

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2009 004452

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: Sibel YILMAZ**

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| Delivered On:                 | 12 February 2014   |
| Delivered At:                 | Coroners Court of Victoria<br>Level 11, 222 Exhibition Street<br>Melbourne 3000  |
| Hearing Dates:                | 11 & 12 August 2011<br>10 November 2011<br>2 November 2012   |
| Findings of:                  | Coroner Paresa Antoniadis SPANOS   |
| Representation:               | Dr Ian FRECKELTON of Counsel, instructed by Mr Adam AKBULUT appeared on behalf of the family of the deceased.<br><br>Mr Paul HALLEY of Counsel, instructed by Ms Hannah JANKIEWICZ appeared on behalf of Dr S. SMYRNIOS<br><br>Mr Pat BOURKE of Counsel, instructed by Mr Bernie BALMER appeared on behalf of the deceased's husband Mr B. ASLAN on the first three hearing dates. |
| Police Coronial Support Unit: | Leading Senior Constable Kelly RAMSEY, assisting the Coroner.  |

I, PARESA ANTONIADIS SPANOS, Coroner,

having investigated the death of SIBEL YILMAZ

and having held an inquest in relation to this death at Melbourne on 11 and 12 August and 11 November 2011, and 2 November 2012

find that the identity of the deceased was SIBEL YILMAZ

born on 3 February 1985, aged 24

and that the death occurred on 12 September 2009

at 13 Neil Street, Hadfield, Victoria 3011

from:

1 (a) HANGING.

in the following circumstances:

#### BACKGROUND & PERSONAL CIRCUMSTANCES<sup>1</sup>

1. Ms Sibel Yilmaz was a 24-year-old married woman who resided with her husband, Mr Baris Aslan, in a home they were purchasing in Hadfield. Ms Yilmaz completed her VCE at Ivanhoe Girls' Grammar, and after commencing tertiary studies elsewhere, had transferred to RMIT University where she was studying nutrition. She also worked at the Melrose Lounge, a café on Melrose Drive, Tullamarine.
2. According to records from her treating general practitioner (GP), Ms Yilmaz had no serious medical problems, with consultations being generally for acne, gynaecological issues and weight loss. On two occasions in 2008, Ms Yilmaz was referred to psychologists for management of symptoms of anxiety and/or depression, that she reported were affecting her studies,<sup>2</sup> and persisted despite ongoing engagement with a school counsellor, Dr Stephanie

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<sup>1</sup> Paragraphs 1 – 7 are a summary of facts which were largely (but not entirely) uncontentious, and provide a context for those aspects of the circumstances that were contentious and will be discussed in paragraphs 16 and following below. In broad terms, the summary aligns with the conclusions of the attending police, and does not address the family's concerns which will also be discussed below.

<sup>2</sup> Dr Bulent Munir's statement and a copy of the practice's complete patient history are at pages 42-60 of the inquest brief (Exhibit Q).

Smyrnios.<sup>3</sup> As a result of the second referral, Ms Yilmaz engaged in a course of psychotherapy with Registered Clinical Psychologist Dr Emma Aiken between September 2008 and December 2008.<sup>4</sup> Although they identified a tendency to self-harm and/or suicidal ideation and attempts as features of her presentation and diagnosed her with depression, neither assessed Ms Yilmaz as being at significant acute risk of suicide during her engagement with them, but both recognised an ongoing susceptibility.<sup>5</sup>

3. The marriage between Ms Yilmaz and Mr Aslan appeared happy enough until about two months before her death when they separated for the first time. Ms Yilmaz stayed with her parents for a few days, and after discussions with her husband and intercession by his family and friends, the couple reconciled. There was a second separation a few weeks later, and once again, Ms Yilmaz went to her parents' home. There was a second reconciliation and the couple were living together in the matrimonial home in the weeks immediately preceding her death. To their family and friends, the marriage appeared to have survived the two separations and the couple looked like they were getting on well.<sup>6</sup>
4. On the evening of 11 September 2009, Ms Yilmaz and her husband went to the 21<sup>st</sup> birthday party of one of her work colleagues, Mr Ashish Kumar, known as Ash. All was well and both were drinking and socialising, until about midnight when Mr Aslan saw Ms Yilmaz kissing a male, probably the birthday boy, in what he considered to be an inappropriate manner, and took offence. A scene of sorts ensued, and after some delay in arranging a lift home, the couple were driven home. The drive home was uneventful.
5. The couple argued after they returned home, and Mr Aslan slept in the master bedroom that night while Ms Yilmaz was relegated to the lounge room couch. At 1.45am on 12 September 2009, Ms Yilmaz sent a text message to her friend Angela Ianzano asking her to

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<sup>3</sup> According to Dr Stephanie Smyrnios' statement (Exhibit D), Ms Yilmaz consulted her at RMIT Student Counselling on five occasions 16 April, 29 May, 1 June and 10 June 2008, 26 August and 7 September 2009, and had a scheduled appointment to see her on 16 September 2009.

<sup>4</sup> According to Dr Aiken's statement (Exhibit "T") the nine sessions commenced on 8 September 2008 and continued at approximately fortnightly intervals until 8 December 2008 when Ms Yilmaz said she did not feel the need to continue. Dr Aiken recommended that Ms Yilmaz see her GP for antidepressants, make an appointment to see her as soon as possible if her depression returned, and that otherwise, they should discuss her progress in three months' time. When she had not heard from her by 17 April 2009, Dr Aiken left a message on Ms Yilmaz' phone asking her to call and advised her GP that she had had no contact with her since December 2008.

<sup>5</sup> Dr Smyrnios' evidence is discussed in more detail at paragraph 16 and following below, and Dr Aiken's at paragraph 23 and following.

<sup>6</sup> For example, see Exhibits F, J, Exhibit G statement of Ms Aysel Yilmaz, and transcript at pages 38, 52, 220.

come over, and at 2.00am she attempted to call her mobile. Ms Ianzano did not receive the message and missed phone call until she woke much later that morning.<sup>7</sup>

6. Mr Aslan woke at about 5.00am, saw that the heater and lights were not on in the lounge room, and realised that his wife was not there. As he could see a light on in the garage, he went to investigate and found Ms Yilmaz hanging from a rope tied to a beam in the garage, near a side wall. Mr Aslan tried to hold her weight up with one arm while cutting the rope with a knife he found nearby. As the rope gave way, Mr Aslan could not hold Ms Yilmaz' weight and she fell onto the floor.<sup>8</sup>
7. Mr Aslan went back inside to call emergency services, and attempted cardiopulmonary resuscitation (CPR) under instructions from the operator until ambulance paramedics arrived a short time later, and took over CPR. At about 5.17am they requested support from a MICA paramedic who arrived at 5.31am and took over CPR, applying advanced life support measures. Ms Yilmaz could not be revived, despite some 20 minutes of advanced life support, and was pronounced deceased at 5.51am.<sup>9</sup>
8. As a result of a request from the ambulance officers, police were dispatched at 5.40am and arrived at the scene at 5.40am. They were Senior Constable Salvatore Cantone and (then) Senior Constable Carmel Ross from Fawkner Police who were performing patrol duties. They commenced the investigation of Ms Yilmaz' death by making observations of the scene, taking photographs, speaking to Mr Aslan and others who had been alerted by him and started to arrive at the scene, including the couple's friends Mr Haci and Ms Talia Ozbek, and Ms Yilmaz' family.

#### INVESTIGATION – SOURCES OF EVIDENCE

9. This finding is based on the totality of the material the product of the coronial investigation of Ms Yilmaz' death. That is the brief of evidence compiled by Senior Constable Salvatore Cantone, the statements, reports and testimony of those witnesses who testified at inquest and any documents tendered through them; and the final submissions of Counsel. All of this

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<sup>7</sup> Exhibit J and transcript at page 223.

<sup>8</sup> Exhibit O and transcript at pages 424 and following.

<sup>9</sup> The patient care records from both ambulances (182 Broadmeadows and 193/MICA 14) form part of Exhibit Q.

material, together with the inquest transcript, will remain on the coronial file.<sup>10</sup> In writing this finding, I do not purport to summarise all the material and evidence, but will refer to it only in such detail as is warranted by its forensic significance and in the interests of narrative clarity.

## PURPOSE OF A CORONIAL INVESTIGATION

10. The purpose of a coronial investigation of a *reportable death*<sup>11</sup> is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.<sup>12</sup> The *cause* of death refers to the *medical* cause of death, incorporating where possible the *mode* or *mechanism* of death. For coronial purposes, the *circumstances* in which death occurred refers to the context or background and surrounding circumstances, but is confined to those circumstances sufficiently proximate and causally relevant to the death, and not merely all circumstances which might form part of a narrative culminating in death.<sup>13</sup>
11. The broader purpose of any coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by coroners, generally referred to as the *prevention* role.<sup>14</sup> Coroners are also empowered to report to the Attorney-General in relation to a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or

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<sup>10</sup> From the commencement of the *Coroners Act 2008* (the Act), that is 1 November 2009, access to documents held by the Coroners Court of Victoria is governed by section 115 of the Act.

<sup>11</sup> The *Coroners Act 2008*, like its predecessor the *Coroners Act 1985*, requires certain deaths to be reported to the Coroner for investigation. Apart from a jurisdictional nexus with the State of Victoria, the definition of a reportable death in section 4 includes deaths that appear *to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from accident or injury and the death of a person who immediately before death was a patient within the meaning of the Mental Health Act 1986*”.

<sup>12</sup> Section 67(1) of the *Coroners Act 2008*. All references which follow are to the provisions of this Act, unless otherwise stipulated.

<sup>13</sup> This is the effect of the authorities – see for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J.)

<sup>14</sup> The “prevention” role is now explicitly articulated in the Preamble and purposes of the Act, cf: the *Coroners Act 1985* where this role was generally accepted as “implicit”.

safety or the administration of justice.<sup>15</sup> These are effectively the vehicles by which the prevention role may be advanced.<sup>16</sup>

12. Given the family's strongly held belief that Ms Yilmaz died in suspicious circumstances, it is important to stress that I am not empowered to determine the guilt of any person, or the extent of any civil liability arising from her death. A Coroner must not even include in a finding or comment any statement that a person is, or may be, guilty of an offence.<sup>17</sup> However, if a Coroner believes an indictable offence may have been committed in connection with a death, they must refer the matter to the Director of Public Prosecutions.<sup>18</sup>

#### FINDINGS AS TO UNCONTENTIOUS MATTERS

13. In relation to Ms Yilmaz' death, most of the matters I am required to ascertain, if possible, were uncontentious from the outset. Her identity, the date, place and medical cause of her death were never at issue. I find, as a matter of formality, that Sibel Yilmaz born on 3 February 1985, aged 24, late of 13 Neil Street, Hadfield 3021, died at her residence in the early hours of 12 September 2009.

#### THE MEDICAL CAUSE OF DEATH

14. Nor was the medical cause of death controversial. On 15 September 2009, an autopsy was performed by Senior Forensic Pathologist Dr Matthew Lynch from the Victorian Institute of Forensic Medicine (VIFM), who also reviewed the circumstances as reported by the police and post-mortem CT scanning of the whole body (PMCT).<sup>19</sup> In his autopsy report, Dr Lynch listed his main findings as ligature mark about neck, left periorbital bruising and bruised upper lip in midline, and fractured left greater horn hyoid bone.<sup>20</sup> Dr Lynch concluded that the cause of death was hanging. As to the mechanism of death, he

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<sup>15</sup> See sections 72(1), 67(3) and 72(2) regarding reports, comments and recommendations respectively.

<sup>16</sup> See also sections 73(1) and 72(5) which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

<sup>17</sup> Section 69(1).

<sup>18</sup> Sections 49(1), 69(2).

<sup>19</sup> Prior to the autopsy, in the context of Mr Aslan's objection to autopsy, Dr Lynch conducted an external examination on the morning of 14 September 2009 and provided a report of his findings – Exhibit A.

<sup>20</sup> The other listed (incidental) findings were probe patent foramen ovale, pulmonary oedema and haemorrhagic endometrium – Exhibit A autopsy report page 8/9.

commented that *“hanging involves one or a combination of upper airway obstruction, vascular (arterial or venous) obstruction or cardiac arrhythmia induction in the setting of carotid sinus stimulation.”*

15. Dr Lynch also noted the results toxicological analysis of post-mortem blood that revealed ethanol (alcohol) at a concentration of 0.08g/100mL<sup>21</sup> and the antidepressant sertraline (“Zoloft”) at 0.1mg/L, a concentration he described as consistent with therapeutic use, but no other commonly encountered drugs or poisons.
16. At inquest, Dr Lynch expanded on his findings, in particular answering questions about the bruising he identified in the left periorbital region and on upper lip in the midline, and more broadly about matters relevant to the suggestion of suspicious circumstances, discussed in some detail below.<sup>22</sup> Dr Byron Collins, Consultant Forensic Pathologist, provided an independent assessment for the family. His evidence will also be discussed in some detail below, but suffice for present purposes to note that he reservedly agreed with the cause of death as formulated by Dr Lynch.<sup>23</sup>

#### FOCUS OF THE CORONIAL INVESTIGATION AND INQUEST

17. In common with many other coronial investigations, the primary focus of the coronial investigation and inquest into Ms Yilmaz’ death was on the circumstances in which she died. Put simply, her family of birth expressed concerns that Ms Yilmaz did not intentionally cause her own death by way of suicide, but that her husband Mr Aslan may have caused or contributed to her death. In the course of the inquest, the related issue of the adequacy of the police investigation of Ms Yilmaz’ death was also investigated.
18. By way of aside, the family’s concerns did not appear to arise immediately on learning of Ms Yilmaz’ death, but arose more as a dawning awakening, suspicion attaching to Mr Aslan over time in the aftermath of her death, based on a sense that he was not behaving as he ought, either towards her memory or her family, and based on things he was alleged to have said. The concerns also appear to have arisen in the setting of the family’s relative general

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<sup>21</sup> More commonly referred to as 0.08%. Transcript page 8.

<sup>22</sup> Transcript page 5 and pages 8 and following. See paragraph 55 and following below.

<sup>23</sup> Exhibit G included Dr Collins’ four-page report dated 26 August 2010 – “I reservedly agree with the cause of death as stated by Dr Lynch in the autopsy report which, in essence, means that the deceased died by neck compression, as a consequence of suspension by a ligature.”

suicide illiteracy. This is not a criticism and not even surprising, given that suicide remains largely taboo within the general community. Irrespective of its genesis, the family's concerns were within the reasonable scope of a coronial investigation, and merited investigation.

19. The family's concerns were detailed in the statements of her brother, Mr Sinan Yilmaz,<sup>24</sup> her father, Mr Huseyin Yilmaz,<sup>25</sup> both of whom also testified at inquest, and her mother Mrs Aysel Yilmaz.<sup>26</sup>

#### MENTAL HEALTH AND HISTORY OF SELF-HARMING

20. Unbeknownst to her family, Ms Yilmaz had a significant history of mental ill health, diagnosed as depression/anxiety, dating back at least to her final year of secondary education. Features of her illness were suicidal ideation and a tendency to self-harm.<sup>27</sup>
21. As foreshadowed above, Ms Yilmaz had accessed psychological counselling through the Student Services Counselling Service at RMIT University. Clinical Psychologist Dr Stephanie Smyrnios from that service provided a statement for the coronial brief and attended the inquest.<sup>28</sup> Case notes from the service produced at inquest indicate that this was not the first time that Ms Yilmaz had sought counselling or psychological support, with a reported two prior attendances on a school psychologist in year 12 for depression, two sessions with a counsellor at La Trobe University in 2004 and one session with Ms Lyn Radford, also from the RMIT service, on 25 May 2006 on a "drop-in" basis.<sup>29</sup>
22. Dr Smyrnios saw Ms Yilmaz on five occasions on 16 April, 29 May and 10 June 2008 and after a 14-month hiatus, on 26 August and 7 September 2009, just four days before her death. Her evidence about the content of their counselling sessions is detailed in her statement and computerised case notes kept at the counselling service.

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<sup>24</sup> Exhibits B and C.

<sup>25</sup> Exhibit F.

<sup>26</sup> Part of Exhibit Q.

<sup>27</sup> According to Ms Ozbek, Ms Yilmaz told her of an earlier attempted overdose when she was 16 and was concerned about her weight. Exhibit P. Transcript at pages 62, 68.

<sup>28</sup> Dr Smyrnios' statement dated 19 July 2010 is Exhibit D and the transcript of her evidence is at pages 75-121.

<sup>29</sup> Exhibit E – page 1 of case notes produced by Dr Smyrnios (10 pages).



23. Dr Smyrnios' initial assessment of Ms Yilmaz in April 2008 was that she had a recent recurrence of longstanding depression with suicidal ideation that had been present from her final year of secondary school, and that she showed clinically significant distress synonymous with depression and anxiety. Although modified in some respects over the course of counselling, this remained her fundamental clinical impression of Ms Yilmaz.
24. When she returned to see Dr Smyrnios on 26 August 2009, Ms Yilmaz' self-ratings showed a reliable degree of improvement from 2008, but still indicated clinically significant depression. The main stressor emerging at this consultation was Ms Yilmaz' decision to end her marriage, which had triggered *a return of suicidal ideation at times although less than during her previous depression.*<sup>30</sup> There was also ongoing stress associated with her studies and assessment tasks. Ms Yilmaz reported no (current) plans to end her life and, apart from her own reported conviction that she could overcome depression, identified as protective factors her relationship with her parents, who were supportive of her decision to end her marriage, aware of her psychological distress and encouraged her resumption of counselling, and university life with her new friends, new role as a student representative and good communication with teaching staff.<sup>31</sup>
25. At their final consultation on 7 September 2009, Dr Smyrnios noted that Ms Yilmaz' self-ratings showed some improvement in her general wellbeing from the previous session, but still indicated significant psychological distress synonymous with depression and anxiety. Ms Yilmaz reported concern about returning symptoms of depression and said that over the past week she had isolated herself at her parent's home, slept all day and called in sick to her part-time job. She felt stymied in efforts to end her marriage, as her husband would not sign the required documents and there were complex property issues.<sup>32</sup>
26. As regards medical treatment, Ms Yilmaz reported having discussed increasing her antidepressant medication with her regular GP, and having undergone some gynaecological

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<sup>30</sup> Exhibit D page 2, paragraph 4. I note that Ms Yilmaz informed Dr Smyrnios "*that she had made a decision to divorce her husband following discovery in the past month of infidelity, and had moved back to live with her parents in the past week.*" At inquest Dr Smyrnios maintained that it was her husband's infidelity that was cited as the cause of the marriage breakdown (transcript page 86). I note that other evidence suggests that it was Ms Yilmaz' infidelity which undermined the marriage. See also transcript page 104.

<sup>31</sup> See also transcript page 106-107.

<sup>32</sup> As will be discussed below, there is some difficulty with the dates of the two separations and reconciliations, but it does appear that Ms Yilmaz was living with her husband at the time of this session.

tests by another GP, who identified a problem with infertility that added to her distress. Nevertheless, the counselling session ended on a positive note with agreement that Dr Smyrnios would support Ms Yilmaz to apply for alternative assessment, and Ms Yilmaz appearing less depressed than at the start of the meeting.<sup>33</sup>

27. In evidence at inquest, Dr Smyrnios testified that at their last counselling session, Ms Yilmaz was clear about her wish to continue living her life and talked about plans she had and supports she could use to enable her to do so. She did not appear to be acutely at risk but, in Dr Smyrnios opinion, she remained vulnerable in the setting of a history of longstanding vulnerability to suicidal ideation and a history of some attempts.<sup>34</sup>
28. Dr Smyrnios was cross-examined at some length by Dr Freckelton, on behalf of the Yilmaz family. Despite some concerning features consistent with psychosis, at their first counselling session, Dr Smyrnios did not believe that Ms Yilmaz was suffering from a psychotic illness, but was concerned enough to refer her to a psychiatrist, and would have called a Crisis Assessment and Treatment Team (CATT) if she considered her to be at imminent risk of self-harm. Dr Smyrnios maintained that many of Ms Yilmaz' symptoms were longstanding, and her expressed motivation in seeking counselling was so that she would not deteriorate to the point where she was experiencing suicidal ideation as she had some months earlier. However, in the context of a risk assessment, Ms Yilmaz said that she had no clear plan, was not aware of a painless method, but would attempt suicide again if she was guaranteed a painless method.<sup>35</sup>
29. During the 14-month hiatus in counselling through the RMIT service, Ms Yilmaz' regular GP Dr Bulent Munit referred her to Registered Clinical Psychologist Dr Emma Aiken, and Ms Yilmaz attended nine counselling sessions with her between 8 September and 8 December 2008. The history reported to Dr Aiken was less fulsome than the history

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<sup>33</sup> Exhibit D page 3, last paragraph *"At the end of the session, Sibel gave a positive rating of our discussion on a standard measure of client satisfaction and appeared less depressed than at the start of our meeting. We scheduled the next session in one week on 16.9.09. On 9.9.09, Sibel sent an email as agreed with details of her missed assessments and the relevant lecturers, confirming that she would see me soon. I had no further contact with Sibel..."*

<sup>34</sup> A number of witnesses shed light on Ms Yilmaz' history of suicide/self-harm. According to Exhibit E case notes produced by Dr Smyrnios and based on reports from Ms Yilmaz herself, there was an attempt in 2004, suicidal ideation in April 2006 in the context of receiving a notice about a Centrelink debt of \$10,000.00, and two attempts in the five months prior to her engagement with Dr Smyrnios in April 2008 – the first an attempted hanging where the knot gave way, the second ingestion of poisonous crystals procured from the university laboratory (transcript page 89).

<sup>35</sup> Transcript pages 90-96.

disclosed to the counsellors at the RMIT service. Mr Yilmaz reported feeling depressed, overwhelmed and suffering mood swings for most of 2008 (but not earlier), and said that she had been seeing an RMIT counsellor following a suicide attempt in March 2008, which she described as an attempt to hang herself but her husband stopped her (without reference to the episodes in 2004, 2006 and the other episode in 2008). Ms Yilmaz cited study-related stresses and said that she had asked for a referral from her GP because two days earlier, she had felt suicidal again. She felt that her RMIT counsellor had taught her strategies for coping with overwhelming feelings.

30. Dr Aiken diagnosed a Major Depressive Disorder, Recurrent and recommended six sessions of Cognitive Behavioural Therapy. At their first session on 8 September 2008, Dr Aiken assessed Ms Yilmaz' current suicide risk as low *given her reported motivation to work on her issues and not give in to suicidal thoughts, and that she had identified some strategies from her previous counselling that were helpful in coping with her feelings.*<sup>36</sup>
31. At inquest, Dr Aiken explained that even a low risk of suicide needs to be taken seriously and that she was concerned about the potential of self-harm that she recognised in Ms Yilmaz.<sup>37</sup> Dr Aiken noted that Ms Yilmaz had a tendency to withdraw from her family and friends when she was feeling depressed, and she encouraged her to reach out at such times and to express her feelings. Overall, Ms Yilmaz described her depression as coming and going and her mood as fluctuating. Dr Aiken testified that the predominant symptom was depression, but there was some fluctuation as to whether depression or anxiety was the more prominent symptom at any given time, depending on what was happening in Ms Yilmaz' life.<sup>38</sup> Her anxiety in particular, appeared to relate to her study demands and a desire not to let her family down.<sup>39</sup>
32. As conveyed to Dr Aiken, in an overall sense the marriage was a happy one, and when there was occasional conflict, it seemed to relate to financial matters. Ms Yilmaz spoke of the

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<sup>36</sup> Exhibit I was Dr Aiken's statement dated 11 December 2009.

<sup>37</sup> Transcript at page 200.

<sup>38</sup> Transcript at pages 204-206. I note Dr Aiken's evidence to that "*there was some fluctuations as to whether depression or anxiety was more prominent but this is very common in depression, it has a strong anxious component usually anyway.*"

<sup>39</sup> Exhibit I see, for example, description of counselling sessions on 12 and 27 October 2008. Transcript at pages 201, 203 and following.

difficulties she had experienced in adjusting to married life, living independently from her family and having financial responsibilities.<sup>40</sup>

33. Towards the end of their counselling sessions, on 14 November 2008, Ms Yilmaz reported an improvement in her mood following the commencement of the antidepressant “Zoloft” (sertraline) and using the cognitive behavioural interventions that had been suggested to her. Dr Aiken found that she sounded more positive and realistic in her thinking.
34. Demonstrating the fluctuations in her mental health, at the next session on 23 November 2008, Ms Yilmaz reported being happy as she had just bought a house, but also reported the return of some negative feelings *because her husband had “screamed” at her about a financial issue, and she had felt suicidal that night.*<sup>41</sup> In response to this disclosure, they reviewed her coping strategies and Ms Yilmaz reported that while several strategies were working for her, she still couldn’t talk to people about how she felt, and felt she couldn’t tell her family, as she *didn’t want to worry them.* They worked on a plan to help her express herself as part of coping with negative feelings and seeking support. By the end of the session, in the context of a re-assessment of her current suicide risk, Ms Yilmaz reported that *she was confident that she would not act on these feelings, that she knew these feelings would pass, that talking to one of her close friends was helping, and finally that she believed her life was good overall.*<sup>42</sup>
35. As far as I am able to determine from the available evidence, Ms Esma Uygun is the only relative with whom Ms Yilmaz discussed her mental health. Ms Uygun was a cousin who lived nearby in Glenroy, would walk with Ms Yilmaz twice a week when their respective commitments would allow, and was employed as a sexual assault counsellor at the time. Ms Yilmaz confided that she was suffering from depression, taking antidepressants and getting help from a psychologist. She also said that she had hidden this information from her family and, initially, from her husband, but had then told him.<sup>43</sup> At inquest, Ms Uygun testified that Ms Yilmaz only confided in her after Ms Uygun agreed to keep the information to

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<sup>40</sup> Transcript at pages 200, 207.

<sup>41</sup> Exhibit I.

<sup>42</sup> Exhibit I.

<sup>43</sup> Exhibit H is Ms Uygun’s statement dated 26 February 2010. Transcript at pages 182-183.

herself, and that the discussion took place during one of their walks in the summer immediately preceding her death, that is 2008-2009.<sup>44</sup>

36. Ms Yilmaz also told her friend Talia (also known as Nuray) Ozbek that she had been seeing a psychologist for about one year. Although she did not say she was depressed as such, Ms Ozbek inferred this from comments she would make such as *"I am so sick of life"* or *"I am so bored of life"*. In the context of their long-term friendship, Ms Ozbek also gleaned that Ms Yilmaz was never happy with her appearance, had a complex about her weight and had undergone liposuction while overseas one year before her death. On one occasion, Ms Yilmaz told her that she had tried to commit suicide when she was 16 years old because of a perceived weight problem, and had done so by taking an overdose of medication.<sup>45</sup>
37. Although not telling him about her mental illness from the outset, Ms Yilmaz did confide in her husband about seeing a psychologist and taking antidepressant medication. According to his evidence, he was supportive of his wife in this regard, had been aware of these issues over the last three or four years, and was also aware that she was taking antidepressants over the last six months or so of her life. Although he was aware of a previous attempt at hanging, he did not consider this a real attempt at suicide.<sup>46</sup>

#### THE MARITAL RELATIONSHIP

38. Mindful of the inherent difficulty in fathoming the complexities of any marriage, there is nevertheless a need to determine the state of the marriage between Ms Yilmaz and Mr Aslan to ascertain, if possible, whether or not the marriage or its breakdown played a role in her death, either as a suicide stressor on her part, or as the family submit, as a motive on his part.
39. It is noteworthy that throughout the course of their counselling sessions, neither Dr Smyrnios nor Dr Aiken documented reports of any significant complaints made by Ms

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<sup>44</sup> Transcript at pages 182-183. I note also that Ms Yilmaz said that counselling was "going great". This would appear to be a reference to counselling with Dr Aiken who she last attended in December 2008.

<sup>45</sup> Exhibit P is Ms Ozbek's statement dated 19 November 2009. See also transcript at page 367 where Ms Ozbek testified that *"Emotionally, look she never used to word it ... as well that she was depressed, she was always a happy, jolly girl ... I actually did see her going through a bit of depression ... I didn't see her in a severe depression within the three years. I sort of worked it out within that last one year ..."*

<sup>46</sup> Transcript at pages 339-341. The "attempt" he was referring to occurred shortly after their marriage two years earlier.

Yilmaz about Mr Aslan's behaviour towards her. Of course, in the case of Dr Smyrnios, this observation needs to be tempered by the fact that the history given by Ms Yilmaz was that it was *his* alleged infidelity that led the breakdown of the marriage. Dr Aiken noted that according to Ms Yilmaz, the marriage was good, but she worried that she was depressed *because of* her husband. She explained that she meant he was supportive but that she took out her mood swings on him by yelling at him, for example when he was *not tidy enough* and that she took her *bad temper* out on him when she was experiencing negative thoughts about herself and withdrawing from others.<sup>47</sup>

40. While the available evidence is unclear as to the precise dates when Ms Yilmaz and Mr Aslan separated, signified by her leaving the matrimonial home and moving in with her parents, it is clear that there were two periods of separation and two reconciliations in the two-month period immediately preceding her death. The weight of the available evidence supports a finding that the first separation occurred about two months before Ms Yilmaz' death and that the couple reconciled and resumed living together. A second separation occurred about one month before her death. Again, they reconciled and had been living together for some weeks when they attended the party together on 11 September 2008, the night before Ms Yilmaz' died.<sup>48</sup>
41. Apart from Mr Aslan, whose evidence will be discussed below, a number of witnesses attributed the breakdown of the marital relationship to Ms Yilmaz' infidelity. Some were

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<sup>47</sup> Exhibit I notes re counselling sessions on 8 and 19 September 2008.

<sup>48</sup> Exhibit B statement of Ms Yilmaz' brother, Sinan Yilmaz – “*One month prior to her death, Sibel on two occasions left home and slept at my mother's house due to an argument with her husband...*”; Exhibit F statement of Ms Yilmaz' father Huseyin Yilmaz – “*We never observed any problems or issues in the relationship between Sibel and Baris until approximately two months prior to the death of Sibel... On the night we first became aware of problems between them, Sibel called my wife and informed us she was breaking up with Baris and wanted to move back home immediately...*”; Exhibit G contains the statement of Ms Yilmaz' mother Aysel Yilmaz dated 30 June 2011 – “*I have read my husband's statement and I agree with the matters raised in it ... [after the first reconciliation] For the next few weeks the relationship between Baris and Sibel seemed to me to be on the mend ... Approximately a month after the first separation, I received a phone call from Sibel. She advised me that the relationship was again in trouble and that they had been arguing ...*”; Exhibit P statement of Ms Ozbek has the first separation somewhat earlier – “*Approximately during the month of June this year, Sibel did tell me that her husband Baris, did see a text message from another man on her mobile phone. This message led to Baris wanting to break up with Sibel because she told him she was having an affair ...*”; Exhibit J statement of Angela Ianzano – “*She didn't really go into depth about the problems she was having with her husband but in the last few weeks she said everything was going back to normal and they were doing well. Approximately in July this year Sibel told me that she was having an affair with a person from work named Sonny ... She tried to end this affair in August because she was trying to patch things up with her husband ...*”; Exhibit H statement of Ms Uygun – “*At about July/August my uncle, Sibel's father rang me and told me that his daughter is not well. She is doing the wrong thing and needs help...*”

even aware of the identity of the person with whom she was involved.<sup>49</sup> Mr Sandeep Mishra, known as “Sunny” met Ms Yilmaz through her work and commenced an intimate relationship with her, at first unaware that she was a married woman.<sup>50</sup> At inquest, he testified that they had been intimate *a few times* in the June/July 2009 period and not only once as was asserted in his statement.<sup>51</sup>

42. The available evidence does contain some evidence of other “causes” of the breakdown in the marital relationship. Notably, Ms Yilmaz reports to Dr Smyrnios that it was her husband’s infidelity that had led her to the decision to end the marriage. Also, her mother’s account of Ms Yilmaz’ explanation for separating from her husband the first time is effectively a complaint about violence within the relationship.<sup>52</sup> Whilst I accept that these are truthful accounts of what Ms Yilmaz said to each witness, the accounts are colourable, likely motivated by a desire to give a good account of herself to Dr Smyrnios, and an acceptable and palatable explanation to her mother in the face of her own infidelity.
43. Mr Aslan provided a statement to the police, and testified at inquest. He was represented by experienced Counsel Mr Pat Bourke on the first three hearing days, but unfortunately was not represented on the last hearing day when final submissions were made. Mr Aslan gave evidence at large, without application being made by him, or on his behalf, pursuant to section 57 of the *Coroners Act 2008*. He did avail himself of the protection afforded by section 57 and was provided with a certificate, in relation to *evidence on a particular matter*.<sup>53</sup>
44. According to Mr Aslan’s statement, the marriage was great with some initial teething problems around his long working hours. They talked a lot and were able to talk through any problems. Eventually, he found out that his wife was cheating when he saw some text messages on her mobile phone, confronted her about them and she *confessed that she was*

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<sup>49</sup> Exhibits H, J and P.

<sup>50</sup> Exhibit K statement of Sandeep Mishra dated 19 November 2009.

<sup>51</sup> Exhibit K “*During the month of June or July, I can’t remember the exact month, Sibel came to my house and the relationship was brought to the next stage, we made love. This only ever happened once but we still continued to see each other outside work to talk...*” Transcript page 233.

<sup>52</sup> Part of Exhibit G – “*Mum, I don’t love him anymore”. I said: “Why, what’s the problem?” She said: “He gets very angry. I can’t tolerate his behaviour. He breaks things and is violent when he is angry. I said “In that case I fully support you. You shouldn’t be subjected to that type of behaviour in this day and age. Don’t feel guilty or shameful; it’s not your fault.” See paragraph 19 and footnote 22 above.*

<sup>53</sup> See paragraph 48 below.

*having an affair with a guy from work names Sunny.*<sup>54</sup> Despite the two separations and reconciliations that ensued, Mr Aslan stated that over the few weeks preceding his wife's death, their marriage was good and she would ring him at every opportunity when they were not together.<sup>55</sup>

45. At inquest, Mr Aslan maintained that it was his wife's infidelity and ongoing relationship with Mr Mishra that caused the marriage breakdown, and that he did not disclose her infidelity to her family until after the first separation.<sup>56</sup> He was cross-examined at length by Dr Freckelton about his state of mind in relation to the separations, reconciliation and the state of the marriage as at 11 September 2009. He maintained that he was more upset than angry and described himself as heartbroken about his wife's infidelity. When they reconciled the first time he was still upset, shocked and apprehensive.<sup>57</sup> Mr Aslan did not recall telling Ms Ozbek that he was suspicious of his wife, but did feel betrayed and was *trying to understand that if she is going to be faithful from now on or not.*<sup>58</sup>
46. Mr Aslan testified that after the first reconciliation, Ms Yilmaz promised him that the relationship with Mr Mishra was at an end, and after a discussion with Mr Mishra, Mr Aslan accepted similar assurances from him.<sup>59</sup> About one week later, Mr Aslan discovered that they were still seeing each other when he was near RMIT for work, called his wife and asked where she was. She told him she was out with a friend, admitted it was Sunny and told him the bar/café they were in.<sup>60</sup> After another discussion with Mr Mishra, he drove all three of them home, and the couple separated for a second time. The second separation lasted seven to ten days, during which time Mr Aslan and Ms Yilmaz kept in touch, eventually reconciling when they both indicated that they wanted to get back together.<sup>61</sup>

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<sup>54</sup> Mr Sandeep Mishra known as Sunny.

<sup>55</sup> Exhibit O is Mr Aslan's statement dated 19 November 2009.

<sup>56</sup> Transcript at pages 351-353. This is consistent with Mr Uygun's evidence that her uncle hinted that his daughter had been doing the wrong thing/having an affair, and asked her to intervene. Exhibit F and transcript at page 183.

<sup>57</sup> Transcript at pages 399-402. The word "apprehensive" is my understanding of what he is trying to convey at pages 401-402.

<sup>58</sup> Transcript at page 402.

<sup>59</sup> Transcript at pages 401-402.

<sup>60</sup> Transcript at page 405.

<sup>61</sup> Transcript at page 407.



47. There are two salient matters that arise around the time of the separations. The first concerns allegations that Mr Aslan used a tracking device or devices to conduct surveillance on his wife, in the setting of what is said to be an obsessive and suspicious attitude towards her. Dr Freckelton cross-examined Mr Aslan about this issue in some detail. Beyond admitting that he used a tracking device on his own vehicle to protect stock in trade which he carried in the vehicle against theft, he denied in the clearest possible terms and repeatedly that he used any form of tracking device whatsoever to follow his wife's movements.<sup>62</sup>
48. The second matter concerns damage to Ms Yilmaz' car and is the *particular matter* in respect of which Mr Aslan was afforded the protection of a certificate pursuant to section 57 of the *Coroners Act 2008*, on the basis that his evidence may tend to incriminate him.<sup>63</sup> Dr Freckelton put an allegation to Mr Aslan that he intentionally damaged Ms Yilmaz' car in the throes of the second separation, by scratching three words into three separate panels – “whore”, “slut” and “bitch” in Turkish. He testified that the car also belonged to him, and denied the extent of damage alleged. He did admit scratching the car accidentally at first, alleged that Ms Yilmaz also scratched the car in retaliation, and stated that he then scratched the Turkish word for “slut” on the car.<sup>64</sup> He also testified that immediately after causing the damage, he *felt really sorry for doing that*.<sup>65</sup> In response to Dr Freckelton's suggestion that this was an angry and emotional scene, he testified that this was the *only time* that he got angry because he felt his wife was listening to her family, jeopardising the marriage in the interests of financial gain.<sup>66</sup>
49. Despite the recent history of infidelity, separations and reconciliations, Mr Aslan maintained that for the few weeks between their second reconciliation and the party on 11 September 2009, the marriage was good, indeed very good, and that his wife was trying to do the right

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<sup>62</sup> Transcript at pages 403-405.

<sup>63</sup> Transcript at pages 353 and 394.

<sup>64</sup> Apart from the statement of Mrs Aysel Yilmaz, part of Exhibit G, the incident is mentioned in her husband's statement Exhibit F. Transcript at pages 408 and following.

<sup>65</sup> Transcript at page 411.

<sup>66</sup> Again, these are not his words but my understanding of his evidence at transcript pages 411-413. This suggestion of an ulterior motive for their reconciliation is consistent with Ms Ianzano's evidence to the effect that Ms Yilmaz was forced back to the matrimonial home by her family (Exhibit J and transcript at page 228) and the evidence of Mr Mishra to the same effect (transcript at page 233).

thing, and trying to save the marriage.<sup>67</sup> He denied that they had discussed divorce, division of property and testified that he tried and was trying to forgive her infidelity.<sup>68</sup>

THE PARTY – 11 SEPTEMBER 2009

50. A lot of time at inquest was taken up with trying to characterise the type of kiss that Mr Aslan saw his wife giving the birthday boy. On one view Ms Ianzano was in the best position to say, and her evidence was that she and Ms Yilmaz were simply giving him a kiss on the cheek, one each side of him, at the same time. At inquest, she conceded that someone else could have seen it differently.<sup>69</sup> Significantly, Ms Ianzano testified that Mr Aslan poked his wife by way of getting her attention and did not slap her, before going back downstairs and outside.<sup>70</sup> This was consistent with his account, and belied Mr Sinan Yilmaz' evidence about a slap.<sup>71</sup>
51. Mr Kumar (Ash) provided a statement after the inquest had commenced, and his recollection was that Ms Yilmaz hugged him, wished him happy birthday and kissed him on the lips, and that it was not a big kiss but a peck. He realised that Mr Aslan had witnessed the kiss and was upset. He tried to persuade him that it was just a friendly kiss, but an argument ensued between the couple downstairs, and they left shortly thereafter.<sup>72</sup>
52. Mr Aslan and Ms Yilmaz had trouble finding a taxi. Ironically, shortly after he arrived at the party after working a late shift, it was Mr Mishra who drove them home in his car, accompanied by another person from the party, Mr Hitesh Babbar, known as Harry. Both testified that there was no discussion between the couple as they drove home, and nothing much was said at all, apart from Mr Aslan giving directions.<sup>73</sup>
53. When spoken to by the police at the scene, Mr Aslan admitted that there had been a verbal altercation at home following the incident at the party. In his statement made two months

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<sup>67</sup> Transcript at page 413.

<sup>68</sup> Transcript at pages 413-414.

<sup>69</sup> Exhibit J, transcript at pages 220, 225, 231.

<sup>70</sup> Transcript at pages 222, 225.

<sup>71</sup> Transcript at pages 337, 417. Exhibits B and C.

<sup>72</sup> Exhibit G, statement of Asish Kumar dated 5 September 2011. See also statement of Hitesh Babbar known as Harry, dated 5 September 2011.

<sup>73</sup> Transcript pages 242 and following.

later, he said *I told her to go and sleep on the couch and we will talk tomorrow when she got sober.*<sup>74</sup> At inquest, he denied striking Ms Yilmaz despite being pressed and maintained that he had never struck her.<sup>75</sup>

54. It would be easy to characterise Mr Aslan's reaction to the kiss as an overreaction. However, it needs to be seen in the context of their recent troubled and fragile relationship. In effect, Mr Aslan testified that seeing the kiss was the last straw, that he was disappointed and simply realised that the marriage was over and was not going to work. *"There was that day the moment that I hundred per cent decided that I can't do it any more. I mean, she won't change any more."*<sup>76</sup>

#### FORENSIC EVIDENCE

55. Motive and opportunity are concepts more commonly encountered in the criminal jurisdiction, but they are difficult to avoid in the circumstances. For the purposes of this aspect of the finding, I have *assumed* that the realisation that the marriage was over and/or the incident at the party was sufficient motive for Mr Aslan, and that being the last person to see Ms Yilmaz alive, and the only other person in the house than night, provided him with opportunity.
56. There is scant direct evidence that it was within Mr Aslan's *physical* capabilities to cause his wife's death. Such evidence as there is suggests he had a left shoulder problem that made it difficult for him to hold her weight.<sup>77</sup> According to the autopsy report, Ms Yilmaz was of average build at 163cm in height and 64kg in weight. Mr Aslan is considerably taller and of wiry build. Dr Collins proffered the opinion that it would not be *impossible* for Mr Aslan to lift Ms Yilmaz and suspend her.<sup>78</sup> Levers and pulleys aside, I have also made the *assumption* that it was physically possible for Mr Aslan to cause her death. I stress that these are threshold assumptions made to provide a setting for the expert forensic evidence, and not findings made on the evidence.

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<sup>74</sup> Exhibit O.

<sup>75</sup> Transcript at page 417.

<sup>76</sup> Transcript at pages 416-418.

<sup>77</sup> Transcript at page 427.

<sup>78</sup> Transcript at page 175. This opinion was based on seeing Mr Aslan in the courtroom and knowing Ms Yilmaz' height and weight.

57. Absent classical defensive injuries, a finding of a concealed homicide as opposed to a suicide by hanging, requires evidence of significant incapacity in the deceased, whether from injury causing unconsciousness or a significantly altered conscious state, substance induced incapacity, or a combination of both.<sup>79</sup>
58. Apart from ligature-related injuries, Dr Matthew Lynch, who performed the autopsy, identified three injuries of interest in terms of the circumstances surrounding Ms Yilmaz' death. The first, a bruise of the upper lip in the midline position, reflective of some form of recent non-specific blunt trauma. Dr Lynch testified that this type of injury is commonly seen in the setting of resuscitation, indeed is almost to be expected, but he could not exclude other possible causes.<sup>80</sup> Dr Collins expressed a similar view about this injury, and moreover, expressed the opinion that the injury was unlikely to have contributed to an altered conscious state such as would facilitate a concealed homicide, rather than a suicide.<sup>81</sup>
59. The second injury was not visible on external examination, but visualised at autopsy. It was described by Dr Lynch as an area of subcutaneous haemorrhage on the scalp in the occipital region<sup>82</sup> in the midline that could be considered typical of the minor bleeding seen in association with blunt trauma in the perimortem period, for example in the process of the body being cut down.<sup>83</sup> Although this type of injury was often sustained in the process of an individual being cut down from a suspended position or collapse, he could not exclude it having occurred around the time of suspension/death. He testified that it was *not possible* to infer any particular level of incapacity or effect on a person's conscious state from such an injury.<sup>84</sup> It follows that a degree of incapacity could not be entirely excluded.
60. Dr Collins found this particular injury concerning as a possible contributor to unconsciousness, or an altered conscious state, in the perimortem period, more specifically, at the time when Ms Yilmaz was being suspended.<sup>85</sup> Read in its entirety, his evidence about

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<sup>79</sup> The evidence of Dr Lynch and Collins proceeded on this premise. In particular, see transcript at pages 18 and following and pages 141 and following.

<sup>80</sup> Transcript pages 5,6,11,22 and 32.

<sup>81</sup> Transcript at pages 147-148.

<sup>82</sup> Back of the head.

<sup>83</sup> Part of Exhibit A, the supplementary report dated 22 February 2010 and transcript page 8, 11-12.

<sup>84</sup> Transcript at pages 13, 23, 30.

<sup>85</sup> Exhibit G and transcript at pages 141-2, 144-145, 147-148.

this injury, although nuanced, was not significantly different to Dr Lynch's. It amounted to no more than a possibility that the blunt force trauma that resulted in the occipital midline subcutaneous bruise, if suffered prior to her suspension, could have rendered Ms Yilmaz unconscious or caused an altered conscious state sufficient to allow for her suspension by a third party.<sup>86</sup>

61. In terms of how the blow may have been sustained, as a matter of logic, the possibilities include a self-inflicted accidental blow, an accidental blow inflicted by a third party, a blow inflicted by a third party by way of assault, and an intentional blow aimed at causing incapacity sufficient to conceal a homicide as a suicide by hanging. If the latter case, the optimal blunt force would be sufficient to cause incapacity, but not to break the skin or be readily apparent.
62. The third injury of interest identified by Dr Lynch was an area of left periorbital bruising, apparent on external examination two days after death and confirmed by autopsy the following day.<sup>87</sup> He reported that microscopic examination of this bruising showed an inflammatory infiltrate, suggesting the injury was sustained some hours prior to death consistent with having been sustained the afternoon/evening prior to death, and not suggestive of an injury sustained in the process of Ms Yilmaz' body being cut down.<sup>88</sup> Dr Lynch testified that the injury was the result of blunt force trauma of sufficient force to cause a bruise, but could not say whether the blow was self-inflicted, accidental or fall related or inflicted by a third party.<sup>89</sup> As with the injury to the back of the head, he could not exclude the possibility that the injury was associated with a period of unconsciousness or altered conscious state *at the time it was inflicted*, which he put at some hours at least before death.<sup>90</sup>
63. Dr Collins agreed that the evidence at autopsy supported a finding that this injury was sustained earlier than the perimortem period, some hours prior to death. On that basis he

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<sup>86</sup> Transcript pages 141 and following, especially from page 157 and following.

<sup>87</sup> Exhibit A external examination by Dr Lynch took place on 14 September and the autopsy on 15 September 2009.

<sup>88</sup> Exhibit A and transcript at page 7-10.

<sup>89</sup> Transcript at page 14, 19-20.

<sup>90</sup> Transcript at pages 21 and following.

was prepared to exclude this injury as a possible contributor to incapacity in the deceased sufficient to allow her suspension by a third party.<sup>91</sup>

64. The other possible cause of incapacity in the deceased that could facilitate her suspension by another, was substance-induced incapacity. Both Dr Lynch and Dr Collins were cross-examined about the possibility that the combination of alcohol and the antidepressant sertraline found in post-mortem samples was sufficient to have impaired Ms Yilmaz' conscious state. While Dr Lynch deferred to a clinical pharmacologist or toxicologist, he was prepared to allow of the *possibility* that conscious state could have been impaired by the combination of a blow or blows to the left periorbital area, the blow to the back of the head, her blood alcohol level and sertraline.<sup>92</sup> Dr Collins expressed a similar view, although he excluded the periorbital bruising as a contemporaneous contributor.<sup>93</sup>

#### CRITICISM OF THE POLICE INVESTIGATION

65. On behalf of the family, Dr Freckelton was critical of the adequacy of the investigation undertaken by the police, in particular, on arrival at the scene, but also in failing to preserve certain exhibits until the conclusion of the inquest.<sup>94</sup>
66. The family were supported in this view by Dr Collins, who expressed the opinion that the pathological findings are actually equivocal, in the sense that while consistent with suicide, homicide could not be reasonably excluded.<sup>95</sup> In his report, written to support the family's request for an inquest, he expressed the robust view that exclusion of homicide relies heavily on scene examination and the veracity of witnesses. It follows that such matters fall within the province of the Coroner, who is required to weigh all evidence, including the opinions and findings of forensic pathologists.
67. In its current iteration, the coronial jurisdiction relies heavily on the police for investigation of reportable deaths on behalf of the Coroner, whether or not concomitant criminal

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<sup>91</sup> Transcript at page 146, 154-155.

<sup>92</sup> Transcript at pages 24-25 – *“This...is moving beyond my area of expertise. I'll make some general comments in case they're of assistance to the court...That's possible...I would not – I can't medically quantify the degree of possibility...I'm saying possible, I'm saying it's not impossible.”*

<sup>93</sup> Transcript at pages 156-157.

<sup>94</sup> Encapsulated in Dr Freckelton's final submissions at transcript pages 451 and following.

<sup>95</sup> Exhibit G and transcript at pages 142, 161, 172.

proceedings are envisaged. While some evidence is not time critical or time sensitive, and can be obtained in the days, weeks or even months following a death without compromising the integrity of the investigation, scene examination is not. Where indicated, scene examination requires scene containment, timely action and specialist services.

68. In an ideal world with limitless resources, a case could be made for treating all apparent suicides as homicides, until homicide can be reasonably excluded. As matters stand, the coronial system relies on assessments made by the police officers who are dispatched to the scene, applying their training and experience to make an appraisal of the scene, with assistance from any witnesses or information available to them, and without the benefit of hindsight. It is only where they perceive suspicious circumstances or the potential for suspicious circumstances, that additional police resources are requested, be it from Forensic Services, one of the Crime Investigation Units or the Homicide Squad.
69. Both Senior Constable Cantone and Acting Sergeant Ross testified at inquest and were cross-examined about their observations of the scene, including the demeanour of the people present. They testified that Mr Aslan, the family and others who attended were visibly shocked and distressed, and that nothing in their presentation suggested that Ms Yilmaz had died in suspicious circumstances. They were unaware of any concerns on the family's part that Mr Aslan was somehow implicated in his wife's death, but were alerted by Ms Ozbek to the possibility of conflict between the two families, and that the Yilmaz family would blame Mr Aslan for the death.<sup>96</sup>
70. Property was seized including items of clothing worn by Ms Yilmaz, a length of orange rope and the knife identified as the one used by Mr Aslan to cut her down. Another length of rope was transported with Ms Yilmaz' body to the mortuary and was available to Dr Lynch for examination.<sup>97</sup>
71. Contrary to usual practice, in May 2010, the police returned these property items to the Yilmaz family and Mr Aslan respectively. The usual practice and expectation in the

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<sup>96</sup> Exhibit L statement of SC Cantone dated 9 February 2010. Exhibit M statement of SC Cantone dated 13 December 2010. Transcript at pages 266 and following. Exhibit N statement of Acting Sergeant Ross dated 11 February 2011. Transcript at pages 312 and following.

<sup>97</sup> Exhibit A in which Dr Lynch states "*Received with the body are two lengths of orange rope which measures 0.2cm in diameter.*" Note that SC Cantone's evidence at inquest was that *I'd like to add that the knot that was cut down from the truss was transported to the coroner's office with Sibel*". Transcript at page 265.

coronial jurisdiction is that seized property is retained by the police, until released by direction of the Coroner. Property items considered to have actual or potential forensic significance, such as the length of knotted orange rope and the knife, would not generally be released by a Coroner until at least the conclusion of the inquest.<sup>98</sup> There is no satisfactory explanation as to how, in the sense of on whose authority, the rope and knife came to be returned to Mr Aslan who testified that he no longer knew where they were.

72. With some reservations, I find that the potential for some additional forensic analysis of the items was thereby lost. My reservations stem from the unlikely, as opposed to theoretically possible, forensic value in examining these items so long after the event. Nevertheless, such a departure from accepted practice undermines the coronial jurisdiction, and is not to be encouraged or condoned.
73. Similarly, mindful of the areas of enquiry identified by Dr Collins as lacking in the scene investigation<sup>99</sup> conducted by SC Cantone and SC Ross, I am unable to find that more extensive forensic scene examination is likely to have materially altered the facts, or likely to have further elucidated the circumstances in which Ms Yilmaz died. On that basis, I make no criticism of the scene investigation in relation to this coronial investigation. That said, this case serves as a reminder of the need for police to maintain vigilance around apparent hanging suicides by being mindful of the possibility of concealed homicide.

## CONCLUSION

74. The standard of proof for coronial findings of fact is the civil standard of proof, on the balance of probabilities, with the *Briginshaw* gloss or explication.<sup>100</sup> The effect of the

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<sup>98</sup> Of course, this relies on the Coroner appreciating their forensic significance either because of their sheer nature or the issues under investigation.

<sup>99</sup> Transcript at pages 151-152 where Dr Collins testified that – “*I would have liked to have been able to examine the rope and more particularly I would like to have had the actual way the rope was tied around the beam and any indentation on the beam which might have indicated whether it was actually tied without any weight on it or whether...the body had been levered upwards...Using the beam effectively as a pulley?-- Yes. Or damage to the rope? -- Yes*” and noted some inconsistency in SC Cantone’s description of the chairs in the vicinity of the hanging point. I note that other evidence establishes that the rope was nylon and the beam metal, raising a real question about the utility of such an examination.

<sup>100</sup> *Briginshaw v Briginshaw* (1938) 60 C.L.R. 336 esp at 362-363. “The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences...”



authorities is that Coroners should not make adverse findings against or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death. There is no more serious allegation than that levelled against Mr Aslan, in the course of the coronial investigation of his wife's death.

75. Applying the standard of proof to the totality of the evidence before me, I find that there is insufficient evidence to support a finding that Mr Aslan caused or contributed to the death of Ms Yilmaz, or played any active role in her death. On the whole, I found him to be a truthful witness who testified about difficult matters in difficult circumstances.
76. My only reservation is about his account of the verbal altercation that took place between him and Ms Yilmaz in their bedroom after they returned from the party. While I am not prepared to make a positive finding that he caused the left periorbital injury, based solely on the expert evidence as to the likely age of the injury, and in the face of his denials, I am not satisfied that he was entirely honest in his account.
77. Whilst I understand the family's shock and distress at Ms Yilmaz' death, and accept that they will probably continue to harbour their suspicions, I have to reiterate that they have made serious, but vague allegations that cannot ultimately be substantiated by the evidence. Apart from the incident involving damage to Ms Yilmaz' car, the family's concerns, even taken at their highest, amount to scant evidence of some hostility towards them following the death, and arguably inappropriate behaviour in a particular cultural context. It is of ambiguous forensic significance in the coronial investigation of her death.
78. For what it is worth, I think that the most critical feature of the circumstances surrounding Ms Yilmaz' death was the family's ignorance about her mental illness, her vulnerability for self-harm, and her reluctance to seek their support. Had Ms Yilmaz called her family in crisis in the early hours of the morning of 12 September 2009, or confided in them at any other time about her mental illness, I have no doubt that they would have given her every support, and her tragic death may have been averted.
79. I was invited by Dr Freckelton to make an open finding, but to do so would be to ignore the weight of the evidence before me, in particular the evidence from the two treating psychologists about Ms Yilmaz' longstanding depression, anxiety and vulnerability to self-harm. I find that Ms Yilmaz intentionally took her own life by hanging.

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

The family of Sibel Yilmaz

Mr Baris Aslan

Senior Constable Salvatore Cantone (#35475), c/o O.I.C. Fawkner Police

Dr Stephanie Smyrnios

Dr Emma Aitken

Chief Commissioner of Police Ken D. Lay APM.

Signature:



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**PARESA ANTONIADIS SPANOS**

Coroner

Date: 12 February 2014

