ms Martyn;
- Ms Thomas; and
- Sheree Johnstone.

Accounts given by the children on the 19th October, 2003

27. Living with Ms Thomas and Daniel at 122 Standish Street, Myrtleford in the weeks leading to Daniel’s death were Ms Martyn and her three children then aged 12, 11 and 8. A Suppression Order was made by me on the 17<sup>th</sup> December 2013 pursuant to which there could be no publication of any material that directly identifies the Martyn children, including their names, addresses or photographs. They will therefore be referred to in this Finding as Child 1, 2 and 3 from the eldest child down. All three children participated in VARE interviews<sup>19</sup> on the 19<sup>th</sup> October 2003.<sup>20</sup>

*Account of child Number 1<sup>21</sup>*

28. Child Number 1 indicated that:

- Ms Thomas hits and smacks Daniel all over the body and gags him putting old bits of towel in his mouth and when this happens her mother and Ms Thomas argue about it but Ms Thomas says that he is her son and she can do what she wants;
- Her mother would say to Ms Thomas “If you’re going to put a gag in just like (demonstrating) go like that”.
- Ms Thomas has admitted to making him sick by giving him the wrong food;

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<sup>19</sup> Visual audio-recorded evidence.

<sup>20</sup> Each of them gave evidence to the Inquest, although for the most part they claimed to have no recollection of the events in 2003. They nevertheless insisted that any statements they had made in 2003 would have been truthful.

<sup>21</sup> Exhibit AA - Inquest Brief pp 832-896

- Her mother had put Daniel in a cupboard once for 10 minutes because he “trashed the day care”;
- Ms Thomas tied Daniel up on the bed in different ways and on one occasion like a “starfish”. (When asked whether she saw Ms Thomas do this, she replied “No, I just went in there and they were, like, just like finishing it off and that”. When asked who was doing that she replies “Donna” and to the question where was her mother she replies “I dunno”). Later she states that she has seen Daniel tied up “lot of times”.
- She had seen Ms Thomas hit Daniel’s head against the wall. She said Daniel had had bruised eyes caused by the way in which Ms Thomas held his face to remove the gag from his mouth.
- She has seen the gag in his mouth “only sometimes when he’s in bed” and that he breathes through his nose.
- Ms Thomas holds his head under the water in the bath.
- Daniel stares at them all the time.

*Account of Child Number 2<sup>22</sup>*

29. Child Number 2 indicated that:

- Daniel had lumps on his head because Ms Thomas had put bandages around his head and put him in the cupboard for about an hour and he had kept bumping his head. He was put in there “because he trashed the kinder”. This had happened about a month ago.
- They had been trying to change him and he wouldn’t be quiet so Ms Thomas punched him and gave him a black eye.
- They usually eat in the lounge room and he eats in the kitchen “cos we don’t like him staring at us”.
- I never play with him. “I don’t really see him that much.” She doesn’t know if she is allowed to play with him “I never do, so I dunno”.
- He “sleeps all day in his room”.

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<sup>22</sup> Exhibit Y-Inquest Brief Pp 897-940

- Ms Thomas blindfolds him. She thinks her mother told Ms Thomas to do it, because he kept on staring at them when having breakfast, making their school lunches.
- He was last tied to the bed about two weeks before.
- Her mother put him under the house once “and of course- the part where she put it (sic) had to be near our bedroom, because the door’s down there..and woke me up...” That “he started crying and kickin’ stuff that we put there...”

*Account of Child No 3<sup>23</sup>*

30. Child Number 3 indicated that:

- They don’t go out as much anymore because “Daniel’s head’s sore” and describes lumps on Daniel’s head.
- He only played with Daniel a little bit “cos most of the time he was on punishment.....from trashing the kinder”.
- When he was naughty, he was put in the bathroom “spreadeagled” and sometimes “when he was really naughty” he got a cold bath.
- He has seen his mother slap Daniel on the face. That “Donna might (do this) a little bit, but mostly Mum ‘cos Donna don’t know how to treat him and that”.

31. Child Number 3 also described Daniel being tied to the bed, holding both arms out, palms up- “Spreadeagle Mum says” and had seen him like “this lots of times”.

Accounts given by Ms Martyn

32. As previously mentioned, in 2004, Ms Martyn’s then solicitor, Mr Dunn, faxed to police a copy of handwritten notes she had made. This was done presumably on her instructions. This document was transcribed by the Investigating Member and appears in the Inquest Brief at p. 459 GG to 459 KK.<sup>24</sup>

33. I have already alluded to the first statements made by Ms Martyn to police dealing mainly with the circumstances of Daniel’s alleged “disappearance”, although in her statement made 18<sup>th</sup> October 2003, Ms Martyn told police that Daniel had a black eye due to Ms Thomas “pressure-pointing” his eye with her thumb to make him open his mouth. It was in the fax

<sup>23</sup> Inquest Brief pp 941-992.

<sup>24</sup> The original fax has been misplaced. A Search of Mr Dunn’s files did not locate the original notes nor the cover sheet attached to the fax.

sent by her solicitor to police in 2004, that Ms Martyn first makes the allegation that she found Ms Thomas strangling Daniel on the Tuesday evening before she was due to go to Shepparton and how the following morning she discovered that Daniel was “gone”.

34. Insofar as the fax relates to Daniel’s treatment generally inside Standish Street, the most notable entries are that:

- On Tuesday (14<sup>th</sup> October) she had found Daniel tied to his bed and gagged.
- One day she had found Ms Thomas trying to drown Daniel in the bath holding him down with both hands.
- Ms Thomas kept threatening to put Daniel under the house, “like the mongrel dog you are, you little bastard”.
- Ms Thomas had given Daniel a black eye by “pressure pointing” to open his mouth because he was “carrying on and had food in his mouth”.
- Ms Thomas used to threaten Daniel that she would tie him up and put him in a dark cupboard.
- One day she had found Ms Thomas shoving Daniel’s face in his cereal and slapping him across the head.

#### Accounts given by Ms Thomas

35. Ms Thomas made two statements to police respectively on the 18<sup>th</sup> October 2003 and 20<sup>th</sup> October 2003. She later participated in three video-taped Records of Interview that were played at the commencement of the Inquest. In the first of these, she purported to detail the way in which Daniel had been treated by Ms Martyn during his last 6-7 weeks. Video-taped interviews contradict in many respects the contents of the earlier statements.

36. Insofar as these accounts relate to incidents inside the house at Standish Street in the lead up to Daniel’s “disappearance”, she made the following comments:

#### Statement made 18<sup>th</sup> October 2003<sup>25</sup>

37. In a statement made on the 18<sup>th</sup> October 2003, Ms Thomas stated that:

- She has seen Ms Martyn slap Daniel on face and legs numerous times since they moved in to live with her seven weeks before.

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<sup>25</sup> Inquest Brief P193.

- She had had to take Daniel out of day care at Ms Martyn's insistence due to his bruises being visible.
- Ms Martyn gave Daniel cold baths as punishment and "put Epsom salts in the bath because she knows she shouldn't do".
- Ms Martyn has held Daniel's face down in the bath on the side.
- Ms Martyn has taken Daniel under the house gagged and tied.
- Ms Martyn has gagged him with Chux wipes and tied up in a cupboard .
- Ms Martyn has tied him to the bed with his bandages.
- Daniel is petrified of Ms Martyn.

Statement made 20<sup>th</sup> October 2003<sup>26</sup>

38. In a statement made on the 20<sup>th</sup> October 2003, Ms Thomas stated that:

- She had seen Ms Martyn slap Daniel with her hand many times.
- She had seen Daniel tied and gagged in a cupboard with his hands tied to his ankles. She had been home when Daniel had been in the cupboard all day.
- Two weeks before she had noticed red marks on Daniel's back. Ms Martyn had shown her a brown belt in two pieces and remarked: "I just broke the belt on Daniel".
- About four times she had found Daniel tied to the bed during the daytime and at night.
- Ms Martyn would punish Daniel by not allowing him to look at anyone.

1<sup>st</sup> Record of Interview conducted with Ms Thomas on 22<sup>nd</sup> October 2003<sup>27</sup>

39. In a her first record of interview conducted on the 22<sup>nd</sup> October 2003, Ms Thomas stated that:

- Once she moved into the Ms Martyn home, Ms Martyn took over full responsibility for Daniel and would not let Ms Thomas do anything in that regard.
- Ms Martyn would yell at Daniel, slap him across the face with an open hand and "get in his face and yell at him."

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<sup>26</sup> Inquest Brief 199.

<sup>27</sup> Inquest Brief, P525-714

- If Daniel looked at anyone it was classed as “staring”. Ms Martyn’s children would complain “He’s staring at me” and Ms Martyn would pick him up by the arm and pull him out to the kitchen and sit him against a wall in the kitchen.
- Ms Martyn would make Daniel sit next to the TV cabinet with his legs spread and make him stare at a red Chux rag for about 3 hours. If he “sooked” during this, she would slap him across the face and tell him to shut up.
- Using bandages, Ms Martyn would tie Daniel to the bed “in a star shape....like a starfish” on his back with the bandages going underneath and tied to the bed. If he screamed (and carried on), she would put a blue Chux gag in his mouth”. In the beginning this happened at nights (after he had gotten out of bed once) and later it happened also during the daytime, sometimes “up to all day” and “in the end it was 24/7”.
- Daniel was petrified of lying back in the bath. Ms Martyn would force him to lay on his back in the bath and would push and hold him down as he tried to sit up.
- Ms Martyn would hold his head side on into the water with only half a nostril and half his mouth out of the water.
- Because on one occasion when put in the cupboard Daniel had kicked the door and broken it, from then on his feet and hands were tied together and around his neck “so that if he did try to get out of it, he would hurt his neck”. The longest time he was in the cupboard was for 2 days.
- Daniel had been put tied up under the house a couple of times at night-time because he was “sooking for Mum”. After the first time, he was also gagged as Ms Martyn’s daughters had complained of him keeping them awake the time before. His hands and feet were tied but not the hands to the feet. (Ms Thomas did not know how much space was under the house because she had never been there).
- He was “like skin and bone” towards the end.<sup>28</sup> Only Ms Martyn fed him. Ms Thomas did it only once during the week before the “disappearance”, “because it upset me

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<sup>28</sup> This description accords with that given by Daniel’s half-brother David Ruffels who had gone to the house on the 9<sup>th</sup> October 2003 when Martyn was not there. He described Daniel as looking “very pale, thin and very, very sick”. When he returned to the house 2-3 days later, Martyn came onto the verandah and told him he could not enter the house without her permission. He said he had spoken to his father (also Daniel’s father) about “ringing welfare to try to get help for Daniel, but we never got around to doing anything”. IB P. 189-192.

seeing him there with the bandage on his head.” The bandage was put on his head by Ms Martyn because “she said she couldn’t see his fuckin’ ugly face. She was sick of seeing his ugly face”.

- Ms Martyn would make Daniel do laps of the house and would put two fingers up behind his head “virtually pushin’ him along” and telling him to walk faster, walk faster, stop dawdling” and if he picked up speed, he would just fall straight over and “I’d hear the thumps.”

Account given by Sheree Johnston<sup>29</sup>

40. Another witness to Daniel’s treatment at Standish Street was house-cleaner Sheree Johnstone.
41. Ms Johnson was, in 2003, a care worker employed by the Home Care Service of NSW Wiradjuri Branch. The Mungabareena Aboriginal Co-operative engaged her services to clean the home of Ms Martyn and she went there on two occasions, on the 22<sup>nd</sup> September and 13<sup>th</sup> October 2003. On the first visit, she entered the lounge and saw Daniel sitting on the floor, with his legs crossed under him facing the wall. He was boxed in by furniture. He was yelled at by Ms Martyn for moving and was threatened with being put under the house with the dogs. Ms Johnstone described him as afraid and shaking. He remained there for the whole four and a half hours that Ms Johnstone was in the house. When she returned to Standish Street on Monday 13<sup>th</sup> October, Daniel was in the same spot only this time his legs were spread and the furniture surrounding him was different. He was verbally abused by Ms Martyn for wiping his running nose with his sleeve. She said in her statement that at no time did she see Ms Thomas approach him or show any affection towards him. (On this latter occasion, Ms Johnstone was aware that, during her visit, Ms Thomas assisted Ms Martyn to inject herself with what Ms Martyn said was morphine. Ms Thomas has also told police of this episode).

***Conclusion as to the treatment of Daniel in the weeks leading up to his death***

42. All but the accounts given by Ms Martyn and by her children, suggest that Ms Martyn was the perpetrator of significant abuse against Daniel in his last 6-7 weeks. The Martyn children all mention the same kinds of abuse as detailed by Ms Thomas, such as the gagging, the tying up, the slaps, shutting in the cupboard, under the house etc. but, for the most part, attribute these actions to Ms Thomas. However, at times, as instanced above, they each *variously* volunteer that their mother was responsible for such actions as: putting Daniel in the cupboard; assisting

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<sup>29</sup> Inquest Brief, P. 179-185



in gagging Daniel; seeing Ms Thomas and their mother “finishing off” tying Daniel to the bed; their mother telling Ms Thomas to blindfold him; their mother putting him under the house; and that mostly it was their mother that slapped Daniel on the face.<sup>30</sup> I consider that they are all describing actions that they have actually witnessed, even though they may differ as to the agents of those actions. For an eight year old boy to know the word “spread-eagled” suggests that this word was used frequently in the house at Standish Street. Furthermore, they had all been with their mother when she went to 187 Standish Street to report Daniel being missing after returning from Wangaratta on the 17<sup>th</sup> October. It is at least possible that they heard their mother tell Mr Williamson and Ms Shannon about her fear that her children would be removed from her if she told the truth.

43. The observations above of Daniel being made to sit facing a wall and being told to not move his head were made by *non-household witnesses* with no affiliation to Ms Thomas. Each regarded Ms Martyn as the person primarily responsible for this treatment of Daniel.
44. I am satisfied that the principal player in respect of Daniel’s mistreatment during the last 7 weeks of his life was Ms Martyn. Ms Thomas has told police that she was scared of Ms Martyn. That Ms Martyn inspired fear was also evident in the testimony of other witnesses.<sup>31</sup> There are many references in the Inquest Brief to witnesses describing Ms Martyn as being loud-mouthed and threatening. Witnesses also observed Ms Thomas being subservient in the presence of Ms Martyn.
45. Ms Thomas, however, did have options. She was 33 years old, she had her own home to return to at Lawrence Street; she had family in Shepparton; she had access to aboriginal supports. There was no reason why she could not have explored public housing in Shepparton and gone to live there with Daniel. Notwithstanding this, she remained under the same roof as someone who systematically mistreated her own son and she manifestly failed to protect or console him. She chose to do nothing and allowed the abuse to Daniel to continue. This is not to ignore that at times Ms Thomas was also seen to smack Daniel.
46. There was no evidence of Daniel having been mistreated physically during his life prior to his mother taking up residence with Ms Martyn. Indeed, Dr Stubberfield reported that Daniel was the best he had seen him when he last saw him in late July. That Ms Thomas had suddenly turned into a child abuser of the nature alleged in the course of a few weeks is most unlikely.

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<sup>30</sup> The aforementioned are extracted from the accounts outlined in paragraph 29 of this Finding.

<sup>31</sup> See for example evidence of Rosemary Loader and David Munro.

That she inflicted minor assaults on Daniel at times to impress Ms Martyn or at the behest of Ms Martyn is possible and is, at times, supported by other witnesses. She told police she had told Ms Martyn that she wanted to return to her own home after a few weeks after seeing the way Daniel was being treated, but, she said, that Ms Martyn would not let her, due to all the bruises on Daniel's body. Also, she said she was frightened of what Ms Martyn and her friends could do to her if she did, in fact, leave in those circumstances. The extent to which Ms Thomas actively participated in or passively accepted the abuse meted out to her son is difficult to determine. In either event, her conduct was execrable.

### **The competing accounts in respect of circumstances of the death**

47. Since 2003 a number of competing accounts were given by individuals in respect of the circumstances of Daniel's death. The versions of events vary across individuals and between the accounts given by individuals over time. I discuss below accounts provided by both Ms Martyn and Ms Thomas.

#### ***The accounts given by Ms Martyn***

48. As referred to above, Ms Martyn told both Jane Richards and Madeline Kelly in 2008 that Ms Thomas had strangled Daniel and that she, Ms Martyn, had disposed of his body. In the account she gave Ms Richards in 2008, it is not clear on what evening during the nursing course that Ms Thomas is supposed to have returned to Myrtleford from Shepparton, save that it was "when she wasn't expected". Ms Thomas, (it has been independently verified by another witness<sup>32</sup>) travelled to Shepparton on her own to commence her course early on the morning of Wednesday 15<sup>th</sup> October and did, indeed, commence her course that day and attended each of the following two days.<sup>33</sup> She stayed Wednesday and Thursday nights at the home of her niece, Jennifer Greenwood (formerly Ralph) in Shepparton.<sup>34</sup> She *was* expected to return to Myrtleford each afternoon. She missed the bus on Wednesday night as she spent time playing the poker machines, and simply did not return on the Thursday night during which she spent a long time telling Ms Greenwood about the way Ms Martyn mistreated Daniel. Each day she had been dropped off at the TAFE by her niece's husband and collected later. It is not possible that she returned to Myrtleford and strangled Daniel, as alleged by her to Ms Richards. She had no means of transport other than using the bus and she had missed the last bus on the Wednesday night. She had been in Ms Greenwood's company at the poker

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<sup>32</sup> For example Statement of Catherine O'Brien who sat next to Donna Thomas on the bus. IB P. 226-228.

<sup>33</sup> Statement of Robert Britton Inquest Brief P167-169.

<sup>34</sup> Statement of Jennifer Ralph IB P. 300 Exhibit "H".

machine venue. I did not get any impression that Ms Greenwood would lie to protect Ms Thomas and found her to be an entirely credible witness.

49. In the notes that her solicitor were faxed to police prior to 18<sup>th</sup> February, 2004, she stated that she had come across Ms Thomas trying to strangle Daniel on the Tuesday night (14/10/2003); that she had intervened grabbing Thomas by the throat, threatening to “dob her in to Welfare” and kicked her out of the room. She said she then covered Daniel up and “gave him a kiss goodnight”. She stated: “His little lips were blue”. The next morning she opened the door and “he was gone”. It is not clear what she was meaning to convey by the use of the word “gone”. In the same notes, she later stated: “The children knew he was gone on Friday, as they respect closed doors.” She stated that Ms Thomas had phoned from Shepparton on Wednesday night and had “carried on as if Daniel was still here because she told me to get some nappies on her account.” Again, it is not clear what was intended by the phrase “still here”. It seems that the investigating Member Sergeant Sheather interpreted the notes as suggesting that Ms Thomas had taken Daniel from the house on the Wednesday morning. This is apparent in the record of his interview with Ms Thomas conducted on the 18<sup>th</sup> February, 2004, Questions 551 and 554.
50. I consider that it is possible that Ms Martyn meant “dead” when she euphemistically said she had opened the door on the Wednesday morning and discovered that Daniel was “gone”. It follows similarly that the reference to “still here” could have meant “still alive”.
51. In either event, the obvious question that arises is, if the accounts she later gave in 2008 are true, or, if the statements contained in her notes made in early 2004 are truthful and Ms Thomas had indeed been responsible for Daniel’s death, why would Ms Martyn, in 2003, when she reported Daniel missing, be, in effect, defending Ms Thomas by not disclosing this information?
52. Ms Martyn was not to know that Daniel’s body would not be discovered soon after he was reported missing. If she was entirely innocent, by removing his body and hiding it, she took an enormous risk, both in terms of being a suspect in his murder and in terms of the likely removal of her own children. There is no evidence to support any theory that she owed any loyalty to Ms Thomas. There was no evidence of any observed affection between them. Their relationship was of only short duration and, indeed, ceased altogether after Daniel’s reported disappearance.

53. The following cross-examination took place between Counsel Assisting and Child Number 2.<sup>35</sup>

*MS THOMAS: I take it that Donna hasn't been described to you by your mother as someone that she was close to or wanted to cover up or protect or anything like that?---*

*CHILD NO 2 - No, I don't know what their relationship was. But I would say she wouldn't cover for Donna.*

*MS THOMAS: So if Donna killed Daniel, your mother wouldn't have had any reason to then go and dispose of the body and cover up and protect on behalf of Donna?---CHILD NO 2-Yeah, I don't know, but I would – to me there's no motive for that, no reason.*

*MS THOMAS They hadn't known each other particularly long at the time of these events, had they?---*

*CHILD NO 2 - I don't think so. I don't know.*

54. It is apparent that Ms Martyn was very concerned about any risk of her own children being removed from her. According to Ms Thomas, Ms Martyn had forbidden her from returning to her own home a few weeks earlier as she was scared Daniel's bruises would be exposed, along with her mistreatment of him, which, in turn, would bring her to the attention of the Department of Human Services. According to Ms Thomas, for the same reason, Daniel was withdrawn from day-care. Ms Martyn's fear of Child Protection involvement was given as the reason she lied about Daniel disappearing from the front garden. This is what she told Mr Williamson<sup>36</sup> and Ms Shannon.<sup>37</sup>
55. The court heard evidence from Dora Kneebone who, in 2003, operated a mixed business in Thomas Street, Myrtleford. In her statement, adopted in evidence, Ms Kneebone swore that Ms Martyn had come into her store at about 7 AM on Friday 17<sup>th</sup> October complaining and swearing very loudly that Ms Thomas had left her to look after her son without having provided her with sufficient nappies; that Ms Thomas had missed the bus the evening before and had not telephoned until 11 AM.<sup>38</sup> She said that Ms Martyn had then purchased a 12 pack of VIP extra large nappies and insisted that these be put on the account of Ms Thomas. In his statement, David Williamson said that Ms Martyn had come to his place on Thursday 16<sup>th</sup>

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<sup>35</sup> Transcript P. 663.

<sup>36</sup> Statement Inquest Brief Pp 268-274.

<sup>37</sup> Statement Inquest Brief P; 276-279

<sup>38</sup> Statement Inquest Brief P. 241 – Exhibit N

October and that he had overheard her complaining to his partner, Tina Shannon, that Ms Thomas had “missed the bus” and had left her with only two nappies for Daniel and that she had “been to the shop and “booked up” nappies and milk on Donna’s account”. Ms Shannon in her statement supported this account adding that Ms Martyn had told her that Ms Thomas was in Shepparton doing a nursing course and had phoned her the night before to say she had missed the bus.<sup>39</sup> Although it seems likely that Ms Kneebone was mistaken about whether Ms Martyn had bought the nappies on the Friday or the day before, this discrepancy is of no significance.

56. As referred to above, in the faxed notes sent to police on her behalf by her solicitor in early 2004, Ms Martyn, stated that Ms Thomas had phoned her on Wednesday night from Shepparton and that “she carried on as if Daniel was still here because she told me to get some nappies from the shop on her account”. Ms Martyn goes on: “This is when I knew and I started to scatter and went into auto pilot of self preservation as I knew she was setting me up....” and later “ I did buy some nappies, I later cut some up and put them in the bin at the shop.” Detective Russell Sheather told the inquest under cross-examination by Ms Diana Price, Counsel for Ms Thomas, that when Standish Street was searched shortly after the alleged disappearance, in a packet of 12 nappies, there were two missing. He agreed that this would give the appearance that they had been used and that Daniel had been alive after the purchase of the nappies on either the Thursday or the Friday.<sup>40</sup>
57. The statements in Ms Martyn’s faxed notes in relation to the phone call from Ms Thomas and her reaction to it are inherently improbable. If she was “being set up” then why did she “play along” with this alleged “setting up” and go to buy the nappies? It was a clearly calculated strategy designed to mislead not just the shop-keeper but also her friends Ms Shannon and Mr Williamson and to build the case for a “Friday disappearance.”
58. Ms Martyn was interviewed by police by way of videotaped records of interview on a number of occasions: on 19<sup>th</sup> October, 2003, 14<sup>th</sup> November 2003, 18<sup>th</sup> March 2004 and on the 26<sup>th</sup> July 2007. On each occasion, she made a “No Comment” record of interview.

### ***Accounts given by Donna Thomas in relation to circumstances of death***

#### **Statement made 20<sup>th</sup> October 2003**

59. In her statement made the 20<sup>th</sup> October 2003, Ms Thomas states (inter alia) that:

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<sup>39</sup> Tina Shannon is deceased.

<sup>40</sup> See Transcript P. 713.

- The last time she had seen Daniel awake had been on the evening of Tuesday 14<sup>th</sup> October.
- On that night Ms Martyn told her she was going to give Daniel a bath.
- Ms Martyn had “waved her into the bathroom” where she saw Daniel lying in the bath on his back with a wet flannel over his face, making noises “like he was trying to breathe”. She had walked away “because I couldn’t handle seeing him like that” had sat down in the lounge room and “lit up another smoke”.
- Over the following hour, Ms Martyn had repeatedly called her into the bathroom where she saw Daniel sitting in the bath with his head and shoulders over the side, not moving or making a sound. She stated: “I did not show how upset I was because Mandy would have enjoyed that”. She could see his chest rise.
- She made a cup of tea for them both and went into the room Daniel used as his bedroom. She saw Daniel lying on the floor on his stomach with his face to the side “sooking”. Ms Thomas went back to the lounge room to drink her tea. When she next went into Daniel’s bedroom she saw Ms Martyn “drop Daniel onto the bed”. There was no mattress on the bed and he hit the back of his head on the wooden slats. His right eye was shut and black from bruising and swelling. His left eye was bruised but not swollen. He had a lump in the middle of his forehead. She could not see the bridge of his nose due to the swelling. She went back to the lounge and watched “All Saints” on TV and then went to bed.
- The next morning she “checked” on Daniel and he was wearing a bandage covering his eyes. He was snoring and his top lip was swollen. She went to the bank to withdraw some money and left for Shepparton.
- She remembers having bought a 32 or 36 packet of extra large toddler disposable nappies either that week or the week before and that there was half a packet left when she left on Wednesday morning.

Comment with respect to this evidence

60. There was evidence in the form of a statement from veterinarian Andrew Colson<sup>41</sup> that he had received a call from Ms Thomas at about 8.30 PM on the Tuesday night about her cat that was

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<sup>41</sup> Inquest Brief P.223-224.

having trouble giving birth. He met them (Ms Thomas and a young girl)<sup>42</sup> at the surgery and operated on the cat. At midnight, he phoned the home and spoke to Ms Thomas telling her that the cat had not survived but there were four live kittens to collect. Ms Thomas turned up at 12.30 AM to collect them. Dr Colson drove her home. On this basis, it is likely that Ms Thomas has wrongly named the event she describes as occurring on the Tuesday night and that in fact these events occurred on the Monday night. Her subsequent statement clarifies this.

***Record of Interview with Ms Thomas on the 22<sup>nd</sup> October, 2003***

61. This interview was referred to above in relation to the treatment of Daniel. I refer to it here in relation to the circumstances of Daniel's death.

62. In this Record of Interview, Ms Thomas stated (inter alia) that:

- “[On] about the Monday night” she and Ms Martyn were smoking cannabis. She had dozed off and then heard a thump and Ms Martyn saying “Stop your sooking”. She went into the bedroom where she sees a towel with a lot of blood on it and Daniel lying on the floor with the back of his head on the towel. Ms Martyn had told her he had cut his lip but it seemed too much blood for that.
- She had gone to the toilet and when she returned to the bedroom she saw Ms Martyn pick Daniel up by an arm and a leg and throw him onto the slats on the bed “like a sack of potatoes”. She saw his head hit the slat. He was motionless.
- She left the room and Ms Martyn came out about half to three quarters of an hour later.
- During Tuesday she went in and checked on him but all she saw was a bandage on his head. He did not seem to be tied to the bed and she did not see him move.
- He was in the same position on Wednesday morning.

***Record of Interview made 18<sup>th</sup> February 2004<sup>43</sup>***

63. In this Record of Interview Ms Thomas gave an account of evidence including that:

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<sup>42</sup> Apparently one of the Martyn children.

<sup>43</sup> Inquest Brief p731-831

- On the Tuesday morning Ms Martyn had called her into the bathroom. Daniel was in the bath on his back with his head turned to the side and being held down by Ms Martyn with one nostril out of the water. Thomas goes back to the lounge room
- 5-10 minutes later, Ms Martyn calls to her to come back to the bathroom. She does so. This time Daniel's arms are hanging over the side and his head is tilted back with his eyes open. Ms Martyn said to her "look at the idiot". Thomas stayed for a minute and then returned to the lounge room.
- After a short while, Ms Thomas returned to the bathroom. Nobody was there. She went into Daniel's bedroom. He was lying on the floor with bloody towels underneath him. There was a trickle of blood on his mouth. Ms Martyn said he had fallen and hit his mouth. (Ms Martyn had previously told her that "she wanted to break his spirit". Looking back on it, Ms Thomas thinks now that when she saw Daniel in the bath he was "close to death".)
- He had not moved or moved his eyes in the bath or on the bedroom floor.
- She went to pick up Ms Martyn's children from school. Ms Martyn said she was going out "to organise some things" which Thomas took to mean "to get rid of Daniel".
- Later that evening, the cat was giving birth to her kittens. Ms Martyn phoned and when told this said she would be home shortly. She arrived and left shortly afterwards. Ms Thomas takes the cat to the vet (who is called out from home). He later calls to say the mother cat has died and to come and collect the kittens, which she does and the vet gives her a lift home.
- Ms Thomas gets home, Ms Martyn tells her to go to her course the next day in Shepparton and that she will "look after Daniel".
- The next morning Ms Thomas goes into Daniel's bedroom. He is lying flat on his back on the bed slats with a blanket pulled up to his armpits. She does not see him move. He has bandages covering his eyes.
- She phoned Ms Martyn on Friday from Shepparton and Ms told her that Daniel had gone missing and handed the phone to a police officer who then spoke to Ms Thomas.
- Ms Thomas denies strangling Daniel on Tuesday night.



- Ms Thomas denies telling Ms Martyn to act as if nothing happened and to go and get some nappies on her account.
- It is “only looking back on it now” that Ms Thomas realises Daniel was dead when she left on the Wednesday morning.

### **Conclusion as to the circumstances of the death**

64. I consider that the evidence enables me to find that Daniel Thomas died from injuries inflicted on him on the evening of Monday 13<sup>th</sup> October 2003. There is no credible evidence of him being seen alive after Monday evening.<sup>44</sup> The evidence of Ms Thomas that she heard him snoring on the morning of Wednesday 15<sup>th</sup> October was later retracted.

65. Paragraph 74, below, deals with the question of contribution to the death.

## **FINDINGS**

### **Identity of the deceased**

66. On 24 October 2003, the police and forensic officers examined 122 Standish Street, Myrtleford, which resulted in the collection of various items including: an area of carpet in the middle bedroom<sup>45</sup>; a doona cover from the middle bedroom<sup>46</sup>; and four pieces of towel from the laundry floor (comprising two orange pieces and two multi coloured pieces of towel)<sup>47</sup>. The first two categories of items were analysed for the presence of blood and tests were conducted to establish whether any blood located matched that of Daniel Thomas.<sup>48</sup> A ‘*full DNA profile thought to be that of Daniel Thomas*’ was obtained from both items.<sup>49</sup> In relation to the pieces of towel, a ‘*full DNA profile matching the profile thought to be that of Daniel Thomas*’ was obtained from a bloodstain sampled from one of the orange pieces of towel. In addition, a small piece of matter was located adhering to the fibres of this piece of towel and a

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<sup>44</sup> None of the children in their VARE interviews disclosed any knowledge of the circumstances of Daniel’s death. None of them gave convincing accounts of having actually seen Daniel during the 3-4 days before Friday. Assumptions were made by them that he was in his bedroom or being bathed, as they saw their mother going into his bedroom and one child mentions Daniel being bathed but on further questioning, she says that she did not actually see Daniel in the bath.

<sup>45</sup> Item 24

<sup>46</sup> Item 5

<sup>47</sup> Item 7

<sup>48</sup> Statement of Rebecca Heyes, Forensic Scientist, Victoria Police Forensic Services Centre, Inquest Brief 362-375

<sup>49</sup> Inquest brief pages 369-370.

*'full DNA profile thought to be that of Daniel Thomas'* was obtained from this piece of matter.<sup>50</sup>

67. Given the cogency and consistency of this, and the other forensic identification evidence as outlined in paragraph 6 of this finding, I find that the identity of the deceased was Daniel Michael Brendan Thomas.

### **Cause of death**

68. As mentioned above, due to the time elapsed and condition of the incomplete skeletal remains, a cause of death was not able to be ascertained in relation to Daniel Thomas. Given the various accounts of Ms Martyn and Ms Thomas, he may have died from strangulation, drowning or a closed head injury - none of which would have been identifiable at the time of autopsy. At no stage has either woman suggested death from natural causes as being a possibility. Whilst there is reference to Daniel being very thin when seen by his half-brother, David Ruffels, on the 9<sup>th</sup> October, 2003 and Ms Thomas describing him as being "like skin and bone towards the end", neither Donna Thomas nor Mandy Martyn have ever suggested that Daniel died from natural causes. On the other hand there is forensic evidence to support the version that his death was as a result of "injury".
69. I accept and adopt the evidence of Associate Professor Christopher Briggs and find that Daniel Thomas died from unascertained causes. There is insufficient forensic evidence to allow a definitive finding as to the exact mechanism of death, however on the balance of probabilities I find that Daniel Thomas died from inflicted injuries on the evening of Monday 13<sup>th</sup> October 2003.

### **Circumstances**

70. Neither Ms Martyn nor Ms Thomas were called as witnesses in the Inquest. Section 64 Coroners Act 2008 empowers a coroner to determine which witnesses are to be called. Whilst both women were on the original witness list, Counsel for Ms Martyn informed the court early in the proceedings that his client would be objecting to giving evidence if she were called claiming privilege against self-incrimination. Ultimately I determined not to call either of them on a number of bases. In particular, as I have outlined above, they gave different versions with respect to each of the areas inquired into. Not only were their versions incompatible *one with the other*, they were also inherently incompatible and irreconcilable

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<sup>50</sup> Inquest brief pages 370

*within themselves*. Had the former been the case alone, their respective versions could have been tested under cross-examination, (depending on whether the application of the provisions of Section 57 Coroners Act allowed it). This was not the case. I took the view that their earlier statements could not be credibly reconciled and that, consequently, any attempt to do this or to advance yet another version would not assist my investigation. Counsel for each of them were advised of my decision towards the end of the Inquest hearing. There was no application made in response thereto and no objection raised in the written submissions of Counsel.

71. I have already concluded that Ms Martyn disposed of Daniel's body, placing it under the house at 53 Lawrence Street. I am satisfied that there was no basis for Ms Martyn to do this unless she had some responsibility for the death. The false versions of his "disappearance" and the charade of purchasing the nappies were all designed to create the impression that Daniel was still alive, after he was clearly dead and demonstrated guile designed to cover up the true situation. This conduct, together with the disposal of Daniel's remains, is not consistent with any innocent explanation.
72. I am satisfied that Ms Martyn was clearly the dominant person in the relationship with Ms Thomas and that she owed her nothing. Ms Martyn was very concerned about losing her children to the Department of Human Services. These two factors make it highly unlikely that she would take risks to protect Ms Thomas, an acquaintance of only some weeks.
73. I am satisfied that Ms Martyn physically and emotionally abused Daniel, particularly in the 6 – 7 weeks before his death and that Ms Thomas failed to protect him in any way. The demeanour of Ms Thomas, as seen during the video-taped records of interview, was that of a person with a flat affect, I detected no evidence of shrewdness or guile. The demeanour of Ms Martyn in her interviews was aggressive and angry. I mention this not to suggest that Ms Martyn's demeanour on those occasions makes her more likely to have harmed Daniel but to demonstrate the observed differences in demeanour between the two women.
74. I am mindful of the gravity of a finding that a person caused the death of another person and of the statement of the applicable standard as set out in Briginshaw v. Briginshaw (1938) HCA 34 in relation to the degree of satisfaction required before such a finding may be made. However, the evidence of the manner in which Ms Martyn treated Daniel as observed by non-interested parties, of the imbalance in their relationship, the video-taped evidence of Ms Thomas, the deliberately misleading conduct of Ms Martyn after the 13<sup>th</sup> October and her

subsequent admissions about disposing of Daniel's body led to an almost unavoidable conclusion that she was responsible for causing his death. Ms Thomas, by reason of her inaction, also contributed to Daniel's death.

I direct that a copy of this finding be published on the website at the Coroners Court of Victoria and to be provided to the following:

Donna Thomas (by her solicitor Anthony McCaughey

Detective Sergeant Russell Sheather

Mandy Martyn (by her solicitor Greg Duncan)

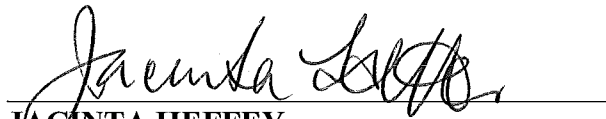
Suzanne Frawley – Victims of Crime Assistance Tribunal (VOCAT)

Bernard Geary – Commissioner for Children and Young People

Kevin Ruffels

Kelly Nolan – Department of Human Services

Signature:



**JACINTA HEFFEY**  
**CORONER**

Date: 3<sup>rd</sup> July, 2014.



137. The evidence as to the actual search of the underneath of the house at 53 Lawrence Street is unsatisfactory.

Leading Senior Constable Phillip Ryder

138. Ryder made an unsigned statement in 2012, which he acknowledged in evidence.<sup>122</sup> In evidence it emerged that Ryder had made a statement in 2008, but that statement had been lost and he had been asked to make a further statement in 2012. When he made the statement in 2012, he did not have the earlier statement, the search log or any notes to assist him.<sup>123</sup>

139. Ryder stated that he was with a group of police, CFA and SES volunteers and that the group were checking backyards in Myrtleford. He arrived at a house in Myrtleford "where Daniel Thomas was believed to have disappeared from."<sup>124</sup>

140. It is apparent from the evidence that Ryder was referring to 53 Lawrence Street, and had wrongly assumed that Daniel had disappeared from that address. Ryder described the house he looked under as weatherboard, built on sloping land, with a gap at the rear.<sup>125</sup>

141. Ryder said that he and another police member, whose name he did not recall, went under the house and searched to "half way up towards the front". The other member went "right up near the front of the house." There did not appear to be any freshly turned earth. "At some stage" he and the other member were told not to worry because the underneath of the house had already been searched. This search did not occur on 17 October 2003, the day

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<sup>122</sup> IB 375A; TX 45

<sup>123</sup> TX 45-7

<sup>124</sup> IB 375A

<sup>125</sup> TX 48-9, 55-6. When shown a photograph of Standish Street he agreed that it was not the house that he had attended.

Daniel disappeared, but some time the following week, perhaps as late as 25 October.<sup>126</sup>

142. Ryder conceded that he looked under the house “off his own bat” and without instruction from any other officer, and that he assumed, given that he believed Daniel had disappeared from the house days before, that the area below the house would have been thoroughly searched.<sup>127</sup> Any inspection that Ryder carried out must have been cursory in the circumstances.

143. In evidence Ryder said that he had been under the house for about five minutes when he and the other police member were told that the house had already been searched.<sup>128</sup> He believed that he walked about five metres under the house and the other member went further. This took place at the end of a long day of searching, in the late afternoon.<sup>129</sup>

144. Daniel’s remains were located approximately 1.75 metres from the entrance to the area beneath the house.<sup>130</sup> Accordingly, any person who entered the space under the house through the small door would have walked over the area where Daniel’s remains were found.

145. The evidence of Ryder should be treated with caution in all the circumstances.

Sergeant Jamie Edwards

146. Edwards was the co-ordinator of the search, and provided a lengthy statement describing the search.<sup>131</sup>

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<sup>126</sup> TX 46-7

<sup>127</sup> TX 53, 62-3, 67, 69, 71

<sup>128</sup> TX 56-7, 73

<sup>129</sup> TX 60-61

<sup>130</sup> IB 348, 434

<sup>131</sup> IB 376. Edwards was not called at the hearing.

147. He stated that on 18 October 2003 Senior Constable Boysen, of the canine unit, searched "the Myrtleford hospital grounds, Cundy Park, and the park, creek and cemetery in the vicinity of 53 Lawrence Street".

148. He also stated that Rescue 403 (being two police members) "conducted a line search of Cundy Park with 2 SES teams, then searched 53 Lawrence Street..."<sup>132</sup>

149. Edwards' statement contains no reference to any search being conducted under the house at Lawrence Street and no reference to Leading Senior Constable Ryder.

Detective Sergeant Russell Sheather

150. Detective Sergeant Sheather conducted further enquiries about the search during the hearing. He stated that he had contacted Sergeant (formerly Senior Constable) Boysen of the canine unit who had advised that his dog had not been taken onto the property at 53 Lawrence Street because of the large number of people who had been through the property prior to 18 October 2003.<sup>133</sup>

151. Sheather also stated in evidence that there was no specific note of any search under the house at 53 Lawrence Street, although the property would have been identified as one to be searched.<sup>134</sup>

Colin Bilney

152. Colin Bilney was called at the hearing and he asked to add to his statement. He stated that he had searched under the house at 53 Lawrence Street on about Tuesday 21 October 2003 when he

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<sup>132</sup> IB 378-9 No statements were provided from any police member who searched in or under 53 Lawrence Street apart from Ryder

<sup>133</sup> TX 78, 717-8

<sup>134</sup> TX 720

attended at the property to collect some of Donna Thomas' belongings.<sup>135</sup> He stated that he looked under the house and found no sign of any disturbance.<sup>136</sup>

153. Bilney conceded in cross-examination that he was not involved in any kind of formal search. He said that he only stepped under the house a few feet before being told to move back because SES workers were "doing their job." He was under the house for only a few minutes. He stated that a police officer and SES workers went under the house. He described himself as a "concerned citizen" at that stage.<sup>137</sup>

154. It is submitted that the court could not conclude that, if Mr Bilney did enter the area under 53 Lawrence Street, he was in a position to make any detailed observations. Additionally his evidence is not supported by any SES worker or police officer. He was not at the house as part of any official search and was not asked to go under the house; indeed on his own evidence he was asked not to do so. His evidence should be treated with caution.

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<sup>135</sup> TX 378

<sup>136</sup> TX 378, 384

<sup>137</sup> TX 404-408; 415-418