

FINDING INTO DEATH WITH INQUEST

*Form 37 Rule 60(1)
Section 67 of the Coroners Act 2008*

Inquest into the Death of DOMINIQUE CUPSA

Delivered On:

Delivered At: Coroners Court of Victoria
Level 11, 222 Exhibition Street
Melbourne 3000

Hearing Dates: 23, 24 January, 2012 at
MELBOURNE

Findings of: JACINTA MARY HEFFEY, CORONER

Counsel Assisting the Coroner: Mr Michael Hennessy, Barrister
instructed by OPP

I, JACINTA MARY HEFFEY, Coroner having investigated the death of DOMINIQUE CUPSA

AND having held an inquest in relation to this death on 23rd and 24th January, 2012
at MELBOURNE

find that the identity of the deceased was DOMINIQUE CUPSA

born on 15 August, 2005

and the death occurred on 18 January 2009

at Wangaratta District Base Hospital, 35-47 Green Street, Wangaratta 3677

from:

1a. COMPLICATIONS OF SEVERE ISCHAEMIC/HYPOXIC BRAIN INJURY

in the following circumstances:

1. Dominique Cupsa was aged 3 years at the date of his death. At the age of 2 months he sustained a severe brain injury as a result of which he was taken into care of the Department of Human Services. He was living at a Disability Support Service House in Wangaratta and was found deceased on the morning of the 18th January 2009 when his carer went to check on him. An autopsy was performed at the Victorian Institute of Forensic Medicine and found no suspicious circumstances in the terminal phase of his life and posited septicaemia or an epileptic seizure as possible immediate causes of death given his "marked neurological deficits".
2. An inquest was conducted into his death due to its direct link to his brain injury sustained in 2005 which was as a result of human involvement and due to the fact that he was in the care and custody of the State at the time of his death.
3. The inquest hearing heard evidence from three medical experts, (Drs Terrence Donald, David Wallace and Edwina Montgomery); Dr Elliot Jarman, medical practitioner at Seymour Hospital, Dominique's paternal aunt, Terezia Cupsa and Detective Senior Constable Jennifer Booth on behalf of Detective Senior Sergeant Ron Iddles of the Victorian Homicide Squad. Neither of the child's parents, Ovidiu and Andreea Cupsa attended either the Inquest hearing or the Directions Hearing.
4. Nobody was ever charged in relation to the child's brain injuries which came to light in mid October 2005. Nobody ever admitted to inflicting the injuries, although the father Ovidiu did admit to shaking the baby on the 13th October 2005 at about 8.20pm when he was alone with the baby. In a record of interview on the 19th October 2005 he told Detective Senior Sergeant Iddles that he had been left to look after the baby on the evening of the 13th October and noticed the baby arch his back. He lifted him around the chest from his pusher and without supporting his head and with his legs and bottom still lying in the pusher he shook him. He said he did not feel that he shook him very hard and not from anger. He said he had been worried about the back-arching.
5. When the baby's mother and aunt returned home shortly afterwards they found Ovidiu clearly worried about the state of the baby who was pale and his eyes were not focussing. Notwithstanding

this, he was put to bed between the parents and taken to Seymour Hospital only the next morning, the 14th October.

6. There, Dr Elliot Jarman examined Dominique and his differential diagnosis was Sepsis-meningitis, urinary tract infection. His pupils were dilated with little reaction to light and he had a bulging fontanelle, was floppy, had a grey appearance, laboured respiration with apnoea episodes. Significantly, Dr Jarman also noted a bruise on the baby's left occiput. Transfer to the Royal Childrens Hospital via NETS was arranged and Dominique was admitted to ICU at the RCH later that day. He was subsequently discharged on the 9th November 2005, severely disabled and blind, into the care of the Department of Human Services.

7. The Coroners Office retained the services of forensic paediatrician Dr Terrence Donald of the Womens and Childrens Hospital Adelaide to review all the medical records and provide an analysis of the observations made and tests conducted in October 2005 in an effort to date and attribute the cause of Dominique's brain injury in 2005.

8. In Dr Donald's view, the account given by Ovidiu Cupsa, if accepted, did not explain the extent of the injuries. He was of the view that this was not a case of shaking leading to brain injury, even if the shaking were maximal. He analysed the various tests and scans conducted at the Royal Childrens Hospital. In relation to the brain injury he noted the result of the CT scan which revealed that the whole of the brain had been subject to ischaemia and parts of the brain on both sides had infarcted. The MRI revealed haemorrhages, all in the subarachnoid space. Significantly he noted that the skeletal survey showed "soft tissue swelling consistent with skull haematoma overlying the posterior parietal area". This supported the observation of the bruise noted by Dr Jarman: Dr Thomas told the court that the bruising to the back left part of the head "indicates clearly that there had been impact.... (which could) account for the bleeding into the brain tissue at the back of his head."

9. Dr Donald compared the forces from head impact with those of head shaking and said that the former were much greater, in the order of ten times, the rotational force from shaking. "So that's why this impact to the back of the head is so important, because the forces in that would have been much greater than any force that could be generated even by maximal shaking". The presence of retinal haemorrhages, he said, were no longer considered according to the latest research to be diagnostic of baby shaking. He said he had been troubled in this case as "the evidence of impact seemed to be overlooked." He described the contusion to the brain caused by impact, likely by a fall onto a hard surface or against a wall, as "primary injury" leading to haemorrhage occupying space leading to damage to nerve cells, the latter not being able to maintain normal fluid balance leading in turn to pressure inside the head. The raised intracranial pressure is the "secondary injury" as it compromises the circulation to the brain via patent blood vessels, thereby depriving the brain of oxygen which in turn causes hypoxia and ischaemia. The head impact had occurred in the order of a few to several days before as the "secondary" changes referred to above take some time to develop.

10. Dr Wallace, neurosurgeon at the Royal Childrens Hospital expressed a different view from Dr Thomas. As stated above, the presence of hypoxic ischaemic changes, which they both agreed take some time to develop, was considered by Dr Thomas to be a feature *secondary* to a severe impact to the

head and his preferred scenario was the baby's head coming into contact with a hard surface. Dr Wallace on the other hand considered these changes to be evidence of a *primary* insult such as caused by suffocation or strangulation. He said hypoxic ischaemic changes were unusual as a consequence of trauma in a child of this age as the bones of the skull are not yet fused and the head will expand to relieve the head pressure. Dr Wallace also considered the evidence of the bruise significant suggesting a severe head injury. This led to his view that there had been two occasions of trauma, one causing the bruise and one interfering "with the oxygen supply to the brain or the blood supply to the brain or both" such as strangulation or suffocation. The example he gave was of a pillow being held over the child's head which would occlude the blood supply but not leave any marks.

11. Dr Edwina Montgomery was a consultant paediatrician at the Gatehouse Centre attached to the Royal Childrens Hospital. Her notes of her examination of Dominique make no reference to any bruise. The records of the Royal Childrens Hospital make no reference to the presence of a bruise. The Court also heard evidence from the paternal aunt that when she visited Dominique at the hospital with the paternal grandmother on the 14th October they both noticed a bruise on the back of the baby's head and the grandmother asked a doctor what it was. She said that there were a number of doctors present but only one answered saying that the baby had a bruise on the back of his head.

I consider that there is strong evidence of a bruise which is supported by the skeletal survey and that this is evidence of a high impact injury likely to have been caused by the baby falling and hitting his head on a hard surface at least one to some days before he presented to Seymour Hospital. I am unable to say whether this injury led to the hypoxic ischaemic changes to the brain or whether the latter were a direct consequence of trauma in the nature of suffocation cutting of blood supply to the brain. I have no basis on which to prefer the evidence of one expert to the other. I do consider that shaking of any magnitude is unlikely to have produced this result. Dr Donald discounted it. Dr Wallace stated that it would not explain the hypoxic ischaemic changes as the raised intracranial pressure would have been relieved in a child of this age due to the anatomy of the skull. Both experts agreed that there had been a high impact injury to the head in the days before the presentation to Seymour Hospital.

12. Both experts also agreed that there had been at least one episode (separate from the brain injury) of trauma leading to bony injuries. The bone scan and skeletal surveys showed evidence of healing fractures of the lateral part of the sixth, seventh and possibly the eighth left ribs. There was a healing fracture of the left humerus in the region of the proximal metaphysis. The bone scan also suggested possible other areas of trauma such as the proximal right humerus, the distal left tibial metaphysis and possible skull fracture involving the left parietal bone. These latter suspected injuries were not subsequently reviewed by serial x-ray examination. The possible skull fracture had it been confirmed would have been consistent with the bruise/high impact injury referred to above.

13. The dating of these bony injuries places them at least 10-14 days from the date of the presentation to Seymour Hospital as the court was told that evidence of healing only occurs within this time frame of 10 - 14 days from the date the fractures were sustained.

14. In summary, it is open on the evidence to find that the baby was subjected to traumatic injury on at least two occasions. He had been left exclusively in the care of a number of family members from

the date of his birth, including his maternal grandmother until she returned to Romania on the 27th September 2005. After that date he spent time with his aunt Terezia (notably for the whole of the 11th October and for four hours until 12.30pm on the 12th October 2005); by his mother Andreea (for the rest of the day on the 12th October and for all of the 13th October until she and Terezia left him with his father from 6.30pm until 8.00pm).


15. It is not possible to date the bruise (and therefore the date of the head injury caused by impact) nor is it possible to date with any precision the other injuries noted. Suffocation with a pillow would leave no trace on the body (if Dr Wallace's theory were to be accepted). Under the circumstances it is not possible to nominate any person as being likely to have caused the injuries from which the baby died.

16. As I indicated Dominique was in the care of the Department of Human Services at the time of his death in 2009. There is nothing at all to indicate that he was not well cared for or his needs not attended to during that period. Neither of the *immediate* causes of death posited by the pathologist suggest that they could have been avoided.

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

Department of Human Services
Child Safety Commissioner
Royal Children's Hospital
Child Death Review Committee

Signature:



JACINTA MARY HEFFEY
CORONER

Date: 30th April 2012

