

IN THE CORONERS COURT  
OF VICTORIA  
AT ECHUCA

Court Reference: COR 2008 003094

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

**Inquest into the Death of Angela Jade Bannister**

Delivered On: 5 July 2012

Delivered At: Echuca Law Courts

Hearing Dates: 21<sup>st</sup> – 25 February 2011, 2<sup>nd</sup> March 2011

Findings of: Mr Richard Wright, Coroner

Representation: Mr G. Prosser For Mr Bradley Bannister  
Mr C. Mylonas For Ms Tania Walker  
Mr C. Mandy For Mr Daniel Simmons  
Mr D. McWilliams For Echuca Regional Health

Counsel Assisting the Coroner Ms Sarah Hinchey  
Ms Leah Bloch

I, Mr Richard Wright, Coroner, having investigated the death of ANGELA JADE BANNISTER AND having held an inquest in relation to this death on 21<sup>st</sup> – 25 February 2011, 2<sup>nd</sup> March 2011 at Coroners Court Echuca find that the identity of the deceased was ANGELA JADE BANNISTER born on 22 August 2006 and the death occurred between 2045 hours on 18 July 2008 and 0652 hours on 19 July 2008 at Echuca

**from:**

**1a CHEST INJURIES**

**in the following circumstances:**

**Background<sup>1</sup>**

In March 2008 Tania Walker commenced a relationship with Daniel Simmons. Walker had two children of a previous relationship, Ebony and Angela. Daniel Simmons resided with Tania Walker at 43 Darling Street, Echuca at the time of Angela's death.

On 18 July 2008 at approximately 9.30am Simmons took Angela and Ebony to Go-Lo in Echuca. Simmons says that while out on the shopping trip, a dog bit Angela on the left cheek. The dog was described as a "Red Heeler". He said that he did not actually see the dog bite Angela, just that it "launched up on her". Simmons said that Angela fell over when the dog jumped on her and she hit her head on a concrete kerb. Simmons and the two girls then went into shop in Go-Lo. Purchases were made and they returned home, where Simmons told Walker what had happened to Angela at the shops.

At about 11.00am, Walker reported the dog bite incident to Council ranger, Tony Miles, and took Angela to the Echuca Hospital where she was seen by Dr Ghadiri.

A number of people saw Angela during the day on 18 July 2008 and gave an account of their observations of her at that time. Each witness confirmed that at no stage did Angela seem to be in any pain or discomfort.

Dr Ghadiri, the examining doctor at the hospital, noted that Angela had sustained superficial injuries to her face, that she did not seem to be in pain and was moving her limbs normally. Walker agreed that at this time, Angela was not in pain and was moving all limbs normally. Walker also reported to police that when Angela got home from the Hospital she seemed to be "normal".

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<sup>1</sup> This background was largely agreed by the Parties.

Angela's grandmother Tracey Brown and her husband Leslie Brown had the opportunity to observe Angela during the course of the day. The following observations were made by them:

- (a) Angela was noted by Tracey Brown to be running around and laughing;
- (b) Tracey Brown recalls that at some stage Angela slipped off a chair, but did not appear to be hurt as she did not cry;
- (c) Leslie Brown recalls that Angela was an active child and was "running and playing as she normally would" on that day;
- (d) Leslie agreed with his wife's statement that Angela was "wiggling her bum from side to side" and didn't seem to be in any pain or discomfort - she was "laughing and enjoying herself";
- (e) Leslie Brown also said that on that day he picked Angela up and hugged her and that she showed no signs of discomfort or pain.

Walker gave evidence that she recalled seeing Angela running around and doing "normal things for her", at her mother's place. Walker also recalled seeing Angela slip off a chair while she was at her mother's house. She agreed that if Angela had hurt herself she would have come to Walker for comfort and that she did not do that.

A friend of Walker's, Fiona Burke, was present at 43 Darling St Echuca at about 12.05 pm on 18 July 2008. Walker acknowledged that Burke came to her house but was not sure at what time that occurred. Burke observed the bump on Angela's head and the bite mark. She noticed that Angela was "running around, giggling, laughing and wanting cuddles."

At approximately 2.15pm on 18 July 2008, Council Rangers Tony Miles and Jenny Quintal attended at 43 Darling St Echuca. Walker confirms that this occurred. At this time, Miles observed that the little girl with bruises "was running about and didn't seem to be in any obvious distress". He said: "When I first attended the two children were running around and they actually come to the door... Angela didn't seem to be too distressed. I thought she seemed to be happy, smiling."

A Preliminary Dog attack report was completed and photos were taken of Angela Bannister's face. These photos are an important piece of evidence, as (with the exception of the marks attributed to the dog bite incident and Angela's fall where she hit her head earlier in the day), they do not show any of the injuries observable on Angela's face on 19 July 2008, in photographs taken shortly after her death.

At approximately 5.30-6.00pm, Angela and Ebony Bannister were taken to Undera by Walker for access changeover. Walker said that she put Angela in her car seat in order to go on that trip, and that at that time, Angela did not complain. Both girls were seen by their father Bradley Bannister at that time. Ebony went with her father for the access visit. Angela stayed with her mother.

When Walker and Angela returned home to Darling Street, Angela was fed a small amount and was bathed by Walker. Walker says that at this time, she did not notice any bruising on Angela's body, apart from the bite mark and the existing injury to Angela's forehead.

During the evening, Walker's step-brother, Michael Brown was at the Darling St house and noticed that until she went to bed, Angela was "her happy playful self". She was walking around, dancing and climbed up onto Michael Brown's lap. He said that she showed no signs of discomfort. Michael Brown said that at one stage, Angela climbed "half way up his lap" and he lifted her the rest of the way. He said that Angela did not cry out in pain when he did that. Michael Brown and the other visitors who had been at 43 Darling St Echuca on 18 July 2008, all left by late that evening. There is no evidence to suggest that Angela had sustained any injury (with the exception of those referred to above) before the time they left.

At some time between 7.30-9.00pm on 18 July 2008, Angela was put to bed by Walker in port-a-cot in Walker and Simmons' bedroom. Walker says that she had given Angela about 5 mls of Nurofen at 4 o'clock in the afternoon on the 18 July 2008. She does not recall giving Angela more Nurofen before she went to bed.

Later in the evening, (possibly at around 10.30pm), Angela was put into bed with Walker and Simmons. Walker said that Angela "was still restless, so we just laid with her and she'd doze off to sleep, then she'd wake up and then she'd doze off and wake up again." It seems likely that a further dose of Nurofen was given to Angela by Walker at about this time "because she was due for it then".

### **Circumstances**

After approximately 10.30 pm on the night of 18 July 2008, there were only two adults in the house at 43 Darling Street, Echuca. The events of that night can only be pieced together from the evidence of Walker and Simmons. That evidence is supplemented by statements to Police and the Department of Human Services ("DHS") made by Walker. Both Ms Walker and Mr Simmons were subject to a Homicide Squad investigation in relation to Angela's death. Simmons exercised his right to silence in the formal interview and gave a basic "no comment" interview to investigators.

Simmons' testimony to this coronial enquiry is the first time he has given his perspective on the events, apart from a Police interview on the day of Angela's death. As discussed below, the evidence was given with an immunity under section 57 of the *Coroners Act 2008*.

### **Investigations**

As noted above, the circumstances of Angela's death have been investigated by Victoria Police and DHS. No charges have yet been laid by Police. The DHS investigation has resulted in Ebony being placed with Bradley Bannister for her day to day care.

### **Role of a Coroner**

The coroner's function is investigative and inquisitorial rather than adjudicative and adversarial. Coroners are required to investigate matters in their jurisdiction and, in the case of a death, determine the identity of the deceased, how the death occurred, the cause of death and the particulars needed to register the death.

It is clear that the identity of the deceased and the cause of death, in this case, are known. The primary inquiry for the Coroner therefore relates to the circumstances of the death.

## **THE INQUEST**

### **Preliminary Issues**

The major preliminary issue for the Inquest was an application under section 57 of the *Coroners Act 2008*. The section provides:

57 Privilege in respect of self-incrimination in other proceedings

(1) This section applies if a witness objects to giving evidence, or evidence on a particular matter, at an inquest on the ground that the evidence may tend to prove that the witness—

(a) has committed an offence against or arising under an Australian law or a law of a foreign country; or

- (b) is liable to a civil penalty under an Australian law or a law of a foreign country.
- (2) The coroner must determine whether or not there are reasonable grounds for the objection.
- (3) If the coroner determines that there are reasonable grounds for the objection, the coroner is to inform the witness—
  - (a) that the witness need not give the evidence unless required by the coroner to do so under subsection (4); and
  - (b) that the coroner will give a certificate under this section if—
    - (i) the witness willingly gives the evidence without being required to do so under subsection (4); or
    - (ii) the witness gives the evidence after being required to do so under subsection (4); and
  - (c) of the effect of such a certificate.

Mr Mandy, on behalf of Simmons, and Mr Mylonas on behalf of Walker submitted that neither of their respective clients should be called to give evidence to the Inquest. It was argued that they had been extensively interviewed and investigated by Police and the Department of Human Services (“DHS”) in relation to the death and this should suffice. It was also argued that as both Simmons and Walker are both “suspects” in Angela’s death, the interests of justice would not be served by exposing them to further examination.

I formed the opinion that there were reasonable grounds for the objections to giving of evidence, made by each of the applicants. I informed both Walker and Simmons that they need not give evidence unless I required them to do so. I further informed them of the effect of the Certificate. I formed the view that their giving evidence would be in the interests of justice, and subsequently issued a Certificate to both witnesses. Both witnesses gave evidence during the Inquest.

## The Witnesses

The following witnesses were called before the Inquest:

Tony Miles	Shire of Campaspe
Daniel Simmons	Partner of Tania Walker
Tania Walker	Mother of the deceased
Leslie Brown	Stepfather of Ms Walker
Michael Brown	Son of Leslie Brown
Bradley Bannister	Father of the deceased
Steven Pryor	Ambulance Victoria
Shelley Owens	Ambulance Victoria
Dr Bala Kumar Pillai	Echuca Hospital
Nurse Gordon Haswell	Echuca Hospital
Dr Puneet Grover	Echuca Hospital
Dr Michael Burke	Victorian Institute of Forensic Medicine
Dr Stuart Lewena	Royal Children’s Hospital
Dr Mahtab Ghadiri	Echuca Hospital
Det Sgt Graham Guy	Victoria Police

**Tony Miles** was the Council ranger tasked, along with Ms Jenny Quintal, with following up the dog attack report with Mr Simmons. He took photos of Angela’s injuries. He gave evidence about the meeting with Mr Simmons and Ms Walker, his impression of Angela’s demeanour during the

meeting and subsequent attempts to locate the animal that had allegedly been involved in the "attack".

As the "dog attack" and the injuries that flowed from the alleged "attack" were, based on medical evidence at this Inquest, not related to the cause of death, Mr Simmons evidence on this issue will not be rehearsed. I will return to this issue below.

As noted above, **Daniel Simmons**, was the de facto partner of Angela's mother. He and the mother were with Angela on the night she died. Both were the subjects of the Police investigation into the death. Simmons gave evidence and was cross-examined on the "dog attack". He also gave evidence in relation to events on the night of 18 and 19 July 2008 at 43 Darling Street, Echuca. As one of only two people present with Angela on the night she died, and in receipt of a certificate under section 57 of the Act, it could be expected that Simmons would inform the inquiry accurately on the events of the night.

Mr Simmons detailed how Angela was unsettled during the night. She was administered low dose Nurofen on occasion. He telephoned the Echuca Hospital to inquire about a possible overdose of the medication at 2.53 am, using Walker's mobile. There is also evidence that the landline at 43 Darling Street was used to telephone the hospital at 2.55am.

He gave evidence of changing Angela's nappy at about 5.30 am. She was wet through to her bedding. He took Angela to the lounge room to change her nappy and he observed her "fitting", her leg was in spasm and her eyes were closing and reopening fast. He saw her leg rise. Soon after he noted that Angela had stopped breathing and he commenced Cardio Pulmonary Resuscitation (CPR).<sup>2</sup>

Mr Simmons' evidence was that he had never done CPR before and he tried a combination of "mouth to mouth" resuscitation and CPR using "little hands" on her heart.<sup>3</sup> When Mr Simmons formed the view that this was not working, an ambulance was called.

The chronology reported by Simmons was confused, as the following exchange between Simmons and Counsel Assisting indicates:

That was when you took her to the lounge room?---Yeah.

I see, because that's where the heater was?---Yes.

Or a heater was?---Yes.

I see, so that's the sequence of events, so you've realised, well if I leave her here with the nappy she's going to get really cold, I'll take her down to the heater. So you then go into Angela's room to get a new nappy and it's when you come back that you see her leg's up in the air and her eyes are rolled back, is that right?---I went into her bedroom and Tania and met in the kitchen, in the hallway, as we walked in to the opening lounge room door, and then that's where Angela's leg was starting to rise, yes.

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<sup>2</sup> Inquest Transcript page 65 lines 20-29

<sup>3</sup> Mr Simmons demonstrated "little hands" as a type of two-fingered CPR on the chest. Transcript page 67-68.

So is this when you thought to yourself, from your observations of Angela that she was not breathing?---She looked still.

She looked still?---Yeah, well hard. Like I can't - I've never done this stuff before, I don't know. I just checked her and brought her out into the middle of the lounge room.

Were you frightened by what you saw?---Yes, scared.

So what did you do?---I brought her - laid her on the lounge room floor in the middle, I just brought her out from the heater a bit and told Tania to ring Triple 0.

Now just - and I understand the times are very hard, but from what I'm hearing you say, there was no long period where you and Tania got to go back to sleep and, you know, maybe have an hour's rest or whatever?---No.

So it sounds to me like this must have been shortly after the time in your record of interview where you say, well about four, 4.30, you did drop off the sleep for a little while and that at five o'clock she wakes up again. Does that sound right, that that's the time when the - what you call the wee that was out of control happened?---No, because bubby went to sleep, me and Tania had sex, so I said to her, "If she wakes up again, we'll stay up." So we were - yeah, and then she woke up.<sup>4</sup>

**Tania Walker's** evidence was problematic in that it was at times at variance with her earlier accounts to Police and DHS. For example, in relation to whether she was asleep for most of the early morning, or was awake and closely monitoring her daughter's health throughout the time leading up to her death.

In relation to this issue, the Police interview on 19 July 2008 has Ms Walker saying:

Q.371 And is that what happened ...is that what happened this morning?

A. Yeah. Yeah, She, Danny just, she held her breath and she just went like jelly went all limp and, with Danny

Q.378 Were...you present to see that?

A. No, I was in bed. I had fallen asleep probably about half an hour..<sup>5</sup>

There is no mention of Walker falling asleep in the DHS interview of 22 July 2008.<sup>6</sup>

The question of whether or not Walker slept during the night was put to her by Counsel Assisting during the Inquest:

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<sup>4</sup> Inquest Transcript, pp 65-66

<sup>5</sup> Inquest Brief, Volume 2, pp 519-520

<sup>6</sup> Inquest Brief, pp 315 to 322

I appreciate it's a long time ago, but doing the very best you can if you can just tell His Honour what you remember then about what occurred until the time when you rang the hospital, which was we know at 10 to 3 in the morning. So from about 11, or maybe it was midnight, for that next two hour period can you tell His Honour what occurred?---I think we just laid there and watched - kept an eye on Angela and was talking.

Did you go to sleep at any stage?---I don't recall. I could've dozed off, I don't remember.<sup>7</sup>

Another example related to her observation of Simmons administering CPR to Angela, as disclosed in her Police interview of 19 July:

Q.380 So what happened then?

A. And then Danny took her in the lounge room and laid her on the floor where I showed you.

Q.381 Yes. In the loungeroom there?

A. Started CPR

Q.382 Okay. And how, when you say "CPR" what was he actually doing?

A. Like, doin' the compressions on her chest and...

Q.383 How was he doing those?

A. Just two fingers

Q.384 Two fingers

A. Yeah. And then he was breathin' into her mouth and she spewed a little bit and then that was it. There was nothing else. Like.....

Q.385 When you say "two fingers" and I appreciate you don't know how to do it...?

A. Yeah

Q.386 Are you able to just display...?

A. Well, I was out on the phone to the ambulance.

Q.388 So you didn't actually see...?

A. No. They said to wait out the front for the ambulance.



The description of Simmons doing CPR above can be contrasted with Walker's recollection at the Inquest, when Counsel Assisting put the following to her:

So you know that Daniel has said, "Well, look, I didn't know what I was doing 'cause I've never done CPR on a baby". But you had a chance to observe him?---I had a quick look, yes.

And you didn't see anything that caused you concern that he was pressing too hard on Angela's chest?---No. I've never done CPR so I thought he was doing the right thing. You certainly didn't see him using his whole body weight to press down on her?---No, not at all.

Did he accidentally for instance put a knee on her as he was doing it?---I didn't see, no. You didn't see or you don't think so?---I don't think so, no<sup>8</sup>

**Walker** detailed that she was awake most of the night looking after her daughter. In the hours before Angela's death, the Inquest was told of Walker's interaction with the Hospital, the Ambulance Service and with Simmons. She was not able to give the Inquest any explanation as to how Angela received the injuries that led to her death.

Angela Bannister suffered chest injuries that resulted in her death. On the basis of the medical evidence received at this Inquest, these injuries occurred when only the mother and her partner were on the premises at 43 Darling Street; but Angela's mother was unable to say how her daughter suffered these injuries.

**Leslie Brown** was the partner of Tania Walker's mother, Tracey Ann Brown<sup>9</sup>. He had attended Echuca Hospital, where Angela had been taken after the alleged dog attack. After treatment at the hospital, Angela and her mother visited Mr and Mrs Brown. Mr Brown reports that, at the time, Angela was lively and seemingly unaffected by the attack. He also observed that he did not think that the mark on Angela's face was indeed a dog bite.

Walker brought the two girls back to her mother's house again, later in the afternoon, on the way to a change-over meeting with their father at Undera. Once again, Mr Brown had an opportunity to observe Angela. She was still lively and unimpeded in her play by any obvious injury. He learnt of Angela's death when Tania Walker telephoned his wife at about 6.30 am on 19 July 2008.

In the body of his statement to the Inquest, Mr Brown made the following observation:

The other thing that I cannot get out of my head is that Angie was so well and so normal at our house on the Friday afternoon. As I have said they left at about 4.30 pm and she was fine. I am not exactly sure when Tania meets Brad for the change-over of the kids but I think she leaves Echuca at about five, it all depends on when Brad finishes work. But regardless of this it would not have been a long time. I cannot understand why Angie got to be so sick all of a sudden.<sup>10</sup>

<sup>8</sup> Inquest Transcript, pp 154-155

<sup>9</sup> Tracey Ann Brown died before the Inquest was held.

<sup>10</sup> Statement of Leslie John Brown, dated 12 September 2008, page 62 of the Brief.

**Michael Brown** is Leslie Brown's son and described himself as a friend of Daniel Simmons, although that friendship had "cooled" in recent times. He spent a lot of time at Tania Walker's house in Simmons' company and was present at the house the night Angela died.

On the evening of 18 July 2008, Mr Brown admitted to smoking cannabis with Mr Simmons<sup>11</sup>. He left the residence at Darling Street at about 8.30 pm on that night. He recalled that:

...Angie was just normal, she was her happy and playful self and it appeared that the dog attack and the bump on her head had not had any affect on her.<sup>12</sup>

**Bradley Bannister** is the father of Angela and Ebony. He was scheduled to take the girls on an access visit on 18 July 2008. In his evidence he detailed interactions with Simmons. These included a relatively rancorous telephone conversation, where he, Mr Bannister, expressed his concern with the safety of his children. On 18 July 2008, at Unera, Mr Bannister took Ebony for access, but Angela stayed in the car. Tania Walker had decided that Angela should stay with her for the night, following the alleged dog attack.

Mr Bannister's account of the alleged dog attack is at significant variance with the account from Mr Simmons. He says that he was told by Tania Walker that the attack had occurred at the Echuca Pound and that Angela had been with her mother at the time.

Mr Bannister had a prepared statement for the Inquest. That statement is annexed to these findings at Appendix 1.

#### **Steven Pryor**

At the time of the Inquest, Mr Pryor had been an ambulance paramedic for 30 years and had been with Ambulance Victoria in Echuca for 8 months. On 18 July 2008, he had taken an ambulance station wagon home for the night as he was "on call", rostered with Koshelyar Owens.

At 6.21 am on 19 July 2008, Mr Pryor received a call out to go to 42 Darling Street, Echuca<sup>13</sup>. He was told that Owens was proceeding to the address independently. As the ambulance entered Darling Street, Mr Pryor was met by a vehicle coming towards him flashing its lights. He stopped beside this vehicle. The time was 6.29 am.

Simmons alighted carrying Angela in his arms. He opened the passenger side door of the ambulance and sat down. Mr Pryor noted that Angela was "non-responsive". Pryor directed Simmons to the rear of the station wagon and Angela was placed on the flat surface in the interior. His initial observation was that the child's airways were clear but she had no pulse and was not breathing. Angela was also cool to the touch.

CPR was commenced, using a two-fingered technique. Mr Pryor noted that the rib cage was resistant to pressure and rebounded well. Owens arrived and used a self-inflating resuscitator to ventilate the child. She also fixed pads, to monitor her heart beat. CPR was halted after a period and the monitor checked. No heart activity was detected, Angela was asystole.<sup>14</sup>

Angela was then conveyed to Echuca Hospital, where the ambulance, driven by Ms Owens, arrived at 6.41 am.

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<sup>11</sup> Statement of Michael James Brown, dated 13 September 2008, page 67 of the Brief.

<sup>12</sup> Loc cit.

<sup>13</sup> It is common ground that while the dispatch information noted the wrong address, by reason of the fact that Simmons met the ambulance out in the street, no delay in attending to Angela occurred by reason of this error

<sup>14</sup> Inquest Brief, pp 94 to 97

### **Shelley Owens**

As noted above, Ms Owens was rostered with Mr Pryor on 18-19 July 2008. When the call came to attend at Darling Street, she left the Ambulance Station in an ambulance. This ambulance was used to bring Angela to the Echuca Hospital. Ms Owens confirmed Mr Pryor's evidence.<sup>15</sup>

### **Dr Bala Kumar Pillai**

Dr Pillai was the Visiting Medical Officer on call at Echuca Hospital on the morning Angela was brought to the Emergency Department. He arrived during the resuscitation attempt and assisted in its implementation. Dr Pillai advised the family when a decision was taken to terminate resuscitation. The next day he took a number of swabs from Angela's body, under direction from a pathologist at Shepparton Hospital. The swabs were sealed and handed to the Police.<sup>16</sup>

### **Gordon Haswell**

Mr Haswell has been a Registered Nurse for about 18 years at the time of the Inquest. He was the After-Hours Manager at Echuca Hospital on the morning Angela was brought in by the ambulance. He supervised her movement from the ambulance to Emergency and the commencement of the hospital's resuscitation attempt. Mr Haswell was responsible for the CPR. He used the "hand encircling" technique. When he was later he was informed of the injuries to Angela's chest, he stated he was confident that his technique could not be responsible.<sup>17</sup>

In his view, when the child was brought to Emergency, Angela Bannister had poor chances of survival. There had been over 30 minutes since she had shown signs of life, known as "downtime", blood was beginning to pool in her extremities and there were no vital signs.

In his evidence at the Inquest, Mr Haswell said that he notified the Police of Angela's death, as he was not satisfied with the responses of Walker and Simmons in relation to the observations made of her body and in the circumstances of the death.<sup>18</sup>

### **Dr Puneet Grover**

Dr Grover was the Hospital Medical Officer at Echuca Hospital on the night Angela was brought to the Hospital by ambulance. At about 0635 hours on 19 July 2008, Dr Grover was informed of Angela's imminent arrival at the Emergency Department and, as a consequence, alerted the on-call Visiting Medical Officer, Dr B.K. Pillai, the After-Hours Nursing Coordinator, Gordon Haswell, and the Registered Nurse on duty in the Emergency Department, Tricia Caswell.

When Angela arrived at the hospital, Dr Grover took observations. Angela did not respond to painful stimulus, there was no spontaneous breathing, no sounds were heard from her heart, no brachial or carotid pulse was detected.

Urgent resuscitation was undertaken, including the administration of adrenaline and atropine. He consulted with Dr B.K. Pillai on his arrival and Dr Pillai joined in the resuscitation efforts. After speaking to the family present at the hospital, Dr Pillai terminated the resuscitation at 0652 hours on 19 July 2008.

Dr Grover then performed an inspection of Angela's body, and noted the following:

- Bruise and abrasion on the left upper forehead
- Multiple bruises on the left side of face

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<sup>15</sup> Inquest Brief, pp 98 and 99

<sup>16</sup> Inquest Brief, pp 103 and 104

<sup>17</sup> Inquest Brief, pp 105 and 106

<sup>18</sup> Transcript, page 339

- Bruise on left eyelid
- Bruise below lateral aspect of left eyelid
- Bruise on nasal bridge
- Bruise on left cheek in front of ear
- Old bruise on the lower third of sternum
- Small old bruise left sub-costal area
- Old bruise on the labia majora both sides
- Old linear bruise on the left inguinal area
- Bruise on the right lower back.

A total of 10 bruises, both new and aged, were found.

#### **Dr Michael Burke**

Dr Michael Burke is a Senior Pathologist in the Victorian Institute of Forensic Medicine. He performed the autopsy on Angela Bannister. On the basis of his examination, he concluded that there was no evidence of any natural disease process that would have led to Angela's death.<sup>19</sup>

His anatomical findings from the autopsy were listed as follows

- Intra-thoracic haemorrhage
- Mesenteric and adrenal haemorrhage
- Fractured left pelvis (superior pubic ramus)
- Bite mark left cheek
- Old bruise and laceration left forehead

The cause of death was identified as **1(a) Chest Injuries**.

The examination showed blood in both the left and right pleural cavities and in the mediastinum. He noted fractured ribs and bruising from the mediastinum into the retroperitoneum and small bowel mesentery. Examination of Angela's brain showed no evidence of injury or natural disease that "would have led to irritability, collapse and death."

The autopsy included an expert examination of the bite mark on Angela's cheek. Dr Burke reported that in the expert's opinion, the left cheek injury suggested a human bite.

In Dr Burke's view, the inflammation around the rib fractures and inflammatory changes within the heart, all indicated that Angela had suffered these injuries prior to her death. Additionally, in his view, based on experience and review of the literature, the pelvic injury to the child was an injury uncommon in cases of non-accidental injury, extremely rare in association with CPR and would have made movement extremely uncomfortable and painful to the child. The damage to the heart and adrenal glands were considered to have arisen from a significant downward pressure on Angela's body.

This last point is hardly consistent with the levels of activity observed by visitors to 43 Darling Street earlier in the evening of 18 July 2008. In turn, the implication is that Angela suffered this injury after she was taken to bed.

In his evidence to the Inquest, Dr Burke detailed injuries to Angela's eyelid, nose, in the eye cavity, the chin, cheek, a "patterned" injury around her neck, injury on the sternum, gut, finger, elbow, upper and lower legs: all on her front. On her back he identified further injuries to her back, loin and her left buttock.

<sup>19</sup> Autopsy report on Angela Bannister, dated 28 September 2008, paragraph 14, page 15.

### **Dr Stuart Lewena**

Dr Lewena is a Paediatric Emergency Physician at the Royal Children's Hospital. His evidence at the Inquest concentrated on Angela's pelvic fracture, discovered during the autopsy. His inquiries demonstrated that the fracture went right through the bone of the pubic ramus. In Dr Lewena's opinion, this fracture could not be ascribed to the CPR undertaken by Simmons. The fracture would have significantly affected the child's movements, involving a great deal of pain. In his experience, these types of fractures are relatively rare and are caused by significant trauma. He was prepared to agree that if Simmons had performed CPR in the manner described in his evidence, it was unlikely that he would have caused the injury.

### **Dr Mahtab Ghadiri**

Dr Ghadiri examined Angela when she was brought to Echuca Hospital by her mother, following the "dog attack". Ms Walker at this time told the doctor that she had been with Angela when the dog attacked, a statement Ms Walker has subsequently denied.

On examination, Dr Ghadiri found Angela to be alert and reporting no pain. She checked Angela's medical record and noted that her tetanus immunisation was up to date. Dr Ghadiri's evidence in her statement, and confirmed at the Inquest, was that Angela was in good health at the time of her examination.

### **Cross-examination on the medical evidence**

It is fair to say that the medical evidence in this Inquest was hotly contested by Counsel for Simmons and Walker. The attack on the evidence was continued in submissions made on behalf of both parties. Counsel Assisting's response to these submissions is attached as Appendix 2 to these findings. The response details the arguments put and Counsel Assisting's rejoinder.

### **Det Sgt Graham Guy**

At the time of Angela's death, Detective Sergeant Guy was attached to the Homicide Squad. He was informed of the child's death at 8.45 am on 19 July 2009 and also learnt that local doctors were concerned with the bruising observed on Angela's body. He travelled to Echuca with other Squad members and, at 2.42 pm that day, commenced an interview with Daniel Simmons.

A search warrant was obtained in relation to 43 Darling Street, Echuca and number of telephone intercept warrants were also obtained. These intercepts commenced on 26 August 2008 and ceased on 24 September 2008. Listening Device warrants were obtained in relation to two vehicles.

On 15 September 2008, Tania Walker was interviewed. The Walker and Simmons interviews were transcribed and checked. At the Inquest, Mr Guy agreed that none of the intercepts or listening devices recorded any admissions that either Walker or Simmons was responsible for Angela's death.

Detective Sergeant Guy was the Informant in this matter and prepared the brief. The whole brief together with photographs, was tendered through Mr Guy as an exhibit in this Inquest.

### **Submissions**

As noted above, submissions were received after the Inquest adjourned from all Parties. Counsel for Simmons urged the Coroner to return an open finding. The submission made by Mr Bradley Bannister urged the adoption in Victoria of legislation operating in the United Kingdom, the *Domestic Violence, Crime and Victims Act 2004*. This latter proposal will be considered below.

## Standard of Proof in Coronial Matters

In making findings in this matter, I am required to be satisfied on matters on what is called a "balance of probabilities". This is commonly known as the civil standard of proof, as opposed to that in the criminal law. In criminal law, a matter has to be proved "beyond a reasonable doubt". A balance of probabilities is a lesser standard than the criminal test, in terms of proof.

Where there are or may be criminal issues in a coronial inquiry, the degree to which I, as a coroner, need to be satisfied, on a balance of probabilities, becomes much stronger. I need to be more certain before reaching conclusions in these matters than I might be in other circumstances. This is the test set out in the High Court case of *Briginshaw v. Briginshaw*<sup>20</sup>.

Latham CJ set out the test in the following passage:

There is no mathematical scale according to which degrees of certainty can be computed or valued. But there are differences in degree of certainty, which are real and can be intelligently stated, although it is impossible to draw precise lines, as upon a diagram, and to assign each case to a particular subdivision of certainty. No court should act on mere suspicion, surmise or guesswork in any case. In a civil case, fair inference may justify a finding upon a basis of the preponderance of probability. The standard of proof required by a cautious and responsible tribunal will naturally vary with the seriousness or importance of the issue.<sup>21</sup>

As the learned authors of *Death Investigation and the Coroner's Inquest*<sup>22</sup> put it:

Coroners should be mindful of the deleterious effect that a finding of contribution to cause of death may have on a person's character, reputation and employment prospects, as well as the gravity of such a finding. While allegations of matters such as assault need to be proved only on a balance of probabilities before a coroner, their criminal nature is one of the factors to be taken into account in determining whether the requisite level of "comfortable satisfaction" exists as to the matters alleged.

In the words of Gobbo J, in *Anderson v Blashki*<sup>23</sup>

But, because of the gravity of the allegation, proof of the criminal act must be "clear cogent and exact and when considering such proof, weight must be given to the presumption of innocence"<sup>24</sup>

## Findings

There are two findings in this Inquest. The first concerns the alleged "dog attack" on Angela Bannister, the day before she died. The story of the attack depends wholly on Simmons' story. There is no independent or supporting circumstantial evidence that comes to his aid. He refers to a red heeler dog attacking Angela. No one before or since has come forward with a sighting of this dog. No Council Ranger has come across it. No resident in Echuca-Moama has come forward, notwithstanding the extensive publicity attending the issue.

<sup>20</sup> *Briginshaw v. Briginshaw* (1938) 60 CLR 336.

<sup>21</sup> *Loc sit*, pages 343-44

<sup>22</sup> *Death Investigation and the Coroner's Inquest*, Ian Freckleton and David Ranson, Oxford University Press, 2006, at pages 554 -555.

<sup>23</sup> *Anderson v Blashki* [1993] 2VR 89, at 96

<sup>24</sup> Quoting with approval *Cuming Smith and Co Ltd v Western Farmers Cooperative* [1979] VR 129, at 147

I am further satisfied, on the evidence before the Inquest, that the bite mark on Angela Bannister's face is not, in all probability, a dog bite mark. Angela clearly suffered a bruising as a consequence of her visit to Go Lo on that day. Mr. Simmons was aware that Mr. Bannister was alert to any signs of potential mistreatment of his daughters whilst they were in Simmons' and Walker's care. In my view, the "dog attack" story was an attempt by Simmons to deflect responsibility.<sup>25</sup> I am satisfied to the requisite standard of proof that the issue of whether or not there was a "dog attack" is irrelevant to the question of how Angela Bannister died.

Dr Burke's evidence, cited above, was that there was no illness or infection detected in Angela Bannister's body that could explain her sudden death. If there was no illness, the question of why Simmons would resort to CPR is left in limbo.

The evidence relating to Angela's health on the night of the 18th is unchallenged. She was a lively young infant, climbing and running without effort or discomfort. She was bathed by her mother and put to bed in a porta-cot. Dr Burke has given evidence of the extensive injuries on Angela's body, detected at the autopsy. None of these injuries, apart from the bite mark and the bump on Angela's head, were seen by her mother.

The injuries to Angela's ribs, internal organs and pelvis occurred overnight at the Darling Street house, where only Walker and Simmons were present. The evidence was that Simmons was responsible for the majority of Angela's care during the night.

Both Walker and Simmons say that Angela was unsettled during the night, incontinent and "sore". Evidence from Dr Burke was that the time period from when she incurred her injuries to her ultimate death from internal haemorrhaging could be a significant period of time.<sup>26</sup> It follows that most of the activity pursued by Simmons in attempting to resuscitate Angela, in the period from 4am to 6am on 19 September 2008, was more than likely occurring as she was close to death from internal bleeding.

Simmons says that he was changing Angela's wet nappy, in front of the heater. He says he noticed her leg rise in the air and she began "to fit", then became still. It was at this time that Simmons decided to commence CPR.

The medical evidence is that Angela Bannister died of chest injuries. She had rib injuries, internal thoracic haemorrhaging, mesenteric and adrenal haemorrhage and a fractured pelvis. Each one of these injuries is unlikely to have been caused by accident. When considered as a constellation of injuries, this conclusion becomes compelling. The only people in a position to cause these injuries were Walker and Simmons.

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<sup>25</sup> The following exchange between Simmons and Counsel Assisting illustrates this point:

What I want to suggest to you is that you were very aware that if something happened to either of the girls while they were in your care that you would be blamed for that by Bradley. What do you say about that?---Um, yeah, because he made a - he gave me a phone call, uh, two weeks prior to this happening.

And what did he say in the phone call?---Um, "If you ever touch my kids I'll kill you".

And what had prompted that? Like what brought that on?---I'm not quite sure. (Inquest Transcript, Page 49)

<sup>26</sup> You were asked a question by counsel assisting, about whether or not you could put a time on the what period of time had elapsed from the commencement of the bleed to ultimate death?---Yes.

Your answer to that question was it was very difficult to put a finite time on it. Can I suggest, sir, is it a period that would be within, say a space of 12 hours?---You would think so, yes.

You would be surprised, would you not, if it was anywhere outside 12 hours?---Yes, with that sort of trauma, yes.

When you say, "That sort of trauma", I take your evidence to be that the trauma that caused these injuries which led to death was of a significant nature, is that right?

---Absolutely

The issue of Certificates notwithstanding, no direct evidence was forthcoming from Simmons or Walker to identify which one of them or whether both were responsible for the injuries. The circumstantial evidence of responsibility is strong and, in my opinion, the appropriate inference can be drawn. The second finding is that I am satisfied, at the required standard of proof, that these injuries were caused by Daniel Simmons and/or Tania Walker acting individually or in concert.

## Recommendations

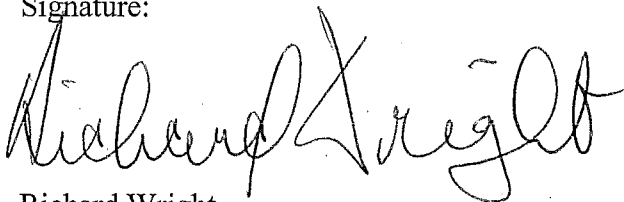
As noted above, counsel for Mr Bannister proposed that the Coroner recommend the introduction to Victoria of child protection legislation in place in the United Kingdom, known as *Domestic Violence, Crime and Victims Act 2004*. That Act deals with situations where a child or "vulnerable person" dies in circumstances where there is a significant risk of serious physical harm being caused to the child or "vulnerable Person" and there is another person responsible for the harm. To be liable under the Act, in the first instance, the person causing the harm must be a member of the victim's household and have frequent contact with the victim. Alternatively, a household member who should have been aware of the threat to the child's or "vulnerable person's" safety and does nothing to prevent the harm can be liable.

The Act provides that if two people in a household could be the perpetrator of an unlawful act on the child or "vulnerable person", there is no need to prove which of them caused a death or allowed it to happen. The Act addresses an issue highlighted in *Lane v. Lane*<sup>27</sup>, where the case was stopped at the close of the prosecution evidence. The Court said there was no evidence pointing at a specific defendant.

In the present matter, there was no evidence of previous violence and no reason to suspect that it had occurred. The Act would not address the situation of Angela Bannister.

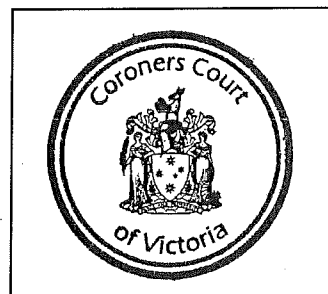
Abstracting from the present case, there have in recent times been a number of major child protection reviews and enquiries. In my view, it is in these forums that the reform question is more appropriately considered. I am not minded, in the circumstances of the present Inquest, to recommend a major reform of the criminal law.

Signature:



Richard Wright  
Coroner

Date: 4 July 2012



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<sup>27</sup> (1986) 82 Cr App R 5



## **APPENDIX 1**

### **BANNISTER FAMILY SUBMISSION**

"To His Honour and all members of the front Bench, Bradley Colin Bannister and loving families and extended families, close and new friends. We'd like to thank you all for making this shocking experience as painful[sic] as could be. To the members of the Echuca Ambulance, the doctors and nursing staff of the Echuca Hospital, we know that you all gave our darling little Angie all the best of your expert and tender care that you could. You all should not have been put through this terrible experience again. We thank you sincerely from the depths of our broken hearts.

To the Echuca Police and the Homicide Squad, for all you have tried to do, this must have been a trying sad experience. For all of you, thank you. To the media for getting this terrible ordeal in your papers in the professional manner that you have.

We lost our beautiful daughter and sister Sharon from a terrible accident over 25 years ago. That was devastating and you just don't get over an experience like that. To lose our sweet little innocent daughter and granddaughter in such a shockingly terrible way just breaks our hearts.

Sweet little Angie was not even two. She had her whole life to live. She should still be here with us today playing like all little girls do. Her darling big sister Ebony just misses her so much. You can tell that just by the way that she talks she does not know how her little sister passed away. We just wonder how she will cope when she does. No parent or grandparent should have to go through the pain we have been through.

Someone knows what happened to our little baby girl on that night. Someone has to be held accountable as in our hearts this was not an accident. We can only hope and pray that one day justice will prevail.

If we have not thanked everybody that has helped our darling little Angela Jade Bannister we wish to now. Words are nowhere enough but they are the only things we have left except our loving memories of our beautiful little angel Angie who is in heaven with her darling Auntie Shaz. We all love you little Angie. You will be in our hearts forever. Sincerely Bradley, Dawn, Colin Bannister

and families." Thank you, Your Honour.

**APPENDIX 2**  
**IN THE CORONERS COURT OF VICTORIA**  
**AT ECHUCA**

**INQUEST INTO THE DEATH OF ANGELA JADE BANNISTER**

**REPLY BY COUNSEL ASSISTING THE CORONER**

This reply will address factual matters set out in the submissions made by Counsel for Tania Walker and Daniel Simmons. The matters to be addressed will be referred to by the paragraph number in which they appear in the relevant submission.

Submissions by Counsel for Tania Walker

As to paragraph 14:

2.1 The evidence attributed to Dr Burke is incomplete. The complete quote is as follows:

*“Q....now I think you may have already answered this question, but just in terms of the external examination you did, I appreciate we had a discussion...in relation to the inflammatory cells and so on, but just in terms of the chest – rib-cage injuries, are you able to confirm that as they are, they could have been entirely the result of CPR?---Oh they could have been.*

....

*THE CORONER: Right, so looking with your eyes you can't identify whether it's CPR or not is the cause?---That's correct.”<sup>28</sup>*

2.2 It will be recalled that earlier in his evidence, Dr Burke said that it was theoretically possible that any one or more of a number of the injuries suffered by Angela, could have been caused by inappropriate CPR, “*save for the fact of the inflammatory response*”.<sup>29</sup> It will be recalled that Dr Burke gave evidence that an inflammatory response will not be seen in the absence of spontaneous circulation. As to this, it is notable that prior to beginning CPR, Simmons checked to see whether Angela was breathing, and formed the view that she was not.<sup>30</sup> Furthermore, during the call to the ambulance,<sup>31</sup> Walker tells the operator that Angela does not have a pulse. These matters are consistent with the view expressed by Pryor that by the time he was treating Angela, she was blue, cool to touch, had no carotid pulse, was not breathing and had dilated pupils. To Mr Pryor, this indicated the possibility that

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<sup>28</sup> T453, lines 12-29

<sup>29</sup> T444 lines 23-26

<sup>30</sup> T88, lines 3-12

<sup>31</sup> see transcript of the call: Exhibit 4

Angela had not had circulation and respirations for a period of time: *"To me the patient was deceased when I arrived"*<sup>32</sup>

- 2.3 Mr Haswell said that when he first saw Angela at the hospital he was told by Mr Pryor that Angela had had 30 minutes of *"down time"* that he was aware of (ie no heart contraction and no breathing). He said that he observed Angela to be mottled and pooling in the extremities, which indicated that there had been *"a significant downtime...[with] no circulation"*<sup>33</sup>

As to paragraph 18:

- 3.1 The submissions made on behalf of Tania Walker posit that the fatal injuries could have been caused by at least one of three scenarios, as follows:
- 3.1.1 *"An event prior to the circulatory collapse... which caused the fatal injuries";*
- 3.1.2 *Simmons' incorrect application of CPR (following a real or imagined need);*
- 3.1.3 *Incorrect CPR by Haswell.*
- 3.2 The submissions assess the evidence of injuries, including non-fatal injuries, in an attempt to ascertain which of these scenarios is most likely to be correct. The thrust of the submissions seems to be that the evidence relating to non-fatal injuries is insufficient to enable a definitive conclusion to be drawn, and that accordingly the Coroner must make an open finding.
- 3.3 In making this submission:
- 3.3.1 *Inferences are drawn that are not available on the evidence before the Court;*
- 3.3.2 *Relevant evidence is ignored, leading to incorrect conclusions being drawn.*
- 3.4 If the evidence given by Simmons as to the manner in which he performed CPR is accepted, then the Court ought to find that the fatal injuries were not caused by incorrect CPR performed by Simmons. The evidence before the Court clearly indicates that by the time that staff from the Echuca Hospital became involved, Angela had been in asystole for some time. She did not ever recover from this state. Nothing which the hospital staff did at that time could have caused or contributed to Angela's death.
- 3.5 Particular aspects of the evidence considered by Counsel for Walker are reviewed below.

## Bruises

4 As to paragraph 22:

- 4.1 Counsel for Walker submits that all of the bruising on Angela's body is consistent with *"a fall the previous day"* and *"the effects of CPR"*.

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<sup>32</sup> T252-3

<sup>33</sup> T327-328

4.2 It is submitted that the evidence simply does not support the view that the bruises can all be accounted for by the fall the previous day and application of CPR:

4.2.1 *At paragraph 23(a) Walker submits that "a number of focal round bruises on the face... are related to manipulation of the face and jaw to maintain a good seal with the face mask during CPR." Other than Dr Burke agreeing that injury no. 9 shown in photograph 125 could have been caused by fingertips during resuscitation,<sup>34</sup> (and pressing of nostrils) this bald assertion is not supported by evidence;*

4.2.2 *Dr Burke clearly states his expert opinion that the bruises on the right cheek (as depicted in photograph 124) were not caused by fingers, as the bruises are too small and too close together,<sup>35</sup>*

4.2.3 *Notably, Dr Burke was asked whether all the injuries could be as a result of resuscitation, and had the following interchange with Counsel:*

*"MR MYLONAS: Am I correct in saying this?....if we didn't have the inflammatory changes then just about all these injuries, particularly in relation to the chest, the mediastinum, the adrenals, the heart, could be as the result of resuscitation. Is that fair or not?---....the chest injuries, the bleeding into the mesentery, yes. The fractured pelvis, no. Those injuries to the face, no.*

*No?---You can pick out a couple if injuries....*

*The chest.....?---.....and....you can always pick out individual injuries and say 'These are due to resuscitation' but when you sit back and you look at a group - a constellation - a constellation of injuries to the face - no. No<sup>36</sup> (emphasis added)*

4.2.4 Significantly, photos 101, 102, 105 and 106 show a dark cut or bruise above Angela's left eyelid. Walker's counsel did not seek to elicit evidence regarding how such a bruise may have been sustained during CPR. In relation to that particular injury, Dr Burke gave the following evidence:

*"MS HINCHEY: As to the other injuries on her face, so the marks on the right cheek, the abrasions under the chin, the bruise on the left side of the jaw line and the bruise to the right forehead, assuming we accept Mr Simmons version of events which was that he did nothing to injure her except for the application of CPR with no ancillary leaning on her or any of those things, does that explain any of those injuries at all?---No it doesn't, and there's also the injury in the ...the eyelid, which is in her – I think it was on the left side, which is in a recessed area, which is not the sort of place you...get an injury....*

<sup>34</sup> T450-451

<sup>35</sup> T450-451

<sup>36</sup> T463

*What is the significance of that?---Well, if...you have a fall you tend to injure areas that are prominent, so if someone – if you trip and fall over you tend to injure your nose and your chin, your eyebrow, you don't tend to injure underneath your eyebrow.*

*The crease in your eyelid?---The crease – unless you're wearing glasses or something like that, if that explains it, or you've fallen on a projection that just happens to be there, it tends to be protected, so that's unusual in itself, and certainly...CPR doesn't explain all of the injuries to her face.”<sup>37</sup> (emphasis added)*

4.2.5 Applying Dr Burke's evidence about bruising to places on Angela's body which were not prominent, the same comment might be made in respect of the bruise which can be seen across the bridge of Angela's nose – see photos 102 and 120.<sup>38</sup>

4.2.6 As to paragraph 23(c), while Dr Burke conceded that the petechial haemorrhage on the neck and conjunctivae could be the result of CPR, the evidence taken in isolation does not account for the fact that Simmons specifically denied having pressed on Angela's body up around her collar bone, while performing CPR.<sup>39</sup> It is not useful for Counsel for Walker to make assertions about what “could be” the case by reference to what the experts said, without relating that evidence to the account given by Simmons and Walker.

4.2.7 At paragraph 23(i) Counsel for Walker submits that post mortem bruising can occur. This is referenced to T422, where the following exchange occurs:

*“MS HINCHEY: Bruising – can that occur at a time when a child or a patient is in asystole?---...post mortem bruising can occur - it certainly can occur, um*

*Can you tell His Honour the extent to which it can occur?--- ...post mortem bruising tends to be very small compared to the amount of trauma that's caused it. So if you are deceased, if you have been struck by a car and your body is on the road and then a car runs over your body there will be bruising in that area, because blood vessels are being squashed, but the amount of bruising is small with respect to the amount of trauma that your body has gone under.”<sup>40</sup>*

There is no evidence before the Court that the degree of force applied during resuscitation attempts on Angela, would have been sufficient to cause post mortem bruising.

4.2.8 At paragraph 23(j) Counsel for Walker submits that the “superficial bruising around the body is minimal in comparison to the internal fatal injuries” and draws the conclusion that “this suggests that the majority of

<sup>37</sup> T428, lines 7-29

<sup>38</sup> Exhibit 6

<sup>39</sup> T69, lines 29-30

<sup>40</sup> T422 line 29 to T423 line 8

*force was focused on compressing the chest and that the bruising around the rest of the body was incidental to the need to compress the chest."* Presumably by referring to a "need" to compress the chest, Counsel for Walker is referring to the performance of CPR. There is nothing in the evidence to suggest (other than in relation to the bruising around the nostrils and mouth) that any bruising sustained by Angela on her limbs and face was incidental to the application of CPR.

4.2.9 As to paragraph 23(k), where Counsel for Walker states: "*Lastly it is submitted that all [of the bruises] are accounted for by the combination of the alleged dog incident and the fall the previous day and the attempts at CPR,*" the Court is referred to the matters set out above, and particularly reminded of the following:

there were bruises in recessed areas on Angela's face which in Dr Burke's opinion, were not accounted for either by a fall or the application of CPR;

Dr Burke specifically disavowed the proposition that a number of the bruises to the face were incidental to CPR, particularly the application of a face mask;

Dr Burke said that while individual injuries could be attributed to the application of CPR, the same could not be said for the "constellation" of injuries that were present on Angela's body;

Tania Walker herself said that none of the bruises (apart from those to Angela's left forehead and cheek) were present when she bathed Angela on the evening of 18 July 2008.

## The pelvis

5 At paragraph 24:

5.1 Counsel for Walker correctly points out that the pelvic fracture was not a cause of death, but could be an indicator of abuse sustained by Angela during the night of 18-19 July 2008.<sup>41</sup>

5.2 Counsel for Walker then contends that "*there is no evidence available to infer that the pelvic fracture was as a result of an intentional event and unrelated to the CPR and dog incident*".<sup>42</sup> The arguments relied upon are flawed in the following respects:

5.2.1 At paragraph 25, Counsel for Walker states:

*"The in vitro examination of the fracture and its x-raying in order to show the fracture as done by Dr Burke is misleading and based on questionable science. This evidence ought to be excluded on discretionary grounds or alternatively given no weight as the anatomical integrity of the pubic ramus ring has been disturbed in the process of excision and in those circumstances the x-rays showing a gap mean nothing. Dr Lewena*

<sup>41</sup> Walker's Submission paragraph 24

<sup>42</sup> Walker's Submission paragraph 38

*conceded that he was not aware of how the pubic ramus was excised and distraction of the fracture had occurred.”*<sup>43</sup>

5.2.2 There is simply no evidentiary support for the assertion made by Counsel for Walker that an *in vitro* examination as done by Dr Burke is misleading or based on misleading science.

5.2.3 The evidence is clear that there was an x-ray carried out while the pubic ramus was still *in situ*, which showed the fracture.<sup>44</sup> In relation to this matter, Dr Lewena's evidence was:

*“I can accept that this image<sup>45</sup> shows distraction whilst the other image in situ doesn't. The other image does show clear involvement of both cortices of the bone. So whilst it's possible that the image may appear more distracted on this image I don't think it's possible that this fracture has been converted to a different type of fracture as a result of the excision.”*<sup>46</sup>  
(emphasis added)

5.2.4 In any event, the question of the method of excision is irrelevant. Counsel for Walker stated that the purpose of the line of questioning was to establish that the fracture sustained by Angela was “stable”.<sup>47</sup> Dr Lewena agreed that the pelvic fracture was a stable fracture.<sup>48</sup> Counsel for Walker submits that “It is common knowledge that a splinted fracture is less painful than a non splinted one.”<sup>49</sup> However, the key point is that nevertheless, Dr Lewena said that the fracture (which he described as stable<sup>50</sup>), would have caused the person who suffered it “significant pain”.<sup>51</sup>

5.2.5 At paragraph 29, Counsel for Walker criticises Dr Lewena in the following manner:

- (a) he was said to have been evasive and unwilling to engage on the issue of the minimum force which would be required to cause a pelvic fracture in a child;
- (b) he was said to have opined beyond expertise;
- (c) he was said to have used “vague, indefinite subjective and unaccountable language such as “significant force””;
- (d) he was said to have failed to identify the scientific basis of his opinion “other than because he had not seen it therefore it does not exist”;
- (e) he was said to have failed to distinguish why the dog rush scenario was different to the pedestrian cases of pelvic fracture in Chia's study.

<sup>43</sup> Walker's Submission paragraph 25

<sup>44</sup> Inquest brief p 120

<sup>45</sup> Exhibit 28- the x-ray of the excised public ramus

<sup>46</sup> T514 lines 8-15

<sup>47</sup> T516 lines 6-9

<sup>48</sup> T516 lines 8-9

<sup>49</sup> Walker's Submission paragraph 25

<sup>50</sup> T516 lines 8-9

<sup>51</sup> Exhibit 26



5.2.6 The Court is reminded that Dr Lewena is a paediatric physician practising exclusively in the specialty of paediatric emergency medicine. He is employed full time at the Royal Children's Hospital in Parkville, Victoria. During his evidence, he referred to his experience with many thousands of cases which provided part of the basis for the opinions he expressed in Court. Dr Lewena presented as a highly qualified, experienced and thoughtful witness, who gave objective evidence in response to a number of matters put to him by different counsel.

5.2.7 Importantly, Dr Lewena's evidence indicated the following:

- (a) the paediatric pelvis has the capacity to deform significantly, yet not break;<sup>52</sup>
- (b) thus while pelvic fractures caused by falls from heights are seen in adults, such injuries by this mechanism are rare in children. Children falling from heights commonly suffer injuries to the head and upper extremities;<sup>53</sup>
- (c) pelvic fractures are a very uncommon injury in children;<sup>54</sup>
- (d) he has seen "*many many hundreds of football injuries where players have been tackled to the ground*", and has never seen a fractured pelvis arising from such a situation;<sup>55</sup>
- (e) he has seen a fractured pelvis from one sporting injury, namely when a child was thrown from a horse;<sup>56</sup>
- (f) he has reviewed the relevant literature and surveyed his colleagues to supplement his own experience. That review indicates that pelvic fractures seen in children "*all occur in high velocity high impact trauma.*"<sup>57</sup> He fairly conceded that he has not "*performed more detailed analysis than that*";<sup>58</sup>
- (g) that led to his evidence that in relation to the hypothetical situation of a 30kg dog knocking a 22 month old child to the ground:

*"As I've stated when I was asked this question before, I've seen many, many thousands of similar severity traumas and I have never, nor have any of my colleagues, ever seen a pelvis fracture as a result of that kind of trauma and I would find it hard to conceive that it could occur."*<sup>59</sup>

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<sup>52</sup> T516 lines 17-20

<sup>53</sup> T492, referring to the conclusion in the abstract of an article entitled "*Pelvic fractures in infants as a sign of physical abuse*" by Starling et al

<sup>54</sup> T490-491

<sup>55</sup> T518 lines 5-8

<sup>56</sup> T512 lines 23-28

<sup>57</sup> T519 lines 22-27

<sup>58</sup> T519, line 26-27

<sup>59</sup> T518 lines 14-20

- (h) Dr Lewena considered that it was possible that a small child "*being tackled by a 120 kg football player*" could fracture the pelvis,<sup>60</sup> but, as set out above, found it hard to conceive that a pelvic fracture could occur if a 30kg dog tackled a small child to the ground.

5.2.8 Counsel for Walker submits that Dr Lewena "*opined beyond expertise*" because:

- (1) he does not possess any training referable to biomechanics;
- (2) His only experience was of pelvic injuries as a result of motor vehicle accidents which does not qualify him to opine whether other traumatic mechanisms can result in pelvic fractures;
- (3) Furthermore he was at odds with the literature with respect to non MVA cases such as sporting injuries.<sup>61</sup>

5.2.9 These criticisms of Dr Lewena are unreasonable. Dr Lewena did not require training in biomechanics in order to give evidence that all of the paediatric pelvic fractures he had seen or which had been reported "*all occur in high velocity high impact trauma.*"<sup>62</sup> Dr Lewena said as much when in relation to this issue he answered: "*Yeah, I'm not answering that question on biomechanical knowledge, I'm answering that question on clinical knowledge and experience.*"<sup>63</sup>

5.2.10 Furthermore, as a matter of logic, if Dr Lewena has seen an extensive range of injuries that occurred as a result of a variety of different circumstances, only some of which have ever resulted in a paediatric pelvic fracture, this must enable him to draw conclusions, based on his clinical experience, about the types of circumstances and forces which would be likely to cause those types of injuries.

5.2.11 The fact is that Dr Lewena went beyond his own extensive experience, by reviewing the literature<sup>64</sup> and also canvassed the experiences of his colleagues.<sup>65</sup> It was against this background that Dr Lewena gave his expert opinion to the Court.

5.2.12 Lastly, the criticism that Dr Lewena's experience was "*at odds with the literature with respect to non MVA cases such as sporting injuries*", is demonstrably untrue, he having referred to his experience of pelvic fractures from sporting injuries.

5.3 *At paragraph 32, Counsel for Walker queries "how 'significant' was the force that broke the pelvis if it did not even bruise the skin" and posits that the "experts have not adequately explained this in this case." This assertion is incorrect. Both Dr Burke and Dr Lewena clearly explain that it is not uncommon that an event that causes significant internal injury,*

<sup>60</sup> T518 lines 9-13

<sup>61</sup> Walker's Submission paragraph 29(b)

<sup>62</sup> T519 lines 22-27

<sup>63</sup> T520, lines 7-12

<sup>64</sup> Exhibit 26

<sup>65</sup> T497, lines 22-31

may not cause bruising to the skin.<sup>66</sup> Dr Lewena explains this may be because insufficient time has elapsed to allow the bruise to emerge, or because the fracture is not as a result of a direct blow to the overlying soft tissue but as a result of other forces applied to the bone so the surrounding tissue has not been independently traumatised and isn't bruised until swelling comes from the bone underneath.<sup>67</sup>

5.4 In support of an assertion that the pelvic fracture could have been caused by events during the day of 18 July 2008, Counsel for Walker submits that "there are cases of asymptomatic pelvic fractures in the literature."<sup>68</sup> (emphasis added). In fact, only one case has been identified for this inquest, as described in Plunkett's case study.<sup>69</sup> It is important to note that Dr Lewena has serious concerns regarding Plunkett's conclusion that a pelvic fracture may be asymptomatic: he said that there are "multiple flaws" in Plunkett's article, including:<sup>70</sup>

5.4.1 that the article is not a clinical case report with verifiable information being presented in a clinical manner, but a descriptive report of events;

5.4.2 there is only one comment made alluding to the child being able to ambulate, without any reference to that earlier in the article;

5.4.3 the authors themselves make the point that the cause of the pelvic fracture remained unknown and so the timing of the pelvic fracture was never really determined - with multiple postulated ideas as to when it might have occurred;

5.4.4 the information was gained three years after the event on the basis of recollection of somebody whose identity is not clear from the article, from that person's recollection of three years previously whether the child had symptoms for an injury the circumstances and timing of which were unknown;

5.4.5 it is unclear who made the observation that the injury was asymptomatic;<sup>71</sup>

5.4.6 as a consequence, Dr Lewena states that he "wouldn't place a lot of weight with regard to medical evidence on that";<sup>72</sup>

5.4.7 under cross examination, despite having all of these matters put to him, Dr Lewena's evidence was "I don't accept that this fracture can be asymptomatic, nor is that my clinical experience."<sup>73</sup>

5.2 As to paragraph 38, it is submitted that the matters referred to above demonstrate that the submission that there is no evidence that the "dog incident" did not cause the pelvic fracture,<sup>74</sup> ought to be rejected.

5.5 Furthermore, contrary to the assertion that "there is no evidence available to infer that the pelvic fracture was... unrelated to the CPR", it is noted that the evidence is that neither

<sup>66</sup> Burke T445, lines 11-23, Lewena: T520 line 13 - T521 line 31

<sup>67</sup> T521 lines 23-31

<sup>68</sup> Walker Submission paragraph 37(b)

<sup>69</sup> see reference 5 in Exhibit 18: Plunkett J, *Resuscitation Injuries Complicating the Interpretation of Premortem Trauma and Natural Disease in Children* Journal of Forensic Science 2006; 51(1):127-130

<sup>70</sup> see generally T496-497

<sup>71</sup> T496

<sup>72</sup> T496 line 31-T497 line 1

<sup>73</sup> T524, lines 3-4

<sup>74</sup> Walker Submission paragraph 31

*Simmons, Pryor, Owens nor any of the Hospital staff, applied force to Angela's pelvis during CPR.*

### Inflammatory Response

6. At paragraph 46:

- 6.1 Counsel for Walker notes that that evidence of an inflammatory response in Angela's heart tissue does not exclude the possibility that Simmons' *"erroneously commenced and incorrectly performed [CPR] at a time when the deceased had a functioning circulation."*<sup>75</sup>
- 6.2 However, as has been pointed out at paragraph 2.2 above, the evidence before the Court indicates that prior to beginning CPR, Simmons checked to see whether Angela was breathing, and formed the view that she was not.<sup>76</sup> Furthermore, during the call to the ambulance,<sup>77</sup> Walker tells the operator that Angela does not have a pulse. These matters are consistent with the view expressed by Pryor that by the time he was treating Angela, she was blue, cool to touch, had no carotid pulse, was not breathing and had dilated pupils. To Mr Pryor, this indicated that possibly Angela had not had circulation and respirations for a period of time: *"To me the patient was deceased when I arrived"*<sup>78</sup> Mr Haswell said that when he first saw Angela at the hospital he was told by Mr Pryor that Angela had had 30 minutes of "down time" that he was aware of (ie no heart contraction and no breathing). He said that he observed Angela to be mottled and pooling in the extremities, which indicated that there had been *"a significant downtime...[with] no circulation"*<sup>79</sup>
- 6.3 In addition, Simmons' evidence is that during his CPR attempts, he did not exert the degree of significant force that Dr Burke states would have been required to cause the fatal injuries.

### Chest Compliance

7. At paragraph 49:

- 7.1 Counsel for Walker submits that Haswell's evidence that he did not cause the rib fractures *"was self serving and an attempt at avoiding the effects of criticism of his conduct of CPR by Pryor"*.<sup>80</sup> There is no basis for this assertion.
- 7.2 Dr Pillai was the VMO at Echuca Hospital and was present while the resuscitation was occurring. Dr Pillai had close to 35 years of experience as a medical practitioner. He said that he had probably seen hundreds of infant resuscitations during that time.<sup>81</sup> He said in relation to the resuscitation: *"...I saw that it was a standard CPR process that was going in front of me."*<sup>82</sup> He said that there was

<sup>75</sup> Walker Submission paragraph 46

<sup>76</sup> T88, lines 3-12

<sup>77</sup> see transcript of the call: Exhibit 4

<sup>78</sup> T252-3

<sup>79</sup> T327-328

<sup>80</sup> Walker Submission paragraph 49

<sup>81</sup> T301-302

<sup>82</sup> T301, lines 16-24

nothing that caused him any concern in the manner that the resuscitation was being performed.<sup>83</sup>

7.3 Dr Grover also observed Haswell's application of CPR. He gave evidence that it was "appropriate" and that there was nothing that he saw in the manner that CPR was being performed which caused him any concern.<sup>84</sup>

7.4 The key factor to bear in mind is that by the time that Angela arrived at Echuca Hospital, she had been in asystole for some time. Dr Grover considered her to be "dead" when he saw her,<sup>85</sup> because she was "asystolic, flat-line", "pale" and "cold".<sup>86</sup> Dr Burke's evidence was to similar effect.<sup>87</sup> Dr Pillai said in relation to his observations of the CPR " ...well the obvious thing was that we were not getting much of a response from a cardiovascular point of view....her pupils were fixed and dilated; ...she was very pale and exsanguinated; ...the observation was there were multiple bruises in the face, and I think that was quite – that was the one thing that really stood out."<sup>88</sup>

7.5 Dr Grover said that throughout the resuscitation efforts at the hospital, there was "no change" in Angela's presentation.<sup>89</sup>

7.6 Consequently, there can be no argument that anything done during the resuscitation by staff at the hospital, is in any way linked to the cause of Angela's death.

## 8. At paragraphs 50-66:

8.1 Counsel for Walker addresses arguments to do with the legal definition of death, as set out in the *Human Tissue Act 1982*. These arguments appear to be made, at least in part, in order to found a basis for criticism of the Hospital's resuscitation efforts, viz:

8.1.1 At paragraph 66(c), Counsel for Walker asserts that to suggest that Angela was dead at the time she arrived at the Hospital, "*is wholly inconsistent with the actions of all concerned at the time in pursuing resuscitative measures until 6.53am presumably on the basis that it was [a] worthwhile endeavour based on assessments of a possibility of reversal of the clinical state.*"

8.1.2 At paragraphs 71 and 72, Counsel for Walker makes the following comments:

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<sup>83</sup> T301, lines 25-26

<sup>84</sup> T368, lines 14-20

<sup>85</sup> T365, lines 24-26

<sup>86</sup> T365, lines 20-23

<sup>87</sup> T433, lines 1-29

<sup>88</sup> T304 lines 2-9

<sup>89</sup> T367, lines 17-23

“71. *As a result we submit there was inadequate resuscitative measures undertaken given the nature of the deceased’s injuries. There was no direct intravenous access and the intraosseous access was only used for a couple of adrenaline injections. Even that took 10 minutes to achieve.*

72. *The adequacy of resuscitation in this case relative to the cause of death is important for a number of reasons:*

(a) *Firstly it is relevant to the time of death in that it is relevant to the Court's consideration as to when it could be said that the cessation of a cardiac rhythm was irreversible. We are left to speculate as to what the effects of a transfusion would have been. Hypovolemia or blood loss was listed by Dr Lewena as a reversible cause of asystole.*

(b) *Secondly, it is relevant to the Courts assessment as to the adequacy of the hospitals management of the deceased to the extent that this has relevance to matters of public health and safety.”*

8.1.3 It is submitted, firstly:

(a) that these submissions ignore the indisputable fact that the fatal injuries must have been inflicted upon Angela prior to her arrival at Hospital, since she had sustained sufficient blood loss to cause her heart rhythm to be in asystole, well prior to her arrival at the Hospital. The Court is again reminded of the significance of the presence of the inflammatory response in a number of Angela’s tissues, and the evidence which confirms that this could not have been generated by resuscitation attempts alone; and

(b) secondly, there is simply no evidence before the Court that there was any measure that could have been, but was not undertaken by staff at the Hospital, that could have saved Angela’s life.

8.1.4 In relation to the paragraph 8.1.3.(b) above, Dr Lewena gave evidence that at the Royal Children's Hospital the protocol for a child found to be in asystole is immediate resumption of cardiac pulmonary resuscitation with chest compressions and ventilation.<sup>90</sup> Dr Lewena noted that where a child arrives at hospital having had an asystolic cardiac arrest out of hospital, there is:

*“.....an almost universally poor outcome and [the child] will not be able to be resuscitated....And I've certainly been involved in resuscitations where it's been very clear at the initiation of the resuscitation that the child has been deceased for an extraordinarily long period of time and that there was no hope of resuscitation with adrenalin or any other heroics that the*

<sup>90</sup> T527 lines 24-27

*resuscitation would have been terminated without adrenaline being given.*"<sup>91</sup>  
(emphasis added)

8.1.5 Dr Lewena was also asked whether he agreed that "*it is correct to say that until you've attempted to give adrenalin you don't know whether the asystole is irreversible.*" Dr Lewena's answer to this question was "*No, I don't believe that is a fair comment*".<sup>92</sup>

### **Submissions by Counsel for Daniel Simmons**

**9. Counsel for Simmons largely adopts the submissions made by Counsel for Walker. For the reasons set out above, this argument ought to be rejected. In addition, Counsel for Simmons contends that the Court should find:**

- (a) That the fatal injuries are consistent with the vigorous, or untrained, application of CPR;
- (b) The inflammatory changes (about which Dr. Burke gave evidence) are consistent with that CPR having been commenced, inappropriately, whilst there was an independent function of the circulatory system.<sup>93</sup>

**10.** In response to these submissions, the Court is reminded of Simmons' own evidence about the manner in which he performed the CPR,<sup>94</sup> and Walker's evidence that Simmons used "two fingers" to perform the CPR upon Angela.<sup>95</sup> Further, the Court is again reminded of the evidence which indicates that prior to beginning CPR, Simmons checked to see whether Angela was breathing, and formed the view that she was not.<sup>96</sup> Furthermore, during the call to the ambulance,<sup>97</sup> Walker tells the operator that Angela does not have a pulse.

**11.** It is submitted that there is nothing in the submissions made by Counsel for Walker or Counsel for Simmons, that ought to cause the Court to reject the conclusions which were contended for by Counsel Assisting in the submission dated 27 May 2011 date.

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<sup>91</sup> T529 lines 2-12

<sup>92</sup> T528 lines 28-31

<sup>93</sup> see paragraphs 5(e) & (f) of the submissions of Counsel for Simmons

<sup>94</sup> see paragraph T68-69, T81, T88

<sup>95</sup> see for eg ROI 19 July 2008, p520, Q 383

<sup>96</sup> T88, lines 3-12

<sup>97</sup> see transcript of the call: Exhibit 4