

**Inquest into the death of  
Jaidyn Raymond Leskie**

## **JAIDYN RAYMOND LESKIE**

**CORONERS CASE NUMBER: 007/98**

### **ABOUT THE REPORT**

The Report is divided into a number of sections. There is a general Introduction followed by a discussion section dealing with evidence and submissions. After the "*Discussion on the Evidence*" section are the "*Findings*" and "*Conclusion to the Findings*". Then follows the "*Recommendations and Comments*" section of the report in which the writer makes some observations about issues to do with public health and safety or the administration of justice. Acknowledgements will be found at the end of the document.

### **INTRODUCTION: THE CORONER'S JURISDICTION AND INVESTIGATION**

#### **BACKGROUND AND SUMMARY**

Jaidyn Raymond Leskie was born on 30<sup>th</sup> April 1996 to Ms. Bilynda Williams (nee Murphy) and Mr. Brett Leskie. Mr. Leskie was previously married to Katie, Ms. William's sister.

On 15<sup>th</sup> June 1997 the disappearance of Jaidyn Leskie was reported by police to the State Coroner as a suspected death.

At the time of his disappearance, Jaidyn lived at 27 Lincoln Street, Moe with his mother Ms. Bilynda Williams and his sister Breehanna Leskie (who was born on 17<sup>th</sup> January 1995). Following Jaidyn's disappearance an extensive search was conducted and his body was recovered from the Blue Rock Dam in the Moe district on 1<sup>st</sup> January 1998 when it was discovered floating on the surface.

On 14<sup>th</sup> and 15<sup>th</sup> June 1997, shortly before his disappearance, Jaidyn was being looked after by Mr. Greg Domaszewicz who was a friend of Ms. Williams. At this time Ms. Williams had permitted Mr. Domaszewicz to care for Jaidyn at his house at 150 Narracan Drive, Newborough. Mr. Domaszewicz lived alone at this address.

Subsequently, in July 1997, Mr. Domaszewicz was charged with Jaidyn's murder and remanded in custody. On 1<sup>st</sup> January 1998 the death was reported to the Coroner when the body was discovered at the Blue Rock Dam, near Moe.

In March 1998, committal proceedings were conducted at the Moe Magistrates' Court and Mr. Domaszewicz was committed for trial. Subsequently, on 4<sup>th</sup> December 1998 he was found not guilty by a Supreme Court jury of Jaidyn's murder or manslaughter.

*Summary history of coronial involvement in the investigation*

In December 1998 Mr. Brett Leskie's solicitors sought a coronial investigation into the death and to hold an inquest. Subsequently Deputy State Coroner Iain West commenced an investigation into Jaidyn's death. In January 2002 the Deputy State Coroner advised interested parties he had decided to exercise his discretionary power under s.17(3) of the *Coroners Act 1985* (Vic) and not to hold an inquest into the death.

In May 2002, Deputy State Coroner West completed a record of investigation into the death. The following findings were made; the identity of the deceased was Jaidyn Leskie and that death occurred on or about 14<sup>th</sup> June 1997 at an unknown place and was from head injuries. The Deputy State Coroner also made summary findings in relation to the "*circumstances*" of the death which included demographics residential and a description of various events of the evening of 14<sup>th</sup> June 1997 that had emerged during the trial, the discovery of Jaidyn's body along with the results of the post-mortem examination and the verdict from the criminal trial.

Following completion of Deputy Coroner West's finding on the papers (sometimes called "*a finding in chambers*" or "*a chamber finding*") remained as the record of investigation into the death until it was set aside by the State Coroner on 26<sup>th</sup> September 2003.

Prior to setting aside the Deputy Coroner's findings, in June 2002, the State Coroner received letters from Jaidyn's family seeking a review of these earlier findings and requesting that an inquest be held into the death. There were also requests from members of the public. The family also sent requests to the Attorney-General, who forwarded them to the State Coroner.

An investigation review was ordered by the State Coroner and, on 21<sup>st</sup> July 2003, the Principal Registrar of the State Coroner's Office advised Ms. Williams and other family members that the State Coroner had reviewed additional material supplied by the police, had granted the application of Ms. Williams and ordered an inquest into the death. On 26<sup>th</sup> September 2003, a "mention hearing" was held and orders were made under s. 59A of the *Coroners Act* declaring the findings made by the Deputy State Coroner void.

An inquest was commenced by the State Coroner on 17<sup>th</sup> November 2003. This inquest is referred to as the "*First Inquest*" and it ran for 22 hearing days with 48 witnesses being called. On 16<sup>th</sup> April 2004, before completion of this inquest Counsel for Mr. Domaszewicz applied to the State Coroner for orders setting aside the following:

- (a) the orders made by the State Coroner at the mention on 26<sup>th</sup> September 2003;
- (b) the order made by the State Coroner that the First Inquest be held; and
- (c) three summonses that had been issued by the State Coroner to Mr. Domaszewicz requiring him to attend and give evidence at the First Inquest.

On 7<sup>th</sup> May 2004, the State Coroner refused Mr. Domaszewicz's application and provided written reasons. Counsel Assisting effectively summarised the balance of the processes thus:

*"On 3 June 2004, Mr. Domaszewicz filed an originating motion in the Supreme Court of Victoria seeking declaratory relief and a permanent stay of the investigation and inquest into the death of the deceased.*

On 17 December 2004, the Supreme Court made certain declaratory orders, the effect of which was to terminate the First Inquest for lack of jurisdiction. However, the Supreme Court held that the State Coroner had jurisdiction to hold an inquest into the death of the deceased under s. 17(1) of the Coroners Act, as long as he had considered, pursuant to s. 17(3) of the Coroners Act, whether to exercise his discretion not to hold an inquest. Mr. Domaszewicz's application for a permanent stay was refused.

On 19 April 2005, after hearing submissions from the parties to the First Inquest, the State Coroner announced that he had considered whether to exercise his discretion under s. 17(3) of the Coroners Act not to hold an inquest, and had decided that an inquest should be held (the Second Inquest).<sup>1</sup>

The Second Inquest commenced on 11<sup>th</sup> July 2005 with all of the evidence given and tendered at the First Inquest being adopted as evidence in the Second Inquest.<sup>2</sup> The remainder of the evidence took four days and the Committal and Trial transcripts were tendered in evidence.

It is noted that, on the order of the State Coroner, Mr. Domaszewicz was not required to give evidence at the Inquest on health grounds.

#### *Coroner's findings*

Section 19 (1) of the Coroners Act 1985 provides that a coroner investigating a death, the coroner must find, if possible:

- (a) the identity of the deceased;
- (b) how death occurred;
- (c) the cause of death;
- (d) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act 1996* (Vic); and
- (e) the identity of any person who contributed to the cause of death.

Under Section 19 (2) and 19 (3) of the Act the coroner may also comment on any matter connected with the death, including public health or safety or the administration of justice, but must not include any statement that a person is or may be guilty of an offence.

Section 19 (e) of the Act was amended in 1999 and the requirement under this subparagraph to find the identity of any person who contributed to the death was deleted. However, for investigations that commence prior to the amendment (July 1999) the requirement for the coroner to find *contribution* still applies.

### **DISCUSSION ON THE EVIDENCE**

In this section of the report a range of issues and evidence will be examined. There are a range of submissions by the various parties on how issues and evidence should be viewed by the Coroner and relevant parts of these submissions can be found referenced in this section of the report.

#### **THE RELATIONSHIPS OF THE PARTIES INVOLVED**

Ms. Williams and Mr. Domaszewicz first met in September 1996. Mr. Domaszewicz had been involved in running a motor vehicle repair business with Ms. Williams'

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<sup>1</sup> *Submission by Counsel Assisting*, pp. 2-3.  
<sup>2</sup> *Second Inquest transcript*, p. 1.

husband, Mr. Leskie. Apparently Ms. Williams developed “a relationship” with Mr. Domaszewicz who had no children.

#### **THE HISTORY OF PREVIOUS BABY-SITTING BY MR. DOMASZEWICZ**

Ms. Williams stated that Mr. Domaszewicz had looked after Jaidyn about eight to ten times before the day he disappeared. Evidently, he first commenced looking after Jaidyn two or three months earlier.

Apparently, Jaidyn and Mr. Domaszewicz seemed to get along well and he did not often stay at Mr. Domaszewicz’s house. During this time, Ms. Williams had observed one occasion where Mr. Domaszewicz played Nintendo with Jaidyn.

Some of Mr. Domaszewicz’s friends gave evidence about his relationship with Jaidyn. Mr. Glenn Walker said<sup>3</sup> that he observed him at Mr. Domaszewicz’s house on about six occasions before the disappearance. According to Mr. Walker, Mr. Domaszewicz generally took good care of Jaidyn. However, Mr. Walker also stated that sometimes Mr. Domaszewicz would get annoyed with Jaidyn and smack him but this was not hard. Mr. Matthew Walsh also said that he had observed Jaidyn at Mr. Domaszewicz’s house and that Jaidyn got on well with Mr. Domaszewicz’s dogs. However, he also noted that on one occasion Mr. Domaszewicz put Jaidyn in the backyard with the dogs and he was crying for about five to ten minutes. Apparently Mr. Domaszewicz would push Jaidyn over on to his bottom to try and make him laugh. Mr. Walsh had not seen Mr. Domaszewicz being cruel to Jaidyn. On one occasion both Walsh and Domaszewicz sought assistance with changing a nappy.<sup>4</sup>

Mr. Walsh noted that “*Jaidyn liked to sook a bit...cry flat out non stop...*”. He said that “*sometimes it would go on for an hour...sometimes he would do it like for like 20 minutes...*”. Evidently, Mr. Domaszewicz would react by “*turning the stereo up louder so he couldn’t hear him*”. The effect that would have on Jaidyn was “*not much, cry a lot...*”. He continued to “*sook*”. Mr. Walsh also said when Jaidyn continued to sook Mr. Domaszewicz would take him out the back with the dogs.<sup>5</sup>

Another friend, Mr. Darren Farr observed Jaidyn at Mr. Domaszewicz’s house and that he was coping satisfactorily with the child.<sup>6</sup> On two occasions Mr Ramen Le Mercier saw Mr. Domaszewicz caring for Jaidyn at the Narracan Drive house. Once Mr. Le Mercier nursed Jaidyn when he was crying having been handed the child by Mr. Domaszewicz. Mr. Le Mercier also said that Jaidyn, who liked the dogs, was put out in the backyard with them by Mr. Domaszewicz.<sup>7</sup>

Ms. Julie Clarke, Department of Human Services Case Officer, who was appointed to Breehanna Leskie after Jaidyn’s disappearance said Ms. Williams told her about an occasion when Mr. Domaszewicz aroused his dogs in the backyard and then locked the deceased outside.<sup>8</sup> However, Ms. Williams said that she did not tell this to Ms.

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<sup>3</sup> See pp 337 to 345 of the Committal transcript (Exhibit 113) and pp 877 to 896 of the Trial transcript (Exhibit 105). See also Mr. Walker’s statements at pp 70 to 76 of the First Inquest Brief.

<sup>4</sup> See pp 345 to 350 of the Committal transcript (Exhibit 113) and pp 906 to 919 of the Trial transcript (Exhibit 105). Also see Mr. Walsh’s statement at pp 77 to 80 of the First Inquest Brief.

<sup>5</sup> Trial Transcript pp. 906 to 919.

<sup>6</sup> See pp 276 to 300 Committal transcript (Exhibit 113) and pp 791 to 858 of the Trial transcript (Exhibit 105). See also statements made by Mr. Farr at pp 165 to 173 of the First Inquest Brief.

<sup>7</sup> See pp 329 to 335 Committal transcript (Exhibit 113). See also statement made by Mr. Le Mercier at pp 65 to 66 of the First Inquest Brief.

<sup>8</sup> See pp 463 to 515 of the First Inquest transcript.

Clarke.<sup>9</sup> Ms. Clarke considered she had recorded details of the conversation in a case note, but was unable to find such a case note when she examined the case file.

#### **JAIDYN'S MEDICAL AND INJURY HISTORY IN THE LEAD UP TO THE DISAPPEARANCE**

- *Medical Reviews*

On 21<sup>st</sup> April, about seven weeks before the disappearance, Jaidyn was seen by Dr. Lampel, a general practitioner from the Moe Medical Centre. Ms. Williams took him to the doctor because he was constantly crying and this upset her. She told Dr. Lampel she was having difficulty in coping at times. Dr. Lampel referred her to a paediatrician and noted there was nothing wrong with Jaidyn.<sup>10</sup> Twice, on 2<sup>nd</sup> and 28<sup>th</sup> April, Ms. Williams also saw Dr. Lesney-Noakes who considered that her son appeared to be in good health.

- *Injuries - the Blue Rock Dam fishing trip*

Mr. Walker said that both he and Mr. Domaszewicz took Jaidyn on a fishing trip to Blue Rock Dam.<sup>11</sup> Apparently Jaidyn was dropped by Mr. Domaszewicz as he was lifting him over a fence. There was some blood under his eye and Mr. Domaszewicz comforted him following this incident. Ms. Williams said that when Mr. Domaszewicz brought Jaidyn back after this trip, she observed scratches and bruises on his face. Mr. Domaszewicz told her it must have happened when Jaidyn was playing with the dogs and sticks.<sup>12</sup>

Jaidyn's paternal aunt, Mrs. Lori Leskie said that when she went on a trip with her nephew and other family members to pick up Brett Leskie's car at Lake's Entrance, she had noticed a deep graze on Jaidyn's cheek.<sup>13</sup> She asked Brett about the graze, and he told her that Ms. Williams had told him (Brett) that when Mr. Domaszewicz took Jaidyn fishing he had fallen down stairs. Mr. Glenn Leskie also observed a deep healing graze on Jaidyn's left cheek when they drove to Lakes Entrance.<sup>14</sup> Brett Leskie had confirmed the falling down the stairs explanation to his wife by Ms. Williams. However, Ms. Williams stated that on the day Lori and Glenn Leskie had driven to Lakes Entrance, Jaidyn was not with them, but was with her.<sup>15</sup>

- *Injuries - Bruising on Jaidyn's face*

Ms. Williams said that about a month before the disappearance, Jaidyn stayed overnight with Mr. Domaszewicz and the child returned home with a bruise mark on his face which looked like an adult's hand. This mark appears in a photograph that was possibly taken on 20<sup>th</sup> May 1997 at Mr. Domaszewicz's.<sup>16</sup> Ms. Williams said that Mr. Domaszewicz told her he had hit Jaidyn's head on the car door and after that he would not stop crying. He also told her that he had taken Jaidyn inside and tried to

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<sup>9</sup> See p 1499 of the First Inquest Brief.

<sup>10</sup> See pp 72 to 86 of the First Inquest transcript.

<sup>11</sup> The evidence of Mr. Walker is at pp.337-345 of the Committal transcript (Exhibit 113) and pp. 877 to 896 of the Trial transcript (Exhibit 105). See also the statements made by Mr. Walker on 20 June 1997, 13 July 1997 and 1 August 1997, which are at pp. 70 to 76 of the First Inquest Brief.

<sup>12</sup> See also the evidence of Ms. Julie Clarke (First Inquest transcript pp.463-515), which is discussed in detail below. Ms. Clarke said that Ms. Williams had told her about this incident, although the evidence suggested that she may have been mistaken and in fact received this information from Homicide Squad investigators.

<sup>13</sup> The evidence of Mrs. Lori Leskie is at pp. 1343 to 1355 and 1411 to 1422 of the First Inquest transcript. See also the statement made by Mrs. Leskie on 10 February 2004 (Exhibit 76).

<sup>14</sup> See p 1355 First Inquest transcript and a statement (Exhibit 79).

<sup>15</sup> First Inquest transcript, pp 1500 to 1501.

<sup>16</sup> Exhibit 27.

stop him crying but then he “lost it”. Then Mr. Domaszewicz offered to go to the police or ‘welfare’ and tell them what had happened as he was afraid they might take Jaidyn away from his mother. Neither the police nor ‘welfare’ was informed. However, after this occurrence it appears that Ms. Williams was nervous about leaving her son with Mr. Domaszewicz.

- *Injuries - Incidents involving Ms. Williams*

Mr. Brett Leskie said Ms Williams told him that that on one occasion she had kicked Jaidyn fairly hard, and on another occasion she had shaken him fairly hard.<sup>17</sup> According to Mr. Leskie the “kicking” incident occurred some weeks before he went to Western Australia for work on 6<sup>th</sup> May 1997. He said that Ms. Williams told him that she had “lost the plot” and kicked her son. After this incident Mr. Leskie took Breehanna and Jaidyn to stay at his parents’ home, because he was concerned about their safety, although he did not observe any physical injuries to Jaidyn and did not advise either the Department of Human Services or the police.

Mrs. Elizabeth Leskie, Jaidyn’s paternal grandmother said that Breehanna and Jaidyn were brought to her house by Brett in February 1997.<sup>18</sup> Brett had advised that Ms. Williams had kicked Jaidyn and needed a break from the children. Mrs. Leskie believed the children went back to Ms. Williams about 15<sup>th</sup> March 1997. She also said that she only saw Jaidyn a couple of times after that and, at no time, did she observe any injuries or bruising on him.

On the ‘kicking’ incident Ms. Williams stated that she had lost her temper one day and shoved Jaidyn with her foot. She said that Mr. Brett Leskie was there when this occurred. She had not shaken Jaidyn as alleged by his father. Ms. Williams noted that, about a month after she had shoved Jaidyn with her foot, Mr. Leskie had taken the children to his parents for a maximum of a week and a half and that the children went there because he was going to Western Australia and wanted to spend time with them before he left. She denied there was any incident that prompted Mr. Leskie taking Breehanna and Jaidyn to stay with their grandparents.

- *Other possible injuries*

In January 1997 Mrs. Lori Leskie said she had seen large bruises on both of Jaidyn’s thighs.<sup>19</sup>

- *Conclusion*

In both Mr. Domaszewicz’s and his mother’s care Jaidyn sustained injuries.

These incidents included one occasion in May 1997 when Mr. Domaszewicz had lost his temper and struck him. Counsel Assisting points out that “*the evidence suggests that, otherwise, Mr. Domaszewicz had a reasonable relationship*” with Jaidyn.<sup>20</sup> However, this “reasonable” relationship also includes Mr. Domaszewicz getting annoyed and smacking the infant child, allowing him to continue to cry and turning the stereo volume up, and also leaving the infant in the backyard with his three dogs.

Yet, it also appears that Ms. Williams may have been wary after the incident that apparently occurred in May 1997, in that she was nervous about leaving her son with Mr. Domaszewicz. But this nervousness did not translate to preventing her leaving

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<sup>17</sup> See pp 439 to 463 First Inquest transcript. See also statements made by Mr. Leskie (Exhibit 34) and at pp 21 to 22 of the First Inquest Brief.

<sup>18</sup> See pp 1355 to 1367 First Inquest transcript. See also statement made by Mrs. Leskie (Exhibit 80).

<sup>19</sup> See statement made by Mrs. Leskie (Exhibit 77) and pp 1343 to 1355 of the First Inquest transcript.

<sup>20</sup> Submission by Counsel Assisting, p. 11.

Jaidyn in his care. It did not trigger any real action by way of protective behaviour towards her son. It should have. The most she did was try to look for her son in the evening of 14<sup>th</sup> June whilst he was in the care of Mr. Domaszewicz. Apart from a number of attempted telephone calls she appears to have put little by way of effort into this action. On receiving no answer to the telephone calls, she went to a party and then proceeded to the local hotel where she drank alcohol into the early hours of the next morning.

But, there is also other evidence of injury following autopsy examination and subsequent additional expert opinion. In this regard Counsel Assisting also observed:

*"If the deceased suffered an injury to his ribs or his arm prior to this date (as some of the medical evidence...suggests), there is no evidence as to how this occurred. There is no evidence of the deceased being in any severe discomfort in the days immediately prior to the day of disappearance, or on the morning of his disappearance."<sup>21</sup>*

### **THE LEAD UP AND DISAPPEARANCE: EVENTS OF 14<sup>TH</sup> AND 15<sup>TH</sup> JUNE 1997**

- *14<sup>th</sup> June 1997: Morning*

Ms. Williams said that Mr. Domaszewicz came to her house late in the morning and requested to have Jaidyn for the day, to which she agreed. He was to pick up Jaidyn after "putting Tattsлото on or something". Ms. Williams then dressed Jaidyn in warm clothes, as Mr. Domaszewicz had said he was going to work on his car and it may rain. Jaidyn was dressed in grey tracksuit pants with a green trim on the bottom and the words "Baby Games" on them, a green long sleeved shirt, a blue grey windcheater and a red jacket. She also pinned a new white dummy to Jaidyn's clothes and put four nappies in a blue plastic shopping bag along with some more clothes, a bottle, an apple, a muesli bar and a lollipop. Ms. Williams stated that she had given Jaidyn toast for breakfast but he did not have anything else to eat before leaving with Mr. Domaszewicz. She noted that it would be unusual for her son to go right through the day without eating more than his breakfast as he had a large appetite and would cry when he was hungry.

Mr. Domaszewicz returned to the house in about half an hour and they both put Ms. Williams' car baby seat into Domaszewicz's car. Evidently the baby seat was wet, as it had been on the verandah. Mr. Domaszewicz then drove the four of them to Ms. Katie Leskie's home (Ms. Williams' sister). Mr. Domaszewicz dropped Ms. Williams and Breehanna off there at about 1.30-2.00pm.

Ms. Williams stated that she had not asked Mr. Domaszewicz to keep Jaidyn overnight. She was under the expectation that he would drop Jaidyn back in the afternoon. Evidently, it was planned that a baby-sitter was going to look after the children at Ms. Katie Leskie's house that evening.

- *14<sup>th</sup> June 1997: Afternoon*

Apparently, Mr. Domaszewicz and Jaidyn arrived at the 150 Narracan Drive address at about 2.00 in the afternoon.<sup>22</sup> After this, apart from Mr. Domaszewicz, there is no evidence that anyone else saw Jaidyn alive. No one else observed Jaidyn at Mr. Domaszewicz's house that day or in the evening. There is some evidence that Jaidyn's voice was heard during evening telephone calls between Ms. Williams and Mr. Domaszewicz.

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<sup>21</sup> Submission by Counsel Assisting, p. 11.

<sup>22</sup> First Record of Interview; Question 339.

According to Mr. Domaszewicz, he was working on his car. He explained that he opened the gates and drove his car into the backyard.<sup>23</sup> There were three dogs in the backyard.<sup>24</sup> On arrival at his house Mr. Domaszewicz got Jaidyn out of the car and reversed the car up the ramps and jacked up the front of the vehicle. The jack was a trolley jack<sup>25</sup> that Messrs. Glenn Walker and Brett Edwards had dropped off at his place earlier in the day.<sup>26</sup> He then closed the side gates and the backyard was enclosed.<sup>27</sup> Mr. Domaszewicz stated that he worked on the car during the afternoon. Apparently, he was welding the exhaust to stop the tail pipe hitting against the bumper bar. He was also fixing the heater cable and spraying some of the front of the car.<sup>28</sup> In the record of interview he said that the car had fallen on him once.<sup>29</sup> Evidently, he had no visitors that afternoon<sup>30</sup> and did not leave the house until he later went to pick up Ms. Williams.<sup>31</sup> According to Mr. Domaszewicz, Jaidyn spent most of his time with the dogs,<sup>32</sup> and was able to go in and out of the house as the back door was partly held open by an extension lead.<sup>33</sup> It rained during the afternoon,<sup>34</sup> but Jaidyn was not in the rain much, as he stood in the garage door. Apparently he got wet, but not that wet.<sup>35</sup>

Mr. Domaszewicz stated that it was dark when he finished working on the car.<sup>36</sup> The light to the porch was on at the back and there were no lights in the garage.<sup>37</sup> He positioned his car in front of the gates when he had finished working on it<sup>38</sup> and then went inside. This was approximately 6.00pm.<sup>39</sup> Apart from some chips Mr. Domaszewicz also said that Jaidyn had not eaten during the afternoon.<sup>40</sup> Evidently he had his bottle which had cordial or coke in it.<sup>41</sup>

Mr. Domaszewicz had spoken to his neighbour Mr. Alan Sparks as he was going in and out.<sup>42</sup> Apparently, early in the afternoon, Jaidyn was bleeding from the lip. Mr. Domaszewicz did not know what had caused the bleeding.<sup>43</sup> He also stated that he did not do anything to Jaidyn and did not lose his temper with him.<sup>44</sup>

- *Telephone conversations: Afternoon*

Mr. Domaszewicz had two telephone conversations during the afternoon that are relevant.

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23 First Record of Interview; Questions 312 to 314.

24 First Record of Interview; Question 327.

25 Second Record of Interview; Question 744.

26 Second Record of Interview; Question 682.

27 First Record of Interview; Questions 311 to 317.

28 First Record of Interview; Question 333.

29 Second Record of Interview; Question 350.

30 Second Record of Interview; Question 294.

31 Second Record of Interview; Questions 325 and 487.

32 First Record of Interview; Question 335.

33 First Record of Interview; Question 343.

34 First Record of Interview; Question 385.

35 Second Record of Interview; Questions 1375 and 1376.

36 First Record of Interview; Question 392.

37 First Record of Interview; Question 394.

38 Second Record of Interview; Question 536.

39 First Record of Interview; Question 406. Second Record of Interview; Question 536.

40 First Record of Interview; Questions 408 and 478.

41 First Record of Interview; Question 484.

42 First Record of Interview; Question 411.

43 Second Record of Interview; Questions 1147, 1158 and 1178.

44 Second Record of Interview; Questions 1201 and 1240.

Mr. Darren Farr stated that he telephoned Mr. Domaszewicz at about 2.00pm, and talked to him for approximately an hour.<sup>45</sup> During this conversation Mr. Domaszewicz did not mention Jaidyn nor did he mention that he was working on his car. Evidently the telephone conversation finished when Mr. Domaszewicz said he had to go because someone had just pulled up.

Later in the afternoon, Mr. Domaszewicz telephoned Ms. Williams at her sister's home. Ms. Williams said that Mr. Domaszewicz was angry because of the conversation with Mr. Farr. Apparently, the Farr telephone conversation had involved an allegation that Mr. Domaszewicz had told someone in Morwell that he was going to kill Mr. Farr by Christmas. However, Ms. Williams also suggested that the allegation may have been the other way around. Evidently, Ms. Williams had previously considered that Messrs. Domaszewicz and Farr had been on friendly terms. During this conversation Mr. Domaszewicz said he was working on his car and advised Jaidyn had fallen over and he (Domaszewicz) had cleaned him up. He also did not say anything about the fact that Jaidyn had been bleeding. As it was raining Ms. Williams inquired of Mr. Domaszewicz as to whether he needed more clothes for Jaidyn. His response was to the effect that it did not matter because he was going to have a shower (or give Jaidyn a shower) and then bring him back to Katie Leskie's. During this conversation Ms. Williams said she heard her son's voice on the phone. Evidently he said the word "dog" (at this time Jaidyn was able to say the words "Mum", "Dad" and "dog").

Following the telephone conversation with Mr. Domaszewicz, Ms. Williams had an argument with her sister and walked home in the rain with Breehanna. She got home just before dark.

- *Attempted telephone calls: Early evening*

After arriving home, Ms. Williams rang Mr. Domaszewicz to advise him to bring Jaidyn to her house rather than to her sister's place. She stated that she tried to ring Mr. Domaszewicz about 15-20 times with no answer. The calls were spread out and she used the redial button. Ms. Williams stated that she was sure that she was dialling the correct number and she was concerned to find out where Jaidyn was.

Conversely, Mr. Domaszewicz stated that there was no reason why he would not have answered the telephone.<sup>46</sup>

- *Telephone call with a neighbour: Evening*

Ms. Mariann McKinnon was one of Mr. Domaszewicz's neighbours (their houses were separated by a vacant block). She stated she had previously seen Mr. Domaszewicz looking after Jaidyn and that he had brought the child to her house on one occasion.<sup>47</sup> On the day of the disappearance she arrived home at about 8.00pm. During the night she rang Mr. Domaszewicz on a couple of occasions to see if he had money for her from one of his friends who owed her money. He did not answer the telephone but, apparently, this was not unusual. She said that Mr. Domaszewicz telephoned her at about 10.00pm and he told her he had phoned a couple of times earlier. They talked on the telephone for about half an hour. He enquired as to whether she had any nappies as he had run out of nappies. She advised him to use a towel instead of a nappy (and her husband, from the background, said he could come and demonstrate to Mr. Domaszewicz). Mr.

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<sup>45</sup> See evidence of Mr. Farr (pp. 276 to 300 Committal transcript [Exhibit 113] and pp 791 to 858, Trial transcript [Exhibit 105]).

<sup>46</sup> Second Record of Interview; Question 576.

<sup>47</sup> See pp 305 to 322 Committal transcript (Exhibit 113) and pp 745 to 758 and 764 to 784 of the Trial transcript (Exhibit 105). See statements made by Ms. McKinnon at pp. 121 to 126 of the First Inquest Brief.

Domaszewicz told her that he knew how and she also informed him that he could get nappies across the road at the service station. Mr Domaszewicz also asked her what size Jaidyn would be and enquired as to whether all service stations sold nappies. During this conversation Ms. McKinnon offered to lend Mr. Domaszewicz some clothes, however, he said he had plenty of clothes. Also she heard a small child and a dog in the background and the child was laughing. Mr. Domaszewicz also told Ms. McKinnon that if Ms. Williams got back early he would come over to her place.

As to Mr. Domaszewicz, he said he rang Ms. McKinnon to get another nappy.<sup>48</sup> Evidently he had changed Jaidyn's nappies approximately four times and had run out.<sup>49</sup>

- *Telephone calls with Ms. Williams: Evening*

There were a number of telephone conversations between Ms. Williams and Mr. Domaszewicz. These occurred after she went to Ryan's Hotel with her sister and her sister's boyfriend. Ms. Williams said that after she first went with the group to a party in Traralgon (at about 8pm), they stayed there until about 11.00pm, when they went to Ryan's Hotel.

After arriving at Ryan's Hotel Ms. Williams telephoned Mr. Domaszewicz from a pay phone. She stated that she was trying to find out where Jaidyn was and that during this call she could hear Nintendo in the background. It was during this call that Mr. Domaszewicz told her "*shit's happened*", Jaidyn had burnt himself on his bottom, and he had taken him to Moe Casualty where they had put cream on him. Evidently, Mr. Domaszewicz also said that they did not do it well enough so he took Jaidyn somewhere else. After this conversation Ms. Williams' sister Katie told her not to worry as Mr. Domaszewicz was joking.

Ms. Williams said that whilst she was at Ryan's Hotel, she drank "*sub zeros*", two glasses of bourbon and a can of Zambucca and coke. Apparently at some point in the evening she was refused any further drinks at the hotel. Ms. Williams did not consider that she was that drunk.

Ms. Williams telephoned Mr. Domaszewicz again. During this conversation he told her that her son was not burnt, but had a red mark that you get if you stood too close to the heater. Ms. Williams recalled that she might have heard Jaidyn in the background in this conversation or an earlier conversation, but she could not be sure whether that was in a telephone conversation this night or the night before.

As to these conversations Mr. Domaszewicz stated Jaidyn was a bit red on the right cheek of his backside, near the kidneys but he was not burnt.<sup>50</sup> He stated that the first call from Ms. Williams was at approximately 10.00pm and that she called again closer to 3.00am.<sup>51</sup> He said that Jaidyn was awake when Ms. Williams rang at 10.00pm.<sup>52</sup>

- *Other evidence of movements of the various players during 14<sup>th</sup>/15<sup>th</sup> June 1997*

There are a number of witnesses who gave evidence and made statements about the movements of the principal parties during the day, evening and early morning of the next day.

Mr. McCarthy said he had gone to Mr. Domaszewicz's place at about 12.00 noon that day to drop some Nintendo controllers back. At this time he arranged with Mr.

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<sup>48</sup> First Record of Interview; Question 585.

<sup>49</sup> First Record of Interview; Questions 586 to 589.

<sup>50</sup> First Record of Interview; Questions 558 and 561.

<sup>51</sup> First Record of Interview; Questions 612, 634 and 650.

<sup>52</sup> First Record of Interview; Question 604.

Domaszewicz to collect him at around 7.30pm to go to a friend's house.<sup>53</sup> Evidently he attempted to telephone Mr. Domaszewicz during the afternoon on three or four occasions with no answer. Mr. McCarthy stated that he finished work at 7.30pm and drove past Mr. Domaszewicz's house about five minutes later but that he did not stop because Mr. Domaszewicz's car was not in the driveway. Mr. McCarthy considered it was not unusual to receive no answer on the telephone from Mr Domaszewicz or for him not keep meeting arrangements.

Ms. Williams said she resolved the quarrel with her sister Katie on the telephone and decided to go with her and Mr. Neville Hibbins (who was Katie's boyfriend) to a party in Traralgon. Evidently, the three of them left Moe for Traralgon at approximately 8.00pm. Ms. Katie Leskie said that she, Neville and her sister drove around looking for Jaidyn and Mr. Domaszewicz before they went to Traralgon.<sup>54</sup> She said they drove past Mr. Domaszewicz's Narracan Drive house.<sup>55</sup> However, Ms. Williams placed a different emphasis on this aspect of events in that she said she had been concerned to find out where Mr. Domaszewicz and Jaidyn were and she wanted to stop at his house because she was worried. Evidently, her sister would not let them drive that way because they were driving in her boyfriend Neville's car, which was unregistered (as Katie's car had broken down).

Mr. Domaszewicz noted he had not made any arrangements to go out<sup>56</sup> and that when he went inside after working on his car he gave Jaidyn a wash<sup>57</sup> and a shower.<sup>58</sup> Apparently the child was standing near the heater and getting red.<sup>59</sup> He said that he put fresh clothes on Jaidyn.<sup>60</sup> He did not seem hungry nor did he seem to want chips or lollies.<sup>61</sup> According to Mr. Domaszewicz they both watched television, including "Hey Hey [it's Saturday]"<sup>62</sup> and then "The Great Escape" and "Batman".<sup>63</sup> Mr. Domaszewicz said that Jaidyn was asleep on the couch by the time "Batman" came on.<sup>64</sup>

Ms. Kim Wilson lived at 26 Lincoln Street. She said that at around 12.30am (on 15<sup>th</sup> June) she heard a car revving. She looked out and saw a green car that may have been Mr. Domaszewicz's car parked across the road out the front of Ms. Williams' house.<sup>65</sup> It is noted that Mr. Domaszewicz denied being at Ms. Williams' house around midnight.<sup>66</sup>

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<sup>53</sup> See pp 764 to 790 Trial transcript (Exhibit 105). See also statement made by Mr McCarthy at pp. 127 to 129 of the First Inquest Brief.

<sup>54</sup> See pp 143 to 156 Committal transcript (Exhibit 113) and pp 229 to 252 Trial transcript (Exhibit 105). See also the statements made by Katie Leskie (Exhibits 86 and 87).

<sup>55</sup> First Inquest transcript, p.1533.

<sup>56</sup> Second Record of Interview; Question 492.

<sup>57</sup> First Record of Interview; Question 468.

<sup>58</sup> Second Record of Interview; Questions 760 to 770.

<sup>59</sup> First Record of Interview; Question 468.

<sup>60</sup> First Record of Interview; Question 474.

<sup>61</sup> First Record of Interview; Question 499.

<sup>62</sup> First Record of Interview; Question 502.

<sup>63</sup> First Record of Interview; Questions 503 to 504. On 22 February 2004, Senior Constable Gibson obtained a copy of the Herald Sun newspaper from 14 June 1997, which verified that the movies "The Great Escape" and "Batman" had screened on television that night. See (Exhibit 89).

<sup>64</sup> First Record of Interview; Questions 507 and 515.

<sup>65</sup> See pp. 322 to 329 Committal transcript (Exhibit 113) and pp 252 to 259 Trial transcript (Exhibit 105). See also the statement made by Ms. Wilson at pp 130 to 131 First Inquest Brief.

<sup>66</sup> Second Record of Interview; Question 1289.

Ms. McKinnon stated that at about 1.00am, she heard a car start up. Apparently she thought the car was a Ford with a 250 cross-flow engine and she considered this might have been Mr. Domaszewicz's car. Although she acknowledged that Ms. Yvonne Penfold had a similar car. She noted that Mr. Domaszewicz sometimes parked his car behind the gates in the backyard, but that he mostly parked it in front of his house.

Mr. Seamus Hasson, first came forward to give evidence in the First Inquest, stated that in the early hours of either a Saturday or a Sunday morning (of the weekend that he believed to be the weekend the deceased went missing) he observed a green Ford sedan in the vicinity of the Blue Rock Dam.<sup>67</sup> Mr. Hasson said that he had been away on a deer hunting trip for a couple of days, and was driving back home in the direction of Moe. He knew it was a Friday night or Saturday night because he remembered being worried about how busy Moe would be when he drove through and that at about 12.30am (30 minutes before he arrived home), he was driving on a road he identified on a map as being Walhalla Road.<sup>68</sup>

Mr. Hasson stated he saw vehicle headlights on Willow Grove Road, a road that was on a ridge parallel to Walhalla Road and ultimately met in a 'Y' intersection with Walhalla Road. He noted that Blue Rock Dam is on the east side of Willow Grove Road. Mr. Hasson said that, in order to amuse himself, he sped up to try and meet the other vehicle at the intersection of the two roads. Evidently as he approached the intersection, Mr. Hasson said that he observed a green Ford sedan, which was an XA or XB Falcon, stationary in the middle of the intersection. He did not see who was driving the car or the number of people in it. When Mr. Hasson's headlights hit the vehicle, the driver accelerated quickly and took off towards Moe. He then followed the vehicle to Moe and at one time was close enough to see the registration number. He said he observed the vehicle for a total of 12 to 14 minutes and then he turned off towards his home, where he arrived at about 1.00 or 1.10am (he saw the time on the clock in his kitchen).

Mr. Hasson said that he had not been drinking that night and that, after arriving home he later informed his wife as to what he had seen (and possibly on the same night) which included his observation of all of the numbers and letters of the vehicle's registration. Mr. Hasson did not write the registration down, but Mrs. Hasson made an acronym out of the letters in the numberplate - IRS (Internal Revenue Service).

Mr. Hasson said that later that week he saw a news report about the disappearance of Jaidyn that showed a car that looked like the car he had seen that night. Mr. Hasson said that he saw the numberplate, he recognised the vehicle. However, he did not report what he had seen to the police, as he thought the information would be useless. Later in 2003 having seen Ms. Williams on television he decided to contact the coroner. Mr. Hasson told his brother and a friend what he had seen. However by the time he made his statement, he could remember the letters but not the numbers on the numberplate. And, since making his statement, Mr. Hasson had researched the case on the internet and knew that Jaidyn disappeared on a Saturday night. Also, since making his statement for the Coroner he had checked his bank records to see if there were any transactions that demonstrated which weekend he had been on the deer hunting trip and observed the car. This was the weekend of 14<sup>th</sup> and 15<sup>th</sup> June 1997, but Mr. Hasson could find no banking transactions to assist his recollection.

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<sup>67</sup> See pp. 287 to 340 *First Inquest transcript*. See also statement made by Mr. Hasson (*Exhibit 20*).

<sup>68</sup> *Exhibit 21*.

Mrs. Gwenda Hasson<sup>69</sup> remembered her husband coming home from a hunting trip on a Friday or Saturday night. She noted that he always sat up for a while drinking coffee and watching television after getting back from such a trip and before going to bed. She said that her husband came to bed at about 2.00am (as she looked at the clock). She recalled it was the next morning he had told her that he had seen a car coming down out of the mountains that he had followed. He told her the registration number (numbers and letters) of the car. She gave evidence that as she heard the registration number, she formed the words "*Internal Revenue Service/System*" in her head. She also said she thought there may have been a "6" and an "8" in the registration number, but she had not put this in her statement "*in case she was wrong*". She observed that her husband may have told her that the car was a Ford and that neither of them had written down the registration number.

Mrs. Hasson also gave evidence that they both subsequently saw a news story about a baby who had gone missing on the same weekend and that this made her feel a bit eerie because her husband had seen the car on the same night that the baby went missing. She noted that later they saw a second news story and a car was in the background. It was while this news story was on the television that her husband saw the numberplate of the car and said "That's the car, that's the car". She said that they both discussed going to the police, but did not do so. She obtained a statement from their bank account to see if her husband had made a transaction at a BP Service Station on the hunting trip. The statement did not show any such transaction, but did show a purchase of hiking boots in Melbourne on 6 June 1997. Mrs. Hasson also confirmed that both she and her husband had done some research on the internet about the case. Evidently, this research was done after her husband made his statement but she could not say whether it was before or after she made her statement.

Following this evidence Senior Constable Gibson (investigator for the Coroner) was directed to perform tests and seek witnesses. He gave evidence at the inquest<sup>70</sup> that on 5<sup>th</sup> December 2003, he undertook tests to assess the visibility of headlights on Willow Grove Road from the road on which Mr. Hasson had been driving. The Senior Constable noted that at that time, the majority of the land at the roadside was fairly heavily wooded and he was unable to comment on the state of the vegetation in 1997. Also he was unable to replicate the sightings of car headlights as described by Mr. Hasson in his evidence at the inquest. Senior Constable Gibson conducted additional inquiries in relation to all Ford motor vehicles registered in Victoria in 1997 with a numberplate commencing with the letters "IRS". There were 23 such vehicles (including the vehicle owned by Mr. Domaszewicz). The Senior Constable located the owners of 20 of those vehicles. Sixteen (16) of the owners told the investigator that they owned the vehicle at the relevant time and that it was not in the Moe area at

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*69 See pp 650 to 673 First Inquest Transcript. See also the statement made by Mrs. Hasson (Exhibit 46).*

*70 See pp. 679 to 686 First Inquest Transcript, the statement made by Senior Constable Gibson (Exhibit 47) and the video of Senior Constable Gibson's tests (Exhibit 48). Senior Constable Gibson also obtained statements from two residents of the area. Mr. Ivo Peric stated he had lived on the road described by Mr. Hasson since 1991 and had not noticed any changes to the trees in the area. He did not recall ever seeing headlights on Willow Grove Road from his road. Mr. Peter McNab had lived in the area for in excess of 20 years and he considered it would be very difficult to see car headlights from the road as described by Mr. Hasson (but may be possible further down the road), and he did not think there had been much change to the trees alongside the road.*

that time.<sup>71</sup> Four of the recorded “owners” said they did not own the vehicle at the relevant time and the previous owner was either deceased or unable to be located.<sup>72</sup>

Mr. Domaszewicz said that, following the second telephone call from Ms. Williams, he left his house to go and pick her up from the hotel. When he left Jaidyn was asleep on the couch<sup>73</sup>, the heater and television were still on<sup>74</sup> and there was no one else in the house. He stated that the dogs were outside<sup>75</sup> and the house was secure.<sup>76</sup>

Counsel for Mr. Domaszewicz commented on Mr. Hasson’s evidence thus:

*“Mr Hasson's allegations of sighting a vehicle which was supposedly Domaszewicz's, on the morning of the day Jaidyn disappeared. I do not propose to examine this evidence. It was discredited at the First Inquest. Mr Gibson could not recreate the sighting; there were many difficulties with the evidence, some of which are referred to in Mr Kennan's submissions, and Mr Gibson himself conceded at the First Inquest:*

*“...you talked about concentrating on new evidence, leaving aside any expert material the new evidence seemed to come from three sources I suggest, one was Mr Hasan (sic), Seamus Hasan, know who I mean?---I certainly do.*

*That's the gentleman who was driving down, because it was cold his shooting trip and he was driving down, whatever the name of the road was, but it was on the outskirts of Moe in the hills?---That's correct Yes sir.*

*His claim effectively was that he saw a vehicle that he believed was Mr Domaszewicz's vehicle right?---He described a vehicle but the obvious inference was that it was Mr Domaszewicz's correct.*

*So it's the fact of it being his vehicle plus the movements of the vehicle and the way it was driven and so on that were as it were the new material right, the vehicle was there, assuming it was all true, Domaszewicz's vehicle was there, and the way it was driven, which direction it was heading and so forth right? --- Yes the new information was that Mr Hasan had made a statement and yes there were those details contained in the statement yes.*

*Were you present when he gave evidence in court?---Not for the whole lot but I did see some of it yes.*

*Have you read it?---I have read the transcript of his evidence yes.*

*You conducted your tests after he gave evidence because we couldn't cross examine him at the time?---Yes.*

*About the tests, conducted afterwards, and the tests showed that it was impossible to reconstruct a situation where he could see what he claimed to see?---That's correct. That's correct.*

*You'd have to say as a policeman that makes his evidence, leaving aside any criticism about his evidence, and there were plenty of them, but that makes his evidence inherently unreliable doesn't it?---Ultimately that's a matter for His Worship, I was asked at the time by I believe it was counsel assisting whether I could say it was impossible for Mr Hasan to have seen what he saw, at the time I said I couldn't*

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<sup>71</sup> One of the 16 people who said they owned the vehicle at the relevant time but that the vehicle was not in the relevant area at that time was Peter Domaszewicz, Mr. Domaszewicz’s brother. Peter Domaszewicz did not give evidence at Mr. Domaszewicz’s committal or trial, nor had he ever made a statement to the Homicide Squad. Senior Constable Gibson obtained a statement from him on 10 February 2004, which is annexed to Senior Constable Gibson’s statement made on 24 February 2004 (Exhibit 89). Peter Domaszewicz said that he was in Melbourne on the weekend of the deceased’s disappearance. He told Senior Constable Gibson that the car he drove at that time was a Chrysler Sedan with the registration number IRS 547: see the statement made by Senior Constable Gibson on 24 February 2004 (Exhibit 89).

<sup>72</sup> See Senior Constable Gibson’s statement, 4th May 2004.

<sup>73</sup> First Record of Interview; Question 651.

<sup>74</sup> First Record of Interview; Questions 662 and 708.

<sup>75</sup> First Record of Interview; Question 654.

<sup>76</sup> Second Record of Interview; Question 636.

say it was impossible because I wasn't aware of the vegetation et cetera. I've since made further enquiries I can now say that in my opinion it's impossible for Mr Hasan to have seen a car on the Willow Grove Road in the positions he said he did. Have not made a subsequent statement about that?---No that is contained - in the further enquiries and the statements that I've taken are contained in --- You've just added something over and above what was in your statement and what you gave evidence of, of the simulation tests you conducted you've just added something over and above that haven't you? --- Yes. We wouldn't have heard of that, didn't give it in your evidence-in-chief - - ? ---I am not trying to hide anything, quite prepared to say that. No, I'm not suggesting you are. I mean, if you were trying to hide it, you wouldn't have said it to - -?---I was intending, had I read the entire statement out, that I would have said it as I was prompted by reading it as I was led through it. No, I didn't mention it at the time. That's why I thought it was important to mention it now. That's a fairly important rider to add to your evidence concerning that issue, isn't it?-- -Yes.<sup>77</sup>

And noted that Counsel Assisting conceded that Mr. Hasson:

*"only came forward some seven years after the events he was describing, despite the enormous publicity surrounding the child's disappearance, the committal, the trial, and subsequently. It is clear Mr Kennan places little weight on Hasson's evidence. I propose to say nothing further about it, other than to point out that he did not make a statement to police until August 20, 2003, some weeks after the decision to conduct an Inquest had been made public by the Coroner's office."*<sup>78</sup>

- *Mr. Domaszewicz collected Ms. Williams and returned to Narracan Drive*

Mr. Domaszewicz said that, having arrived at Ryan's Hotel, he found Ms. Williams to be drunk.<sup>79</sup> He was sober. He advised Ms. Williams that her son was in the hospital.<sup>80</sup> Ms. Williams said she asked Mr. Domaszewicz where Jaidyn was and he told her he was at the Maryvale Hospital. She then asked him to take her to the hospital. However he refused, saying she was too drunk. She said that he had an open stubby of Jack Daniel's in the car and she drank it.

Ms. Williams said that on arrival at Narracan Drive she observed the front windows of Mr. Domaszewicz's house were smashed with glass in the living room. Apparently Mr. Domaszewicz then looked in the cupboards but he did not say anything about Jaidyn. Ms. Williams told Mr. Domaszewicz to ring the police and he responded by saying that he did not *"dob people in to the cops"*. She said that they both did not remain long at Narracan Drive and that she noticed it was 3.04am on the video when they left. Ms. Williams noticed the pig's head as they were leaving. On the way to her house Mr. Domaszewicz drove slowly past Ms. Penfold's where the lights were on.

Mr Domaszewicz stated when they went inside his house, he saw that Jaidyn was missing.<sup>81</sup> However, everything else was there.<sup>82</sup> Mr. Domaszewicz did not tell Ms. Williams that Jaidyn was missing because he did not want to alarm her. He thought that Ms. Penfold might be involved.<sup>83</sup> He noted that the lights he had left on were still

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<sup>77</sup> *Submissions of Counsel for Mr. Domaszewicz, pp. 6 to 7*

<sup>78</sup> *Submissions of Counsel for Mr. Domaszewicz, p. 7.*

<sup>79</sup> *Second Record of Interview; Question 1026.*

<sup>80</sup> *Second Record of Interview; Questions 382 and 401.*

<sup>81</sup> *First Record of Interview; Question 1009.*

<sup>82</sup> *First Record of Interview, Question 1009.*

<sup>83</sup> *First Record of Interview, Question 1010.*

on<sup>84</sup> and both the front and back doors were still locked.<sup>85</sup> He noticed rocks in the front room<sup>86</sup> and the pig's head on the ground outside the lounge room.<sup>87</sup> He stated that it was not possible for Jaidyn to have injured himself while he was away collecting Ms. Williams.<sup>88</sup>

Mr. Domaszewicz then drove Ms. Williams to her house. He also stated that Ms. Williams asked him to stay and gave him a key to her house.<sup>89</sup>

On arrival at her home Ms. Williams gave evidence that she went to sleep on the floor in the lounge room in front of the heater. However, before falling asleep, she telephoned Mr. Brett McGrath (whom she had seen in Traralgon that night), and Ms. Julie Brassington (who was baby-sitting Breehanna at Katie's house). Finally, she telephoned Mr. Domaszewicz and asked him to return to her place. He said he would.<sup>90</sup>

- *Mr. Domaszewicz's movements after leaving Ms. Williams' house*

After leaving Ms. Williams, Mr. Domaszewicz was intercepted by Senior Constable Farnham Molesworth. The police officer gave evidence<sup>91</sup> that at about 3.30am on 15<sup>th</sup> June he saw Mr. Domaszewicz driving in Lloyd Street and he was travelling away from Moe. He stopped Mr. Domaszewicz in Bennett Street and spent about four minutes with talking to him. He asked Mr. Domaszewicz where he had been and the reply was "*nowhere*". The Senior Constable noted that Mr. Domaszewicz did not get out of the car and that his demeanour was "*cautious*". He said that Mr. Domaszewicz did not appear wet and that he did not mention a missing child. Mr. Domaszewicz then drove off south along Bennett Street and into Narracan Drive.

Mr. Domaszewicz stated there was a two hour period between the time he left Ms. Williams' house and the time when he returned at about 5.00am.<sup>92</sup> He stated that over the two hour period he went home for about 10-20 minutes and then went to Ms. Penfold's house, where he did not observe anything.<sup>93</sup> During questioning by police Mr. Domaszewicz gave no further explanation for how he spent this time except to explain that he was looking for Jaidyn.<sup>94</sup>

- *The return to Ms. Williams' house*

Mr. Domaszewicz stated that when he returned to Ms. Williams' house he woke her up and told her that someone had taken Jaidyn.<sup>95</sup> Ms. Williams stated that Mr. Domaszewicz advised he had lied about her son being in hospital and he asked her to go with him to the police.

### **THE 'PIG'S HEAD' INCIDENT**

In the early hours of the morning of 15<sup>th</sup> June 1997 a pig's head was thrown at the lounge room window of Mr. Domaszewicz's Narracan Drive house. There were a number of individuals involved in varying degrees in this incident including Messrs.

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84 *First Record of Interview, Questions 1061 and 1062.*

85 *First Record of Interview, Questions 1076 and 1068.*

86 *First Record of Interview, Question 1079.*

87 *First Record of Interview, Question 1082.*

88 *Second Record of Interview, Question 1012.*

89 *Second Record of Interview, Question 519.*

90 *Second Record of Interview; Question 636.*

91 *See p 136 to 142 Committal transcript (Exhibit 113) and pp. 259 to 280 Trial transcript (Exhibit 105). See also the statement pp. 134 to 137 First Inquest Brief.*

92 *Second Record of Interview, Question 882.*

93 *Second Record of Interview, Question 866.*

94 *Second Record of Interview, Question 897.*

95 *Second Record of Interview, answers to Questions 476 to 477.*

Kenneth Penfold, Dean Ross, Darrin Wilson and Raymond Hopkinson (deceased) and Mr. Penfold's sister Ms. Yvonne Penfold.

At the Magistrates' Court committal hearing and the trial, evidence was given by Messrs. Penfold<sup>96</sup>, Ross<sup>97</sup> and Wilson<sup>98</sup> along with Ms. Penfold<sup>99</sup> on the 2.10 am visit they all made to Mr. Domaszewicz's house. Mr. Penfold shared a house with Mr. Ross and Mr. Raymond Hopkinson at 10 Gladstone Street, Moe. Ms. Penfold lived at 44 Austin Avenue, Moe. Mr. Wilson resided in San Remo.

As Counsel Assisting submitted:

*"although there are some differences in their accounts, their evidence points towards the following sequence of events:*

1. *Ms Penfold, Mr. Penfold and Mr. Wilson had been at a party in Haigh Street, Moe;*
2. *after the party, Ms. Penfold drove Mr. Penfold and Mr. Wilson to Narracan Drive;*
3. *Ms Penfold was driving a brown Commodore belonging to Mr. Wilson;*
4. *on the way to Narracan Drive, there was discussion about Mr. Domaszewicz's harassment of Ms. Penfold, whom Mr. Domaszewicz had been in a relationship with, and Mr. Penfold said that they were going to give Mr. Domaszewicz "a scare";*
5. *on the way there, they picked up Mr. Ross from 10 Gladstone Street;*
6. *whilst at 10 Gladstone Street, Mr. Penfold also picked up a pig's head;*
7. *the pig had belonged to Mr. Hopkinson, who did not go to Narracan Drive that night, staying instead at Gladstone Street;*
8. *they drove to the service station near Mr. Domaszewicz's house on the other side of Narracan Drive, where they stopped briefly;*
9. *they then drove up a dirt road running parallel to the railway line opposite Mr. Domaszewicz's house;*
10. *Mr Penfold and Mr. Wilson got out of the car, taking the pig's head with them;*
11. *Mr Penfold also had an axe handle that he got from the boot of the car and Mr. Wilson had a stick of some kind;*
12. *Mr Penfold and Mr. Wilson waited at the railway line, where they watched Mr. Domaszewicz's house;*
13. *they saw a car reversed into Mr. Domaszewicz's driveway and that the lights were on in the house; they saw Mr. Domaszewicz come out of the house and put something in the wheelie bin, go back inside, come out again, get into the car and drive off;*

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96 See pp. 227 to 252 Committal transcript (Exhibit 113), pp. 367 to 469 of the Trial transcript (Exhibit 105) and pp. 105 to 143 of the Second Inquest transcript. See also the statements made by Mr. Penfold on 16 and 20 June 1997, which are at pp. 89 to 97 of the First Inquest Brief.

97 See pp 261 to 276 Committal transcript (Exhibit 113) and pp 646 to 697 Trial transcript (Exhibit 105).

98 See pp. 156 to 187 Committal transcript (Exhibit 113) and pp. 282 to 367 Trial transcript (Exhibit 105). See also the statements pp. 98 to 104 First Inquest Brief.

99 See pp. 188 to 227 Committal transcript (Exhibit 113) and pp. 511 to 646 Trial transcript (Exhibit 105).

14. *Mr Penfold and Mr. Wilson then walked across the road to Mr. Domaszewicz's house;*
15. *they threw the pig's head at the window of the house twice, threw rocks at the windows and threw the axe handle into the bushes across the road;*
16. *dogs at the house were barking;*
17. *they did not hear a baby;*
18. *they did not enter the house;*
19. *they did not take the deceased;*
20. *they left the house and walked up Narracan Drive in the direction of the Narracan Creek Bridge;*
21. *as they were walking, they saw two young boys, to whom Mr. Penfold said "boo";*
22. *they were picked up by Yvonne in the car at the Narracan Creek Bridge.*<sup>100</sup>

On 9<sup>th</sup> August 2005, during the Second Inquest, Mr. Penfold made a statement in which he said that when Mr. Domaszewicz got into his car, he was carrying a bag that he had brought with him from the house. He put the bag in the boot of the car. It is noted that Mr. Penfold had made no reference to seeing Mr. Domaszewicz with a bag that night during the evidence he gave at Mr. Domaszewicz's committal, Mr. Domaszewicz's trial, or in any of the statements he made to the Police. In addition, Mr. Wilson made a statement on 23<sup>rd</sup> August 2005 (Exhibit 122) stating that he had no recollection of seeing Mr. Domaszewicz put anything in his car.<sup>101</sup>

There is evidence by a number of other witnesses who also observed various aspects of these events and tend to confirm some of the basic story.

Mr. Christopher Alford and his wife Elspeth stated they were driving along Narracan Drive that morning and observed two men running across the road towards the railway line, just down from the BP Service Station and near Mr. Domaszewicz's house. Mrs. Alford noted that it was 2.14am on their car's clock.<sup>102</sup>

Mr. Paul Reid had been at a party in Haigh Street in Moe and on leaving the party, he walked along Narracan Drive towards the BP Service Station with Mr. John Sellens.<sup>103</sup> They were about 200 metres from the service station when he thought that rocks were being thrown at them from the railway side of Narracan Drive. They both continued walking and bought some items at the service station (the service station receipt showed the time of purchase as 2.20am).

Mr. John Sellens agreed that he left the party with Reid and said that at the same time they left the party two other men also left. He lost sight of the two other men. Both he and Reid walked along Narracan Drive to the BP Service Station in order to get something to eat. During the walk someone started throwing rocks from the railway line. Mr. Sellens could hear dogs barking but did not hear either any loud music or a baby screaming. At the service station, he observed the two men who had left the party and they both got into a red car and drove towards Moe.<sup>104</sup> Mr.

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<sup>100</sup> *Submission by Counsel Assisting, pp. 23 to 25.*

<sup>101</sup> *See pp 105 to 143 of the Second Inquest transcript.*

<sup>102</sup> *See pp. 711 to 721 Trial transcript.*

<sup>103</sup> *See pp. 721 to 728 Trial transcript (Exhibit 105). See also statement at pp. 105 - 107 First Inquest Brief.*

<sup>104</sup> *See pp. 108 to 110 of the First Inquest Brief. Mr. Sellens did not give evidence at Mr. Domaszewicz's trial or committal.*

Sellens said that he walked home from the service station arriving there at about 2.45am. During the time Messrs. Sellens and Reid were at the BP Service Station, Messrs. Daniel Halstead and Ben Stubbs were also present.

Mr. Stubbs agreed that he was at a party in Haigh Street, Moe and he left at about 1.30am. He was walking down Narracan Drive towards the service station with Mr. Halstead when he saw two men coming towards them on the same side of the street. One of the men said "Boo" and rocks were then thrown at them. They both continued on past Mr. Domaszewicz's house (he knew Mr. Domaszewicz and his house) and observed that the front porch lights were on at the house. He heard music but did not know where it was coming from and also heard dogs barking.

Mr. Stubbs said that on arrival at the service station he saw the same two men in a red Commodore with a woman and another man.<sup>105</sup>

Mr. Halstead gave evidence at the trial that he left the Haigh Street party with Stubbs and others at about 1.30 or 2.00am and as they walked along Narracan Drive towards the BP in order to buy food they noticed two individuals coming in the opposite direction. When they passed one of the people yelled "boo" at his companion, Mr. Stubbs. He did not notice whether these individuals were carrying anything. As they both continued on they felt rocks being thrown at them. As they walked past Mr. Domaszewicz's house Stubbs pointed it out to Halstead.<sup>106</sup>

Mr. Spark, a neighbour of Mr. Domaszewicz's lived at 148 Narracan Drive. He gave evidence that he was woken at about 2.00am by voices, banging, rustling and glass breaking that lasted for about 30 seconds. He then heard a car speed off. He did not hear a baby crying.<sup>107</sup>

Ms. McKinnon gave evidence that sometime between 2.30 and 3.30am, she heard music from the general direction of Mr. Domaszewicz's house. It was very loud, the song was "Slice of Heaven" and the music lasted for between two and five minutes.

*Comment by Counsel for Mr. Domaszewicz on Mr. Penfold's evidence*

Counsel for Mr. Domaszewicz made the following observations on Mr. Penfold's fresh evidence:

*"Mr Ken Penfold alleged that he now remembered that Domaszewicz was holding a parcel when he went out to the car on the relevant night. This was a startling change from his testimony at the trial, and, was, quite clearly, an invention. His reconstruction continued at the end of my cross-examination. Asked about his evidence at the trial:-*

*"At no stage did you mention anything remotely along the lines - - -?---I've seen him put something in that car boot, and to my knowledge it was a sleeping bag. It's obvious it was a sleeping bag, because that's what he was found in. Now it's obvious, Mr Lovitt, it was a sleeping bag. It doesn't take Einstein to work that out now, does it. "*

*So the object in his hand that he had, late in 2005, just recently remembered was not just a parcel, it was now a sleeping bag! A better example of conscious or sub-conscious reconstruction would be difficult to imagine, especially in a witness like Mr Penfold. And Mr Penfold's new statement was made on August 9, 2005, well **after** the*

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<sup>105</sup> See pp. 350 to 362 Committal transcript (Exhibit 113) and pp 728 to 737 Trial transcript (Exhibit 105). See also the statements at pp. 111 to 115 First Inquest Brief.

<sup>106</sup> See pp 738 to 741 Trial transcript (Exhibit 105). See also statement pp. 116 to 118 First Inquest Brief.

<sup>107</sup> Two statements by Mr. Spark on 15 June and 22 October 1997 are annexed to the statement made by Senior Constable Gibson on 24 February 2004 (Exhibit 89). Mr. Spark gave evidence at Mr. Domaszewicz's trial: see pp 976 to 987 Trial transcript (Exhibit 105).

decision to conduct the Second Inquest.”<sup>108</sup>

#### **POLICE INVOLVEMENT AND FORENSIC INVESTIGATION FOLLOWING INITIAL MISSING PERSON’S NOTIFICATION**

- *Initial police involvement*

Ms. Williams and Mr. Domaszewicz both went to the Moe Police Station at about 5.00am on 15<sup>th</sup> June.<sup>109</sup> Sergeant Maxwell Hill (Officer in Charge of the Moe Police Station) stated that Mr. Domaszewicz said:

*“Her baby’s been kidnapped. My windows have been smashed and they’ve left a pig’s head there.”*<sup>110</sup>

The Sergeant said that Ms. Williams was crying and she told him that Mr. Domaszewicz had told her that Jaidyn was in hospital. Apparently Mr. Domaszewicz said “*they*” had taken Jaidyn from his house in Narracan Drive between 2.30 and 3.20 that morning; and that Jaidyn was not in hospital. He said he went to “*Yvonne’s, looking*” for Jaidyn. Sergeant Hill then had a conversation with Mr. Domaszewicz in another interview room. This discussion was recorded. The Sergeant then talked to Ms. Williams alone for about 35 minutes.

At 10.00am Sergeant Hill and Senior Detective Shelley Rees commenced a formal interview of Mr. Domaszewicz (the ‘First Record of Interview’)<sup>111</sup>. The First Record of Interview concluded at 4.09pm. The Homicide Squad arrived at the Moe Police Station from 1.00pm onwards. That day, Ms. Williams made two statements to police.<sup>112</sup>

- *Police forensic examination of the Narracan Drive and Lincoln Street houses*

Mr. Trevor Evans, a crime scene examiner, Victorian Institute of Forensic Science, gave evidence<sup>113</sup> that at 3.40pm on 15<sup>th</sup> June 1997, he commenced a forensic examination of Mr. Domaszewicz’s house in Narracan Drive and that all the front windows were smashed. He noted that there was a pig’s head in the garden bed at the front of the house. It appeared that the ‘pig’s head’ had been thrown at the house twice before striking a window on a third occasion. He also noted that every window had a piece of wood to prevent it being opened and there was no sign of forced entry. Mr. Evans also stated that there was no damage to the fallen glass inside the house to show an individual had stood on it and there was no physical evidence to suggest that anyone had entered the house via the windows. He also noted there were rocks in the lounge room of a similar size, shape and colour to rocks along the nearby railway line.

Mr. Evans said there was a small particle of what appeared to be skin tissue on the centre of the upright grill and a number of hair fibres on the grill of the gas space

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<sup>108</sup> *Submissions by Counsel for Mr. Domaszewicz, p. 11.*

<sup>109</sup> *Trial transcript (Exhibit 105), p. 1182 (Hill).*

<sup>110</sup> *See pp. 426 to 439 Committal transcript (Exhibit 113) and pp. 1182 to 1388 Trial transcript (Exhibit 105). See also the evidence of Senior Constable Molesworth, who was on the front counter at the Moe Police Station when Mr. Domaszewicz and Ms. Williams arrived.*

<sup>111</sup> *First Record of Interview at pp.208 to 403 First Inquest Brief.*

<sup>112</sup> *Statements pp.180 to 185 First Inquest Brief.*

<sup>113</sup> *Committal transcript (Exhibit 113), pp. 473 to 493 Trial transcript (Exhibit 105), pp. 989 to 1062 and First Inquest Transcript, pp. 675 to 679 and 1423 to 1460. See also the Statement at pp. 638 to 649 First Inquest Brief.*

heater. Also there were blood spots on the bathroom wall that were established to be Ms. Penfold's blood and a number of bloodstained tissues were located in a plastic bag at the base of a wheelie bin at the front of the house.

Mr. Evans also discovered \$600 in cash (consisting of one \$100 note and the balance in \$50 notes) under a mattress in a bedroom. The notes were scrunched up and were wet and when unbundled they appeared to have been wet prior to being placed under the mattress. Mr. Evans considered that the level of wetness was consistent with being in a person's pocket while that person was immersed in water, but not while they were merely out in the rain.

Mr. Evans said that at about 3.25pm on 15<sup>th</sup> June he went to Ms. Williams' house in Lincoln Street. He saw a wheelie bin on its side on the front nature strip and some tyre marks on the nature strip and in the front yard. Following a brief walk through the house, he left the premises. Mr. Evans returned to Lincoln Street at 10.05pm. In one bedroom he found a cot and bedding on the floor beside the cot. There was a baby's bottle just inside the doorway of the room.

Ms. Williams stated that, in the evening of 15<sup>th</sup> June, when she returned to Lincoln Street from being with the police she saw that the mattress from Jaidyn's cot was on the floor and the bedding was thrown over the edge. She noted the cot had been made when she had gone out the night before.

- *Police forensic examination of Mr. Domaszewicz's Falcon sedan*

On 16<sup>th</sup> June Mr. Evans examined Mr. Domaszewicz's vehicle which was a green Falcon XC sedan with Registration Number IRS 680. He discovered a wet jacket on the floor of the rear of the vehicle and a very wet wallet on the floor underneath the acceleration pedal. He noted that the carpet on the floor of the vehicle was wet. He considered that this level of wetness was not consistent with the level of wetness of the wallet, which he thought looked as if it had been immersed in water.

Ms. Williams noted that when it rained, water got in on the front passenger side of Mr. Domaszewicz's car.

#### **EVENTS BETWEEN THE DISAPPEARANCE AND THE DISCOVERY OF THE BODY**

Ms. Williams said that in July 1997, she went away to New South Wales for two to three weeks.<sup>114</sup> It was during her time in NSW she left keys to her house with Darren Farr and Sergeant Michael Roberts. When she came back, she found the dummy Jaidyn had pinned to him on the day of his disappearance on the wall unit in her lounge room, and also a toy mobile phone he had with him that day.<sup>115</sup> There were clothes missing from Jaidyn's cupboard, including jumpsuits, jumpers and jeans.<sup>116</sup> She believed the items of clothing were in photos she was subsequently shown of items recovered from Blue Rock Dam.<sup>117</sup>

When she returned from NSW Ms. Williams visited Mr. Domaszewicz's house, where she observed Jaidyn's windcheater on the pillow on Mr. Domaszewicz's bed. She noted that the windcheater was ripped around the throat and smelt of vomit.<sup>118</sup>

In October 1997, Ms. Williams moved out of her Lincoln Street home and during this move, she observed what she believed to be the plastic bag that she had sent off with Jaidyn on the day of the disappearance in the linen cupboard.<sup>119</sup>

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<sup>114</sup> See p. 1608 of the First Inquest transcript.

<sup>115</sup> First Inquest transcript, pp. 1608 to 1609.

<sup>116</sup> First Inquest transcript, pp. 1610 to 1611.

<sup>117</sup> First Inquest transcript, p. 1612.

<sup>118</sup> First Inquest transcript, pp. 1615 to 1616.

<sup>119</sup> First Inquest transcript, pp. 1617 to 1618.

Mr. Brett Leskie stated that in September 1997, he broke into Ms. Williams' house and removed some items. Mr. Leskie said that he did this because he needed to get some of his belongings, including clothes and tools, and he had been unsuccessful in making arrangements with Ms. Williams. He saw a note pad and photo of the deceased that he also took with him but he did not recognise the handwriting on the note pad and did not like what was in it. The note pad contained a drawing<sup>120</sup> of a child with the words "mongoloid", "poofter", "faggot" and "cunt" written on it.<sup>121</sup> He considered that when the drawing was held up to the light, you could see the deceased's name underneath. He also considered that the photograph showed Jaidyn looking<sup>122</sup> sunken in the face and withdrawn. He took the note pad and photograph to Breehanna's case worker, Ms. Julie Clarke. Ms. Clarke later returned the note pad and photograph to Mr. Leskie and advised him to take the note pad and photo to the police. He then handed these items to police.

Ms. Julie Clarke (Morwell Office of the Department of Human Services) gave evidence that she became Breehanna Leskie's case worker about 21<sup>st</sup> August 1997 and the Department had no involvement with Jaidyn.<sup>123</sup> There was a protection application made after Jaidyn disappeared and there were concerns about whether Ms. Williams was able to protect her children. She had regular contact with the natural mother and father and other people who would come into contact with Breehanna.

On 10<sup>th</sup> September 1997 Mr. Leskie came to see Ms. Clarke and advised her he had broken into Ms. Williams' house on the previous day. He gave her a photograph of Jaidyn showing bruising around his cheekbone and chin areas. He also gave her a sketchpad that contained lots of notes starting "Dear Greg", which she believed to be Ms. Williams' note pad. The note pad also contained a note that said "Tell your mates to shut their mouths, because they're telling their mates what you have done", and a drawing of a fish with a human lower leg and foot protruding from its mouth.<sup>124</sup>

The items were left with her and she photocopied the photograph and the note pad and gave them to her supervisor, Ms. Melissa Price. Mr. Leskie then returned and she gave them back to him and told him to take them to the police. Later, Ms. Clarke showed the copies of the items to Ms. Williams and confronted her about the apparent bruising in the photograph of Jaidyn. She said that Ms. Williams had told her that the bruising had happened when Mr. Domaszewicz had taken Jaidyn on a fishing trip and hit him when he wouldn't stop crying.

Ms. Clarke noted that since making the statement, she had searched Breehanna's file and had been unable to locate the photocopy of the page of the pad containing the words "Tell your mates to shut their mouths, because they're telling their mates what you have done". She had also not found any case notes referring to any of the conversations she had with Ms. Williams about Jaidyn's photograph, his injuries or to comments about Mr. Domaszewicz locking Jaidyn outside with the dogs. Likewise she could not locate the drawing of a fish with a leg and foot protruding from its mouth. However, she did find a drawing of a shark chasing a fish that appeared to

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120 Exhibit 28.

121 Statement dated 1<sup>st</sup> August 1997 (which is at pp. 74 to 76 of the First Inquest Brief), Glenn Walker gave evidence that Mr. Domaszewicz would sometime call the deceased a "mongoloid" or "mongoloid poofter cunt". See also p. 881 of the Trial transcript (Exhibit 105).

122 Exhibit 26 (black and white photocopy) and Exhibit 27 (colour photocopy).

123 The evidence of Ms. Clarke is at pp. 463 to 515 of the First Inquest transcript. See also the statement made by Ms. Clarke on 14<sup>th</sup> August 2003 (Exhibit 29).

124 Drawing, Exhibit 30.

have been done by a child.<sup>125</sup> Ms. Clarke noted that these documents may have been misfiled on another Departmental file. She also considered that a page she was shown from the file that contained song lyrics was not the page she was referring. She had no recollection of ever being shown the drawing of a child containing the words “mongoloid”, “poofter”, “faggot” and “cunt”.

After Ms. Clarke’s evidence additional statements were obtained from nine Departmental witnesses about their dealings with Ms. Clarke and their attempts to locate documents referred to by her.<sup>126</sup> Of these witnesses Ms. Melissa Price stated that she was not Ms. Clarke’s supervisor at relevant times and she had not been shown any documentation provided by Mr. Leskie. Ms. Clarke had not told her of any conversations with Ms. Williams about these topics. Also Mr. Mark Biggs, who was Ms. Clarke’s Unit Manager stated she had not given him any documentation that allegedly came from Mr. Leskie. He noted that he was aware of a photograph of Jaidyn with apparent bruising. Mr. Biggs thought that he may have seen the photograph when looking through the file at some point in his role as Unit Manager. He could not recall Ms. Clarke relating any conversations with Ms. Williams about the relevant topics. Ms. Margaret Seymour who was Ms. Clarke’s Team Leader said she had no recollection of any discussion about the documents stolen by Mr. Leskie from Ms. Williams’ house. She did not recall Ms. Clarke discussing any conversations with Ms. Williams about the issues.

Ms. Vivian Healey, who worked in Ms. Clarke’s team stated that she never received any allegedly stolen documents from Ms. Clarke and did not have any conversations with Ms. Clarke regarding conversations with Ms. Williams about the topics referred to by Ms. Clarke.

On the question of miss-filing of documents, Ms. Danielle Wooltorton, an articled clerk in the Legal Services Branch of the Department of Human Services reviewed files for three other Leskie children in the Gippsland region, and had been unable to find any documents or case notes referring to conversations between Ms. Clarke and Ms. Williams about the topics. Also she did not locate a drawing of a fish with a human leg and foot protruding from its mouth or a note containing the words “*Tell your mates to shut their mouths because they’re telling their mates what you have done*”.

Ms. Dorothy Ross, Ms. Pamela Alaimo and Ms. Linda Archbold made statements about an audit that they had conducted of all client files that may have been handled by Ms. Clarke from 10<sup>th</sup> to 19<sup>th</sup> September 1997 to see whether any such files contained a drawing of a fish with a human leg and foot protruding from its mouth or a note containing the words “*Tell your mates to shut their mouths because they’re telling their mates what you have done*”. No documents were discovered. Also a Program Advisor with the Department, Ms. Linda Doble, said there was no indication of any deletion of electronic case notes from Breehanna’s file.

Counsel for Mr. Domaszewicz submitted that Ms. Clarke’s evidence should be viewed thus:

*“the evidence from Ms Julie Clarke about things she was shown emanating from Mr Brett Leskie’s unlawful entry into the home of Ms Williams in September, 1997. The main items seem to have been a photo of Jaidyn with arguably some bruising, and a note pad containing, inter alia, a fish drawing and a note which allegedly said “tell your mates to shut their mouths, because they’re telling their mates what you have done”,*

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<sup>125</sup> Exhibit 33 (HS). Ms. Williams said that this drawing looked like something her nephew Harley (Katie Leskie’s son) would have drawn: First Inquest transcript, p. 1519.

<sup>126</sup> The statements are annexed to the statement made by Senior Constable Gibson on 24<sup>th</sup> February 2004 (Exhibit 89).

*The bruising was apparently an innocuous result of a fishing trip accident. The drawing was a grossly different depiction of what was the reality. She turned a child's (Breehanna's) drawing of a larger fish about to swallow a smaller fish, to an allegation of seeing a child's leg sticking out of a large fish's mouth! This pathetic claim, which, like Hasson's, only came to light in August, 2003 in a statement to Gibson, was perhaps typical of the sort of flights of fancy which accompanied the gaol "confessions" and Hasson's allegations. It was shown to be ridiculous by a comparison of the representation she drew and the actual drawing, which was in the possession of the police.*

*The offending statement, supposedly apparently written by Ms Williams to Domaszewicz, turned out to be the words of a song Ms Williams had written down, was not a note to anybody, and had nothing whatsoever to do with the death of Jaidyn.<sup>127</sup>*

But that:

*"Put simply, Ms Clarke's imagination seems to have run rampant in the six years between her seeing the notepad, and contacting the police. She claimed to have raised the issues with various superiors and colleagues, but they have all denied any knowledge whatsoever. She claimed to have photocopied the notes - and lost the copies. Counsel acting for Human Services (Mr Wicks), who had sat patiently through day after day of evidence unconnected with her claims, proceeded to strongly criticize her reliability in his cross-examination of her (I am tempted here to ask, rhetorically, whilst Legal Aid would not shell out a nickel for the impugned Domaszewicz, **who** was paying for Mr Wicks' presence for all those silent days, and ditto senior counsel for the DPP and for the two barristers, silk and junior, who represented the Victorian Forensic Science Centre?). In the end, realistically, her reliable evidence amounted to nothing, and I note that Mr Kennan does not seem to have placed any weight on it in his submissions. But she, like Hasson, was opened as a "you-beaut" important piece of new material when Counsel-assisting opened the issues at the commencement of the First Inquest."<sup>128</sup>*

#### **THE DISCOVERY OF JAIDYN'S BODY IN BLUE ROCK DAM**

On 1<sup>st</sup> January 1998 Mr. Samuel Payne<sup>129</sup> observed a baby floating in the water at the Blue Rock Dam. He was on a family picnic at the time and contacted the police.

Senior Constable Brian Hall, Gippsland Water Police<sup>130</sup> subsequently retrieved the body from the dam at about 6.05pm. At about 7.45pm, Dr. Shelley Robertson, a forensic pathologist at the Victorian Institute of Forensic Medicine, attended at the dam. She noted<sup>131</sup> that the body was clad in dark green tracksuit pants, a dark green tracksuit top, a long sleeved blue top bearing the words "Mish Mash", a disposable nappy and white socks with a blue motif. She also observed an elastic type bandage covered by tape on the left arm from the region of the elbow to the wrist. The body was transported to the Victorian Institute of Forensic Medicine in Melbourne for autopsy.

On 2<sup>nd</sup> January Senior Constable Hall returned to the dam with divers from the Police Search and Rescue Squad. They undertook a search of the water in the vicinity of

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<sup>127</sup> *Submissions of Counsel for Mr. Domaszewicz, pp. 7 to 8.*

<sup>128</sup> *Submission of Counsel for Mr. Domaszewicz, p. 8.*

<sup>129</sup> *See statement (1<sup>st</sup> January 1998) at pp. 149 to 151 First Inquest Brief. Mr. Payne also gave evidence at the trial – see pp. 1389 to 1390 Trial transcript.*

<sup>130</sup> *Senior Constable Hall, pp. 362 to 376 Committal transcript (Exhibit 113) and pp. 1391 to 1403 of the Trial transcript (Exhibit 105). See also the statement made by Senior Constable Hall on 11 March 1998 (pp 152 to 154 of the First Inquest Brief).*

<sup>131</sup> *See Dr Robertson's autopsy report (Exhibit 36).*

where the body had been found and at 4.20pm, Senior Constable Manks<sup>132</sup> located a white plastic bag. The bag was approximately 12.6 metres from the nearest step out of the water. It was in 5.7 metres of water and did not have any silt or mud on it. It contained a multi-coloured striped overshirt, a blue and white striped top with a teddy bear print, grey track pants with a green waist band and red leg bands, a pair of elastic sided children's boots, a baby's bottle, a baby's bib; and an apple.

Later, Ms. Williams identified these items as belonging either to Jaidyn or Breehanna.<sup>133</sup>

Senior Constable Manks also found a child's sleeping bag attached to a crowbar with rope. The crowbar was approximately 11.6 metres away from the edge of the nearest step out of the water and was in 4.7 metres of water. In his opinion the lack of silt on the plastic bag indicated that the plastic bag had been wrapped inside the sleeping bag. He believed that Jaidyn's body had also been wrapped in the sleeping bag, and both the body and the plastic bag had popped out of a hole in the sleeping bag at the same time.

The sleeping bag was then identified by Ms. Williams from a photograph taken at the dam as a sleeping bag that had been lent to her by her sister Katie. Ms. Williams said she had taken it to Mr. Domaszewicz's house, but she did not know if she had left it there. At the time of Jaidyn's disappearance she considered it was probably at her house.<sup>134</sup>

Mr Domaszewicz stated that Jaidyn did not have his own sleeping bag. However, Mr. Domaszewicz said that he had a sleeping bag, which was not a child's sleeping bag.<sup>135</sup>

#### THE CROWBAR

- *The evidence about the crowbar*

Mr. Paul Lietzau said that<sup>136</sup> on Wednesday 11<sup>th</sup> June 1997, he took a fencing bar, secateurs, tree loppers and a hand saw to Mr. Domaszewicz's house in preparation for some gardening work. He worked at the Narracan Drive house on the following Wednesday, Thursday and Friday. He left his gardening tools there because he intended to come back on Sunday. Some days later he asked Mr. Domaszewicz for the tree loppers and the crowbar. Mr. Domaszewicz told him that they had gone in the car that the police took to Melbourne. Sometime later he asked again about his tools. Mr. Domaszewicz then advised him the crowbar and tree loppers were at Mr. Darren Farr's place. Mr. Lietzau went to Mr. Farr's and spoke to his wife Sheena. They looked in the shed and around the house but could not find the crowbar.

Mr. Lietzau stated that the crowbar, black and hexagon in shape and was about six feet long and was made of steel. It had the words "BHP Steel" stamped on it or on a sticker on it and it was a Boral Cyclone crowbar with a sticker in the middle of green and yellow and white.

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<sup>132</sup> Senior Constable Manks' evidence is at pp. 403 to 411 Committal transcript (Exhibit 113) and pp. 1451 to 1462 Trial transcript (Exhibit 105). See also the statement made by Senior Constable Manks on 11 March 1998 (pp 155 to 157 First Inquest Brief).

<sup>133</sup> First Inquest transcript, pp. 1503 to 1506.

<sup>134</sup> See pp. 1472 to 1473 of the First Inquest transcript.

<sup>135</sup> Second Record of Interview, answer to Question 809.

<sup>136</sup> The evidence of Mr. Lietzau is at pp 377 to 391 Committal transcript (Exhibit 113). Pp. 922 to 971 Trial transcript (Exhibit 105). Statement made by Mr. Lietzau on 26<sup>th</sup> February 1998, at pp. 158 to 164 First Inquest Brief.

Mr. Lietzau was shown a photograph of the crowbar found in the dam and he stated that the crowbar was similar to the one that he had. He said that it looked to be probably the same one. He said he had identified it when he saw a photograph in the newspaper in January 1998 after his mother had said to him “*that is your crowbar*”. When shown the crowbar itself in court Mr. Lietzau said that it was more or less the same sort of crowbar. Mr. Lietzau said that he last left the crowbar in Mr. Domaszewicz’s backyard. He said that he had also used a long handled shovel which belonged to Mr. Domaszewicz when he was working at Narracan Drive. He thought the shovel was shorter than the crowbar. It had a bend at the shovel head, which the crowbar did not have. When shown a photograph taken during the crime scene examination of Mr. Domaszewicz’s house of an item leaning against the fence in the yard Mr. Lietzau stated it looked like his crowbar.<sup>137</sup>

Ms. Susan Haslam stated that on Sunday, 28<sup>th</sup> September 1997, she was driving in Narracan Drive and she observed a car in the driveway of 150 Narracan Drive. She saw two men in suits and one of them was carrying a steel pole with a round end, which she believed was a crowbar.<sup>138</sup> It was as long as the height of the man carrying it. There was a uniformed police officer behind the men in suits whom she identified as local policeman Sergeant Russell Fraser.

Ms. Sue Havis said in about July 1998, she saw two shovels in a shed at 150 Narracan Drive.<sup>139</sup> She later gave them to Mr. Michael Dunne, a private investigator. She subsequently found another shovel in the shed with a bent bottom on it. When shown three shovels in court, she identified them as the shovels she had seen.

Mr. Evans gave evidence that the object shown in the crime scene photographs was the handle of the shovel.<sup>140</sup> Professor Edgar Smith, Professor of Mathematics, Faculty of Science, Technology and Engineering, La Trobe University opined that the top of the object in the photograph did not stick up above the top of the fence by more than half a millimetre.<sup>141</sup> Applying various calculations, he estimated that the maximum length of the object was 1.63 metres.

Mr. Brian Walsh, land surveyor, stated that he prepared four different estimates of the length of the object shown in a photograph against the fence at 150 Narracan Drive that had appeared in the Herald Sun newspaper.<sup>142</sup> He said that depending on the assumptions made as to the slope of the ground, the length of the object was up to 1.81 metres. Professor Gale Spring, Professor of Scientific Photography at RMIT stated he had enhanced the crime scene photograph.<sup>143</sup> He observed that the item in the photograph definitely protruded above the top of the fence. When shown the crowbar that was found in the Blue Rock Dam, he said that the top of the crowbar could be the shape of the top of the item in the photograph but could not say that it definitely was.

Mr. Christopher Bellman, a photogrammetrist, gave evidence that based on the enhancement of the crime scene photograph made by Professor Spring, he estimated the length of the object leaning against the fence to be a minimum of 1.64 metres. He said that none of the three shovels (which were measured by Professor

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<sup>137</sup> *Enlargement of the photograph, Exhibit 88.*

<sup>138</sup> *See pp 2011 to 2038 Trial transcript (Exhibit 105).*

<sup>139</sup> *See pp 2050 to 2054 Trial transcript (Exhibit 105).*

<sup>140</sup> *Trial transcript (Exhibit 105), p 1060.*

<sup>141</sup> *See pp 1144 to 1175 Trial transcript (Exhibit 105).*

<sup>142</sup> *See pp. 2054 to 2062 Trial transcript (Exhibit 105).*

<sup>143</sup> *See pp 2103 to 2123 Trial transcript (Exhibit 105).*

Smith to be 1.493 metres, 1.547 metres and 1.622 metres) could have been the object shown leaning against the fence in the photograph.<sup>144</sup>

During the First Inquest, Senior Constable Gibson, requested that a high resolution copy of the crime scene photograph showing this object be developed in order to assist in resolving the issue of whether the object was a shovel or a crowbar.<sup>145</sup> This copy was obtained and tendered into evidence at the inquest.<sup>146</sup>

- *Conclusion on the crowbar*

Counsel Assisting suggested:

*“that when taken as a whole, the evidence does not establish whether the object shown in the crime scene photograph was a shovel or a crowbar. It does no more than establish that the crowbar recovered from the Blue Rock Dam may have been the same crowbar that Mr. Lietzau left at Mr. Domaszewicz’s house the day before the deceased disappeared.”<sup>147</sup>*

### **HOW WAS JAIDYN’S BODY PLACED IN THE BLUE ROCK DAM?**

- *The possible use of a boat?*

Mr. Domaszewicz told the police that he had been a part-owner in a boat with Mr. Matthew Walsh, but he sold and had been paid for the sale of the boat in the days prior to Jaidyn’s disappearance.<sup>148</sup>

Mr. Matthew Walsh stated that he purchased a boat that Mr. Domaszewicz had found in the Trading Post from a person in Boolarra for about \$3000 and the purchase was funded in part with money from a bank loan and cash from Mr. Domaszewicz.<sup>149</sup> Apparently Messrs. Walsh and Domaszewicz would go fishing in the boat. Mr. Walsh stated that he sold the boat on the Thursday, two days before Jaidyn disappeared to Mr. Tony Andrews (the father of a friend of his from Loch Sport).<sup>150</sup> He noted that on the weekend of Jaidyn’s disappearance, the boat would have been in Loch Sport. Also the Thursday before Jaidyn’s disappearance he went to Mr. Domaszewicz’s and gave him \$500 from the sale of the boat (probably in \$50 notes).

Mr. Anthony Andrews stated that he had purchased a boat from Mr. Walsh in about 1997 and that he had paid \$1800.<sup>151</sup>

- *Throwing (or walking) Jaidyn’s body into the Dam?*

Simulation trials were undertaken at Blue Rock Dam by the Police Search and Rescue Squad.<sup>152</sup> The purpose of the simulation was to use items that resembled Jaidyn’s body and items found with him in order to help establish how they reacted when put in the dam. A video of the simulation trials was tendered at the inquest.<sup>153</sup>

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<sup>144</sup> See pp. 2079 to 2100 Trial transcript (Exhibit 105).

<sup>145</sup> See Senior Constable Gibson’s statement, 24<sup>th</sup> February 2004 (Exhibit 89).

<sup>146</sup> Exhibit 88.

<sup>147</sup> Submission by Counsel Assisting, p. 40.

<sup>148</sup> Second Record of Interview, Questions 1468 to 1471.

<sup>149</sup> See pp. 906 to 919 Trial transcript (Exhibit 105), Mr. Walsh’s statement, 1<sup>st</sup> February 2004 and pp. 1658 to 1660 First Inquest Transcript.

<sup>150</sup> See statement made (1<sup>st</sup> February 2004) Mr. Walsh said that he thought he had sold the boat about 11 months before Jaidyn’s disappearance, but in oral evidence, Mr. Walsh acknowledged he had been mistaken about this.

<sup>151</sup> Statement, 14<sup>th</sup> February 2004.

<sup>152</sup> See pp. 1387 to 1410 First Inquest transcript. See also the statement made by Senior Constable Veitch on 16<sup>th</sup> February 2004 (Exhibit 83).

<sup>153</sup> Exhibit 82.

Senior Constable Veitch threw a bundle of similar weight and dimensions to that recovered from the dam in January 1998 into the dam from different locations and distances. The weight of Jaidyn's body when recovered was approximately 18 kilograms and the crowbar to which it was tied weighed 8.2 kilograms. The bundle used in the simulation trials weighed 17.8 kilograms and was attached to a crowbar that weighed 7.8 kilograms.

The trials established that if the bundle was thrown or pushed from the edge of the dam nearest to where it was found, in order to reach a distance approaching 12.7 metres, the person pushing it out would have had to have been immersed in the water up to at least waist height (plastic bag was located 12.6 metres from the nearest step). Senior Constable Tullberg, who also assisted in the simulation trials, established that the water level in the Blue Rock Dam on 2<sup>nd</sup> January 1998 was 135.72 metres. The water level on the day the simulation trials were conducted was 135.87 metres. The water level on 16 June 1997, the day after the deceased was reported as missing, was 135.09 metres.<sup>154</sup>

- *Mr. Domaszewicz's wallet*

On 16<sup>th</sup> June 1997, Mr. Evans found a wet wallet on the floor of the car. During the Second Inquest, Mr. Domaszewicz's wallet was received into evidence.<sup>155</sup> In August and September 2005 it was examined by members of the Freshwater Sciences Unit of the Centre for Environmental Sciences with the Environment Protection Authority, with a view to establishing whether the wallet contained any diatoms. Diatoms are present in fresh water, and may have been present if the wallet had been immersed in the Blue Rock Dam. Testing did not show any diatoms in the samples taken from the wallet.<sup>156</sup>

#### **MEDICAL AND SCIENTIFIC FORENSIC EXAMINATION: THE TIME OF DEATH**

In order to determine the time of death the following areas were examined: forensic odontology evidence; evidence about the length of Jaidyn's hair; forensic textile evidence directed to establishing the period of time the clothes and other fabric items found on and near Jaidyn had been immersed in water; and forensic pathology evidence directed to establishing the period of time that Jaidyn's body had been in the water.

- *Forensic odontology evidence*

Dr. Anthony Hill, Honorary Senior Forensic Odontologist, Victorian Institute of Forensic Medicine, examined Jaidyn's dental remains on 3<sup>rd</sup> January 1998 to ascertain the dental age at the time of death.<sup>157</sup> Professor John Clement, a professor at the School of Dental Science at the University of Melbourne, was present at the examination.<sup>158</sup>

Dr. Hill and Professor Clement took photographs of the mouth and x-rays of the jaws<sup>159</sup>. As a result of decomposition, the gum tissues over the top of the bone on the upper jaw and the lower jaw were not present.<sup>160</sup>

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<sup>154</sup> See statement 24<sup>th</sup> February 2004, pp. 14 to 15.

<sup>155</sup> Exhibit 109.

<sup>156</sup> See the report (undated) prepared by Nina Bate and Paul Leahy of the Environment Protection Authority.

<sup>157</sup> Report (undated), Exhibit 3.

<sup>158</sup> Report (undated), Exhibit 3, First Inquest transcript, p. 54.

<sup>159</sup> Supplementary Report 27<sup>th</sup> August 2002 (Exhibit 4), see also First Inquest transcript, p. 43 (Five laminated photographs and diagrams comprise Exhibit 2).

<sup>160</sup> First Inquest transcript, pp. 44 to 45.

Dr. Hill classified each tooth found in the jaws according to three major stages of development. These were teeth that would have been erupted from the bony tissue in the jaw and therefore been visible in the mouth in life (“erupted teeth”); teeth that had been forming for a shorter period and had emerged from within the jaw bone but would have been covered by the gums in life (“partially erupted teeth”); and teeth that had been forming for the shortest time and were still wholly encased in the bone of the jaws (“*un-erupted teeth*”).<sup>161</sup>

Dr. Hill considered that the combined ages of all teeth helped him to arrive at an estimate of Jaidyn’s age at death, which was fourteen months, plus or minus 2 months.<sup>162</sup> Professor Clement described this as an “*extreme range*”, and noted that most children would fall at fourteen months.<sup>163</sup> He noted that approximately fifty per cent of the population would straddle fourteen months, and the percentage would decrease as one moved away from fourteen months.<sup>164</sup> He observed that only one or two percent of the population would fall at 12 months or 16 months.<sup>165</sup> Jaidyn was within the normal pattern of development of a 14 month old child<sup>166</sup> and that it was highly unlikely (or a remote possibility) he had reached 16 months at the time of death.<sup>167</sup>

Dr. Hill gave evidence that at the time of death Jaidyn would have had four visible teeth, two on the top in the front and two in the front on the bottom.<sup>168</sup> He would also have been cutting teeth, which would not necessarily have been visible, but which would have been trying to force their way through the tissue.<sup>169</sup>

Ms. Williams stated that at the time of her son’s disappearance he had four teeth, two in the top and two in the bottom.<sup>170</sup>

- *Length of Jaidyn’s hair*

It appears that, two days before Jaidyn’s disappearance, Mr. Domaszewicz cut the hair. During the First Inquest, Ms. Katie Leskie gave evidence that she thought Mr. Domaszewicz had used clippers on Jaidyn’s hair.<sup>171</sup> After the haircut, there were bald spots everywhere and in some places the hair was no longer than a centimetre. Ms. Williams also said that after the haircut, most of her son’s hair was very short and no hair was longer than a centimetre.<sup>172</sup> The hair was short at the front and at the back there were shorter bits in the shape of triangles.

At the committal Ms. Williams said that she thought Jaidyn’s hair in an autopsy photograph was considerably longer than it was at the time of the disappearance. During the First Inquest, she said she viewed the photograph again, and although it was difficult to know because the hair was wet, she still thought “*its longer [in the photo]*”.<sup>173</sup>

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<sup>161</sup> *Supplementary Report 27<sup>th</sup> August 2002 (Exhibit 4)*.

<sup>162</sup> *Report (undated), Exhibit 3, see also Supplementary Report 27<sup>th</sup> August 2002 (Exhibit 4) and First Inquest transcript, p. 42.*

<sup>163</sup> *First Inquest transcript, pp. 54 to 55.*

<sup>164</sup> *First Inquest transcript, p.55.*

<sup>165</sup> *First Inquest transcript, p.55.*

<sup>166</sup> *First Inquest transcript, p.53.*

<sup>167</sup> *First Inquest transcript, pp. 53 to 56 and 57.*

<sup>168</sup> *First Inquest transcript, p. 49.*

<sup>169</sup> *First Inquest transcript, pp. 49 to 50.*

<sup>170</sup> *Trial transcript (Exhibit 105), pp. 120 to 121.*

<sup>171</sup> *First Inquest transcript, p. 1535.*

<sup>172</sup> *First Inquest transcript, pp. 1521 and 1631.*

<sup>173</sup> *First Inquest transcript, p. 1477.*

In the First Inquest Ms. Lori Leskie said she had cut the deceased's hair on 4<sup>th</sup> May 1997.<sup>174</sup> She said that she had looked at an autopsy photograph and thought that the length of hair was consistent with growth over about five to six weeks since her haircut.

- *Forensic textile evidence*

Professor Michael Pailthorpe, a textile scientist, inspected clothing found on and with Jaidyn's body. He also viewed the sleeping bag. This was with a view to ascertaining the period of time the items had been in the Blue Rock Dam.<sup>175</sup>

The Professor noted varying levels of microbial damage to clothing. The items most affected were the long sleeved cotton undergarment that was in close contact with Jaidyn's body and the bandage that had been wrapped about his left forearm. He considered that the undershirt was more affected than the bandage, probably because it had been in contact with the midsection, a more biologically rich environment than the forearm. The remainder of the items were relatively intact. He considered that the general state of the items was consistent with protection from silt and microbial damage being provided by the sleeping bag.

Professor Pailthorpe noted that the sleeping bag showed extensive degradation. The zipper of the sleeping bag was completely detached from the sleeping bag.<sup>176</sup> However, Counsel Assisting noted:

*"In the absence of information about the precise microbial content of the water at Blue Rock Dam, Professor Pailthorpe was unable to give an opinion as to the likely length of time that the body of the deceased and the items of clothing had been immersed. This could only be ascertained by conducting an immersion test on similar textile items. Given the difficulties associated with replicating the biological activity in the dam during the relevant period and with ensuring that any site used was not the subject of deliberate or accidental interference, an immersion test was not feasible. In Professor Pailthorpe's view, the medical examination of the remains would therefore give the best indication of time of immersion."*<sup>177</sup>

And:

*"Mr. Peter Ross, a forensic officer with the Forensic Services Department, Victoria Police Forensic Services Centre, was present while Professor Pailthorpe examined both the items of clothing and the sleeping bag. He also conducted his own examinations. His observations of the state of the clothing items were consistent with those of Professor Pailthorpe. Mr. Ross observed that the failure of the seam binding the zipper to the sleeping bag had resulted in the bag opening from the bottom and sides."*

And submitted, by way of conclusion, on this issue:

*"Like Professor Pailthorpe, Mr. Ross was unable to determine how long any of the items had been immersed. However, he regarded the appearance of the clothing*

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<sup>174</sup> First Inquest transcript, pp. 1344 to 1346.

<sup>175</sup> The evidence of Professor Pailthorpe is found in a letter to Robyn Bowles 6<sup>th</sup> April 1999 (Exhibit 91), a report 25<sup>th</sup> February 2004 (Exhibit 92), a supplementary report dated 29<sup>th</sup> February 2004 (Exhibit 106), a letter to the Victorian Government Solicitor's Office dated 29<sup>th</sup> February 2004 (Exhibit 106), a letter to the Victorian Government Solicitor's Office dated 29<sup>th</sup> March 2004 (Exhibit 106) and the First Inquest transcript, pp. 1663 to 1678. See also Exhibit 93, a video tape of Professor Pailthorpe's examination of the clothing items and another tape showing examination of the sleeping bag.

<sup>176</sup> See Exhibit 106.

<sup>177</sup> Submission by Counsel Assisting, p. 45 to 46.

*found on the body of the deceased and the sleeping bag to be consistent with exposure to deteriorating conditions for a "reasonably long time".*<sup>178</sup>

- *Forensic pathology evidence*

Dr. Shelley Robertson, forensic pathologist considered that the appearance of the body at autopsy was consistent with immersion for approximately six months<sup>179</sup>, but she also considered that it was possible that Jaidyn's body had only been in the water for two months.<sup>180</sup>

Dr. Byron Collins, another forensic pathologist who was present at autopsy agreed with Dr. Robertson. He noted that it was impossible to choose which of the two time periods was likely to be accurate. Dr. Collins considered that all that could be said with any certainty was that the body had been in the water for at least a month.<sup>181</sup>

- *Conclusions about the time of death*

Counsel Assisting submitted that:

*"...the forensic pathology evidence establishes no more than that the deceased died somewhere between one month and six months prior to the discovery of the body.*

*However, the forensic odontology evidence suggests that the deceased died within a relatively short period of time from the day of his disappearance. It is consistent with death having occurred on the same day of his disappearance. It is not consistent with death having occurred months after his disappearance.*<sup>182</sup>

And the evidence about the length of Jaidyn's hair:

*"...at the time the body was recovered (in comparison to the length of his hair at the time of his disappearance) is equivocal. Little weight should therefore be attached to this evidence.*<sup>183</sup>

Counsel Assisting noted that the forensic textile evidence *"is similarly equivocal. Neither Professor Pailthorpe or Mr. Ross was able to give an estimation of the period of time the textile items found with and on the deceased had been immersed in water.*<sup>184</sup>

### **MR. DOMASZEWICZ'S ALLEGED 'CONFESSIONS'**

- *To the prisoners*

On 16<sup>th</sup> July 1997 Mr. Domaszewicz was charged with Jaidyn's murder and was remanded in custody. The charges followed two interviews with members of the Homicide Squad on 19<sup>th</sup> June 1997 and 16<sup>th</sup> July 1997 respectively.

Mr. Domaszewicz went to the Metropolitan Assessment Prison (called "MAP") on 17<sup>th</sup> July 1997 and remained at the prison until his acquittal on 4<sup>th</sup> December 1998. During this time Mr. Domaszewicz was housed in Units 8, 9, 10 and 13. All of the units were protection units.<sup>185</sup> During Mr. Domaszewicz's period in custody it was alleged that he made separate confessions to three prisoners, namely Prisoners "F", "M", and "R".

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<sup>178</sup> *Submission by Counsel Assisting, p.46.*

<sup>179</sup> *Committal transcript (Exhibit 113), pp. 26 to 27, First Inquest transcript, pp. 536 to 537.*

<sup>180</sup> *Trial transcript (Exhibit 105), p. 1539.*

<sup>181</sup> *Trial transcript (Exhibit 105), pp. 1988 to 1989, First Inquest transcript, p.578.*

<sup>182</sup> *Submission by Counsel Assisting, p.47.*

<sup>183</sup> *Submission by Counsel Assisting, p.47.*

<sup>184</sup> *Submission by Counsel Assisting, p.47.*

<sup>185</sup> *See First Inquest transcript, pp. 268 to 287 and Exhibit 19.*

Prisoner "F" was in the same protection unit at MAP as Mr. Domaszewicz from 16<sup>th</sup> February to 17<sup>th</sup> July 1998, when "F" was released on parole.<sup>186</sup> On 12<sup>th</sup> November 1998, during Mr. Domaszewicz's trial, "F" made a statement at the Melton Police Station where he alleged that Mr. Domaszewicz confessed to him to killing Jaidyn.<sup>187</sup> The statement was made available to the prosecution during the trial, but it was not tendered in evidence.

"F" had also informed police about the alleged confession prior to attending at Melton Police Station. A number of police gave evidence in the First Inquest about their contact with "F" in February 1998 (months prior to the commencement of Mr. Domaszewicz's trial and before the committal).

Detective Inspector Christopher Enright gave evidence<sup>188</sup> that on 10<sup>th</sup> February 1998, he visited MAP with Chief Inspector Mark Stubberfield to see "F". He was with Victoria Police Ethical Standards Department and had no involvement with the investigation into Jaidyn Leskie's death. For about two years "F" had been providing the Detective Inspector with information and evidence in relation to an unrelated murder case. He considered him to be a reliable source. "F" told him that he and Mr. Domaszewicz were both in the same area of the prison and he had overheard a confession by Mr. Domaszewicz say that, on the day in question, Jaidyn was there and he was working on a car in his driveway (using a jack). He also heard Mr. Domaszewicz say something about Jaidyn's blood.

Detective Inspector Enright discussed the matter with the Homicide Squad. On either Wednesday 11<sup>th</sup> or 12<sup>th</sup> February 1998, he went back to MAP with Sergeant Michael Roberts. Prisoner "F" then repeated the details in front of Sergeant Roberts. Sergeant Roberts discussed with Prisoner "F" his ongoing participation in the investigation into Jaidyn's death.

On 13<sup>th</sup> February, Detective Inspector Enright attended at the Melbourne County Court, where he gave evidence at a plea hearing that was being conducted in relation to charges arising out of an armed robbery committed by Prisoner "F". In that hearing he did not refer to the information "F" had provided about Jaidyn's death.

On 25<sup>th</sup> February, Detective Inspector Enright had another conversation with "F" when he again repeated the details of what he had overheard from Mr. Domaszewicz. After this, Detective Inspector Enright had no further involvement with the investigation into the death.

The Detective Inspector also said that he did not offer any inducement to "F" to provide information in relation to the death and was not aware of anyone else having done so. He considered that "F" was due to be released from prison within weeks or months of the time when he gave the information.

Inspector Mark Stubberfield said<sup>189</sup> that in February 1998, he was working in the Ethical Standards Division of Victoria Police with Detective Inspector Enright. He had not had any involvement in the investigation into Jaidyn Leskie's death at this time or later. On 10<sup>th</sup> February 1998, he attended at MAP with Inspector Enright, for a meeting with "F". He did not recall details of that meeting except to say that "F" related something that Mr. Domaszewicz had either said directly to him, or in a conversation with another prisoner that "F" had overheard. He did not see "F" again.

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<sup>186</sup> See *First Inquest transcript*, pp. 268 to 287 and *Exhibit 19*.

<sup>187</sup> See *First Inquest transcript*, pp. 176 to 177, 596 to 599 and *Exhibit 15*.

<sup>188</sup> See *First Inquest transcript*, pp. 118 to 134 and 380 to 413. See also *Detective Inspector Enright's handwritten notes (Exhibit 11)*.

<sup>189</sup> *First Inquest transcript*, pp. 260 to 268. See also *Inspector Stubberfield's notes (Exhibit 18)*.

In 1997 and 1998 Senior Sergeant Michael Roberts<sup>190</sup> was a member of the Homicide Squad and he had been involved in the investigation into the disappearance and death of Jaidyn Leskie. On 11<sup>th</sup> February 1998 Senior Sergeant Roberts was contacted by Detective Inspector Enright and subsequently attended at MAP with Enright the next day. They interviewed “F”, who advised he had overheard a conversation at lunchtime on 9<sup>th</sup> February between Mr. Domaszewicz and a person referred to in the inquests as Prisoner “M”. Evidently in this conversation, Mr. Domaszewicz had talked about how he had “killed the kid”. “F” stated that there was “*nothing in it for him (F)*” to give this information to police.

On 19<sup>th</sup> February 1998, Senior Sergeant Roberts again visited MAP with Detective Sergeant Fyffe. “F” told him that Mr. Domaszewicz was talking and seemed to want to “*get it off his chest*”. Apparently Mr. Domaszewicz had told Prisoner “M” that “it” was originally an accident that he’d tried to fix, but death was accidental and that the death “*possibly involved a female*”. Evidently “M” had told Mr. Domaszewicz to speak to “F”, because he “*knows about these things*”, but Mr. Domaszewicz did not follow this advice. “F” tried for about two weeks to establish a rapport with Mr. Domaszewicz and was willing to assist in any way, including by wearing a tape.

On 5<sup>th</sup> March Senior Sergeant Roberts again visited MAP but with Senior Constable Sheather. Apparently “F” had not established a rapport with Mr. Domaszewicz due to his reputation within the prison but that “M” was willing to speak to them.

The Senior Sergeant stated he had not obtained a statement from “F” because he was reluctant to make a statement and “F” was not given a tape to wear because of concerns about the security of a tape. However, a listening device was placed in “F”’s cell, but no information of any assistance was gleaned. Senior Sergeant Roberts also noted he had not offered any inducement to “F” to provide information in relation to Jaidyn’s death and was not aware of anyone else having done so.

Detective Senior Sergeant Fyffe was working in the Homicide Squad in 1998 on Jaidyn’s death. He confirmed his attendance at MAP with Senior Sergeant Roberts. The purpose of the visit was to start building a rapport with Prisoner “F” and he confirmed Roberts’ description of events. He recalled “F” was due to be released in either June or July.<sup>191</sup>

In 1998 Detective Senior Constable Russell Sheather was assigned to the Homicide Squad and was a member of the team investigating Jaidyn’s death.<sup>192</sup> He also confirmed the 5<sup>th</sup> March attendance at MAP with Senior Sergeant Roberts as well as Roberts’ recollection of the conversation. On 19<sup>th</sup> March, Mr. Sheather again attended MAP with Senior Sergeant Roberts. He took notes of a conversation with “F” in which “F” informed that Mr. Domaszewicz had told him about the day Jaidyn disappeared. The notes recorded that “F” said that Mr. Domaszewicz made reference to being with Jaidyn and working on his car at 5.00pm, to both he and the deceased then having a shower; playing Nintendo/watching TV at his house; being rung by Ms. Williams and going to the pub; having his windows smashed, getting in and getting spare keys; being 30 to 40 feet from shore; “*crowbar to sleeping bag*”; “*can’t swim*”; his mate having a dinghy; the car being on ramps, Jaidyn “*bleeding everywhere*”; and “*What have I done?*”. “F” also said that in subsequent conversations, Mr. Domaszewicz had told him that what he had previously said was untrue; that the blood on the tissues came from blood where his dog bit the deceased

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<sup>190</sup> First Inquest transcript, pp. 136 to 162 and 606 to 613. See also Senior Sergeant Roberts’ handwritten notes (Exhibit 12).

<sup>191</sup> First Inquest transcript, pp. 162 to 164 and Detective Senior Sergeant Fyffe’s handwritten notes (Exhibit 13).

<sup>192</sup> First Inquest transcript, pp. 162 to 175 and 355 to 380 and Detective Senior Constable Sheather’s handwritten notes (Exhibit 14).

on the lip; that Jaidyn was taken when he went to collect Ms. Williams; and Mr. Domaszewicz said *“What have I done? It was only a fucking accident”*. Mr. Domaszewicz also told him that Jaidyn had a broken arm from being dragged out of the window and had referred to seeing Ms. Penfold’s car in Narracan Drive. Evidently Mr. Domaszewicz also talked a lot about the car and the crowbar and said that he couldn’t be tied to the dam and that he knew the ranger at the dam.

Detective Senior Constable Sheather’s notes contained the following reference *“Get Missus H/Comm House, Poss. Not fair dinkum”*. Detective Senior Constable Sheather said that this was not a reference to “F” asking for a Housing Commission house for his wife in exchange for providing information, but referred to something said by Mr. Domaszewicz to “F”. He said that he had not offered any inducement to “F” to provide information in relation to Jaidyn’s death, and that he (Sheather) had no dealings with “F” after 19<sup>th</sup> March.

Apparently Detective Senior Constable Sheather used information provided by “F” in an affidavit in support of an application for a listening device to be placed in his cell. The information in the affidavit<sup>193</sup> was also consistent with the information that was recorded in Sheather’s notes regarding information supplied by “F”. The application for the listening device was granted and the listening device was placed in “F”’s cell for two weeks.

At the inquest “F” refused to take an oath or make an affirmation. He said that he was in fear for the physical safety of himself and his family. He said he was not prepared to elaborate any further on whether anyone had threatened him.<sup>194</sup>

Prisoner “M” was in MAP from 2<sup>nd</sup> August 1996 to 18<sup>th</sup> November 1998. He was in Mr. Domaszewicz’s unit from 17<sup>th</sup> July to 13<sup>th</sup> October 1997. He worked as a food billet and had access to all of the protection units.<sup>195</sup> On 16<sup>th</sup> November 1998 during the currency of the trial “M” made a statement in which he alleged that Mr. Domaszewicz had confessed to him to killing Jaidyn.<sup>196</sup> This statement was made available to the prosecution during the trial, but was not tendered in evidence.

Also this was not the first time “M” had talked to police about the alleged confession. A number of police officers gave evidence about contact with “M” in February and March 1998 (before the trial, committal and service of the autopsy report describing injuries to Jaidyn’s body on Mr. Domaszewicz’s solicitors<sup>197</sup>).

Senior Sergeant Roberts stated that on 6<sup>th</sup> March 1998, he visited MAP and spoke to “M”. “M” believed that Mr. Domaszewicz had killed Jaidyn and that the day after his body had been found, Mr. Domaszewicz had come back from the prison hospital, approached “M”, putting his arms around him and said *“What have I done?”*. Mr. Domaszewicz had also told him that he’d borrowed an iron bar from a friend of his to do some work on his backyard. “M” said that he would attempt to get Mr. Domaszewicz to confide in him.

Senior Sergeant Roberts said he did not offer any inducement to “M” to provide information in relation to the death and he was not aware of anyone else having done so. Detective Senior Constable Sheather said he attended MAP with Roberts. He also stated that the evidence given by Roberts detailing their conversation with “M” on that day was correct.

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193 Exhibit 25.

194 First Inquest Transcript, pp. 255 to 257.

195 See First Inquest transcript, pp. 268 to 287 and Exhibit 19.

196 Exhibit 40. See also the evidence of Detective Sergeant Daly, First Inquest transcript, pp. 196 to 211.

197 See First Inquest transcript pp. 598 to 599.

On 13<sup>th</sup> November 1998 Sergeant Paul Cripps attended at MAP.<sup>198</sup> This was the day after “F” had made his statement alleging that Mr. Domaszewicz had confessed both to him and to Prisoner “M”. The Sergeant spoke to “M” who told him that he did not wish to be interviewed but was happy to have a chat. He told the Sergeant that Mr. Domaszewicz was a “*Nintendo freak*” and that he had told him that he had broken Jaidyn’s arm when they were playing Nintendo. Jaidyn had interrupted and Mr. Domaszewicz had “*lost it*”. The conversation was then interrupted by a prison officer and “M” said he did not want to be interviewed.

On 16<sup>th</sup> November Sergeant Cripps attended MAP with Detective Sergeant Daly and he took a statement from “M”. He stated that he did not offer any inducement to “M” in exchange for providing information in relation to the death. Evidently Sergeant Cripps was asked by a solicitor acting for “M” to provide an affidavit outlining the assistance “M” had provided. This was done and he had no other dealings with “M”.<sup>199</sup>

At the First Inquest “M” stated that in November 1998, he had been in Unit 8 at the Metropolitan Assessment Prison. During this time, he worked as a food billet and as a peer educator. He said that although the statement of November 1998 looked like it bore his signature, he did not recall making it. He said that he did not recall speaking to Sergeant Cripps and also did not recall speaking with Mr. Domaszewicz about Jaidyn.<sup>200</sup>

“M” said that there was a period whilst he was in MAP that he had no recollection. He considered that this may have been due to the stress of the trials and a medical condition his wife was suffering from, as well as to medication he was taking. Also he did not recall an affidavit being prepared on his behalf for the Court of Appeal.

Counsel for Mr. Domaszewicz suggested that in exchange for making his statement “M” had been transferred to Ararat Prison. The reasons behind “M”’s prison movements were explained by Ms. Elizabeth Penter, Acting General Manager of the Sentence Management Unit for Victoria. She said<sup>201</sup> “M” had been on a long-term placement at the Metropolitan Assessment Prison since July 1995 and that on 11<sup>th</sup> September 1998, a decision was made to transfer him to Ararat Prison. However he could not be transferred until his legal appeals had been finalised. Evidently he was a medium security prisoner who required protection and Ararat Prison was the primary protection location for male prisoners of medium security rating. On 10<sup>th</sup> and 11<sup>th</sup> November 1998 “M”’s appeal to the Court of Appeal was heard and he was classified as “*legally cleared*” for the transfer to Ararat Prison. She opined that the bus leaving from MAP to Ararat Prison on 18<sup>th</sup> November 1998 was probably the first opportunity to transfer him after reclassification. She noted that the making of a statement to police was not a relevant consideration in transfer decisions.

Prisoner “R” was in MAP during some of the time that Mr. Domaszewicz was there. “R” was transferred to the prison from Ararat Prison in November 1997. He was located in various protection units at MAP from November to 10<sup>th</sup> December 1997 when he returned to Ararat. He was again transferred back to MAP from Ararat in July 1998, and was housed in various protection units from 3<sup>rd</sup> July to 18<sup>th</sup> November 1998, when he was transferred back to Ararat Prison (on the same day as “M”). “R”

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<sup>198</sup> *First Inquest transcript, pp. 176 to 177, 596 to 599 and Sergeant Cripps’ handwritten diary entries and day book notes (Exhibit 41).*

<sup>199</sup> *Exhibit 41.*

<sup>200</sup> *First Inquest transcript, pp. 714 to 731.*

<sup>201</sup> *First Inquest transcript, pp. 694 to 710.*

was not housed in the same protection unit at MAP as Mr. Domaszewicz, but similar to “M”, he worked as a food billet and had access to the protection units.<sup>202</sup>

On 16<sup>th</sup> November 1998, during Mr. Domaszewicz’s trial “R” made a statement in which he alleged that he (Mr. Domaszewicz) had confessed to him to killing Jaidyn.<sup>203</sup> However, “R” had not made any reference to the alleged confession to any police officer before this. His statement was also provided to the prosecution during the trial, but not tendered in evidence.

Detective Sergeant Michael Daly took a statement from Prisoner “R”. At that time he (Daly) was attached to the Homicide Squad.<sup>204</sup> He went to MAP with Detective Senior Constable Cripps to take a statement from “M”. While Cripps was in the process of taking the statement, Daly was approached by a prison guard who told him that another prisoner wanted to speak to a member of the Homicide Squad – this prisoner was “R”. He left Cripps to speak to “R”. “R” told the Detective Sergeant that Mr. Domaszewicz had made admissions to him in relation to Jaidyn’s death. “R” told Detective Sergeant Daly that he was doing time for a double murder and was due for release in a couple of years. He said that he did not want anything. At the end of taking the statement, Detective Senior Constable Cripps came in and read the statement back to “R” and it was signed by him. Detective Sergeant Daly had not had any prior dealings with “R” and did not have any dealings with him after this time. He said he did not offer him anything in exchange for making the statement and was not aware of anyone else having done so.

In the First Inquest “R” stated<sup>205</sup> that in November 1998, he was in the Metropolitan Assessment Prison. He had been incarcerated since 1988. In June 1989, he had pleaded guilty to a charge of murder, for which he had been sentenced to life imprisonment, with a minimum term of 13 years and nine months. He had been on remand for 18 months. He was one of five co-offenders. He was released from prison on 26<sup>th</sup> February 2003. He said that on 16<sup>th</sup> November 1998 (or possibly the day before) he made a request to the Governor of MAP that he make a statement on the Domaszewicz case. At this time he said he did not know that members of the Homicide Squad were going to be at the prison that day. Mr. Domaszewicz was in Unit 10 and “R” was in Unit 8. “R” said he had been to the gym with Mr. Domaszewicz and other prisoners from these Units a couple of times. They were not great mates and he had sometimes spoken to Mr. Domaszewicz but not often. He said he did not get to know Mr. Domaszewicz until he had come to Unit 8 for about eight to ten days due to “*loss of privileges*”.<sup>206</sup>

“R” stated that he and “M” were the food billets for Unit 8. It was their job to take three meals to the prisoners in their cells each day. They also got the prisoners’ washing out, washed it, and mopped the prisoners’ cells out. Prisoners on “*loss of privileges*” were not permitted to mix with other people. “R” would give them a cigarette if they needed one. “R” stated that when Mr. Domaszewicz was in Unit 8 for “*loss of privileges*”, he went into his cell looking for a cigarette. Mr. Domaszewicz told him to have a seat so they could “*have a yarn*”. “R” told him he hated “*Crown witnesses*”. Evidently they both talked for about 20 minutes, and then Mr. Domaszewicz told him he would tell him the truth about how the child died. “R” said

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202 See *First Inquest transcript*, pp. 268 to 287 and Exhibit 19.

203 Exhibit 16.

204 *First Inquest transcript*, pp. 196 to 211.

205 *First Inquest Transcript*, pp. 211 to 250.

206 The records showed that Mr Domaszewicz was in Unit 8 from 17 July 1997 to 13 October 1997, for a five day period in April 1998 and for a ten day period in August 1998. Between October 1997 and August 1998, the majority of his time was in Unit 9. After August 1998, he was in Unit 10 for the rest of the period of his incarceration.

he had the impression that Mr. Domaszewicz trusted him. Mr. Domaszewicz said the car was on a jack and the baby got its arms caught under the car. The child was screaming and Mr. Domaszewicz did not know what to do, so he slipped the child something to make it calmer. He could not shut the child up so he put a pillow over its head and hit it with a crowbar. While Mr. Domaszewicz was telling him this, "R" saw him getting hot and sweaty and upset. "R" said that Mr. Domaszewicz did not talk to him about this again.

"R" said that neither Detective Sergeant Daly nor Detective Senior Constable Cripps, or anyone else, had offered him anything in exchange for making the statement, and he had made it quite clear that he did not want anything. He said that he had done what he'd done because he felt what Mr. Domaszewicz had told him should have been put in front of the police. He said he felt sorry for what happened to the baby. He said that he had not given evidence against any of his co-offenders.

"R" stated that he did not recall speaking to anyone else about the matters in the statement prior to making the statement, but that he spoke to "M" after making the statement. He had not spoken to "M" since he was released. Also he did not know at that time that "F" had made a statement and had not had anything to do with him. "R" also stated that he did not want early release from prison and had tried to stop himself subsequently being released because he did not know if he could cope with "the outside". He said that at the time of committing the murder, he had been addicted to amphetamines. According to him the killing was "drug-related" and involved the infliction of torture.

Ms. Penter explained the reasons for "R"'s various transfers between MAP and Ararat Prison. She said <sup>207</sup> that he had been transferred from Ararat to MAP because of a requirement for medical treatment and review as he suffered from chronic epilepsy. While he was at MAP he was reviewed and wanted to return to Ararat. On 18<sup>th</sup> November his medical condition was found to have stabilised and that he should be returned to Ararat for the remainder of his sentence. Ms. Penter also noted that the making of a statement to police was not a relevant consideration in transfer decisions.

In November 1998 Mr. Roderick Wise, Director of Prison Services was the General Manager of MAP. He was the Governor in charge of the prison and there were two Operations Managers who were also known as Governors.<sup>208</sup> He was unable to say whether he had had a discussion with "R" about 16<sup>th</sup> November 1998 in relation to information "R" wanted to give to the Homicide Squad. Mr. Wise did not find any note about such a discussion. He had spoken to the other Governors and they were also unable to recall any such discussion.

Another prisoner, Mr. Angelo Saliba, made a statement<sup>209</sup> during the inquest after the evidence of Prisoners "F", "M" and "R" about an alleged confession made by Mr. Domaszewicz to a prison officer at MAP. Mr. Saliba said that he had been on remand in MAP in 1997 and 1998.

According to Mr. Saliba, in January 1998, a prison officer named Mr. Jackson (or possibly a person by the name of Mr. George) informed him that Mr. Domaszewicz confessed to killing Jaidyn. Similar details (to those of the other three prisoners) of the alleged confession were contained in Mr. Saliba's statement. However, there was one allegation that was different – that Ms. Williams told Mr. Domaszewicz to give the deceased one of her tablets "to calm him down". As a result of this

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<sup>207</sup> First Inquest transcript, pp. 694 to 710.

<sup>208</sup> First Inquest transcript, pp. 710 to 714.

<sup>209</sup> See statement 29<sup>th</sup> December 2003 annexed to the statement made by Senior Constable Gibson 24<sup>th</sup> February 2004 (Exhibit 89).

statement further inquiries were made of prison officers working at MAP and no one recalled any conversation with Mr. Domaszewicz about Jaidyn's death. Statements were obtained from Prison Officers Garry Jackson and George Golden.<sup>210</sup>

Mr. Jackson said that he recalled Mr. Domaszewicz but did not remember Mr. Saliba. He said that Mr. Domaszewicz did not give him the explanation provided in the version given by Mr. Saliba. Mr. Jackson said that the only conversation concerning the trial that he remembered was when Mr. Domaszewicz discussed the crowbar that was found with Jaidyn's body and the photograph of a crowbar in a crime scene photograph. Evidently Mr. Domaszewicz claimed to Jackson that he was "set up" by the police.

Mr. Golden had no recollection of any discussion with Mr. Domaszewicz about Jaidyn. Evidently he had checked the rosters for the period and could not suggest any other prison officer at that time with the name "George".

At the Second Inquest a tape recording of a discussion between Mr. Domaszewicz and Mr. Steven Veniamin which occurred on 7<sup>th</sup> April 2004 was tendered.<sup>211</sup> The following discussion is relevant:

*Veniamin: What about when you tormented that kid?*

*Domaszewicz: (Laughs) Yeah, that was different, it was a long time ago.*

*Veniamin: Well why was that different?*

*Domaszewicz: No, that's just a fuckin' stupid thing to even say. I never done nothin'. It's like everything's so –*

*Veniamin: (inaudible) that car (inaudible) reckon.*

*Domaszewicz: Hey?*

*Veniamin: You dropped that car on it mate.*

*Domaszewicz: No. If – mate, I'm telling you now there's a big difference from that and fuckin' murder, that – that – for a start that's accidental death.*

*Veniamin: Yeah.*

*Domaszewicz: You know what I mean?*

*Veniamin: Yeah.*

*Domaszewicz: And I'm not stupid Steve. You know I'm not stupid."*

Mr. Veniamin was visited by a police officer and asked to contact the State Coroner's Assistants Office in relation to this conversation.<sup>212</sup> No contact has been made by him.

- *Conclusions on the confessions - submissions*

Counsel Assisting submitted that the accounts of each of the Prisoners are corroborated thus:

*(1) each of them was located in the Metropolitan Assessment Prison during a period in which Mr. Domaszewicz was also at that location;*

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<sup>210</sup> See statement made by Mr. Jackson 30<sup>th</sup> December 2003 and the statement made by Mr. Golden on 26<sup>th</sup> January 2004 [annexed to the statement made by Senior Constable Gibson 24<sup>th</sup> February 2004 (Exhibit 89)].

<sup>211</sup> The transcript of the conversation, a CD containing the recording and documentation associated with the warrant used to obtain the recording are Exhibits 95 and 96.

<sup>212</sup> See the statement made by Constable Lamond 15<sup>th</sup> August 2004 (Exhibit 112).

(2) each of them had access, at one time or another, to the protection unit(s) where Mr. Domaszewicz was located within the Metropolitan Assessment Prison;

(3) the evidence of the various police officers suggests that both Prisoners "F" and "M" first provided details of the accounts contained in the statements made in November 1998 in February and March 1998, a time when the hearing of the charges against Mr. Domaszewicz had not commenced and only limited information about the case (including the injuries sustained by the deceased) was in the public domain..."<sup>213</sup>

And that "none of the three prisoners appeared to have anything to gain from providing the information". Counsel Assisting noted:

(a) in relation to Prisoner "F", the evidence suggests that he was due for release within a short period of time (although we note that the reference in Detective Senior Constable Sheather's notes to "Get Missus H/Comm House, Poss. Not fair dinkum", is capable of being construed as a request by Prisoner "F" for benefits in exchange for the provision of information);

(b) in relation to Prisoner "M", although the provision of the information was later the subject of an affidavit used in Court of Appeal proceedings, there appeared to be no direct benefit provided in exchange for the information – the suggestion that Prisoner "M" was transferred to Ararat Prison in exchange for providing the information was not borne out by the evidence of prison management; and

(c) in relation to Prisoner "R", the evidence suggests that there was also no benefit provided in exchange for the information - the suggestion that Prisoner "R" was transferred to Ararat Prison in exchange for providing the information was also not borne out by the evidence of prison management."<sup>214</sup>

Counsel Assisting concluded by saying "the accounts contained in the statements of Prisoner "F", Prisoner "M" are of limited value or reliability". They both suggested the following reasons for this assessment of their evidence:

(1) when called upon during the First Inquest to give evidence in relation to his statement, Prisoner "F" refused to give sworn evidence as to the contents of that statement or to the information that he provided the police in February and March 1998; and

(2) when called upon during the First Inquest to give evidence in relation to his statement, Prisoner "M" testified that although the statement appeared to bear his signature, he had no recollection of making it, or of speaking to the police officers about any confession made by Mr Domaszewicz, or of any conversations with Mr Domaszewicz."<sup>215</sup>

However, Counsel Assisting had a slightly different view of Prisoner "R"'s testimony:

"Unlike Prisoners "F" and "M", when called upon during the First Inquest to give evidence in relation to his statement, Prisoner "R" gave sworn evidence consistent with the account contained in that statement. In our view, Prisoner "R"'s evidence was not undermined in cross-examination. The account given by Prisoner "R" is therefore of greater probative value than the account contained in the statements of Prisoner "M" and Prisoner "F". However, this probative value is diminished by the fact that the first time Prisoner "R" told any member of the police about the alleged confession was in November 1998, a time when the trial of Mr. Domaszewicz was underway and there was therefore a large amount of information about the case in the public domain."<sup>216</sup>

On the evidence of Mr. Saliba, Counsel Assisting were of the view that his information was of "extremely limited value and reliability". The reasons for this conclusion were as follows:

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<sup>213</sup> Submissions by Counsel Assisting, p. 62.

<sup>214</sup> Submissions by Counsel Assisting, p. 62.

<sup>215</sup> Submission by Counsel Assisting, p. 63.

<sup>216</sup> Submission by Counsel Assisting, p. 63.

*“(1) The statement made by Mr. Saliba was made at an extremely late stage – Mr. Domaszewicz’s committal and trial had been completed, and the First Inquest was well underway. Each of Prisoners “F”, “M” and “R” had given evidence in that proceeding.*

*(2) The statement made by Mr. Saliba is not corroborated by other evidence. None of the prison officers working at the prison at that time confirm having had such a conversation with Mr. Saliba, or receiving any confession from Mr. Domaszewicz.<sup>217</sup>*

On the telephone conversation with Mr. Veniamin Counsel Assisting submitted:

*“the conversation between Mr. Domaszewicz and Mr. Veniamin is entirely equivocal. On one construction, it contains an admission, and on another, it contains an exculpatory account. No weight should be placed upon it.”<sup>218</sup>*

Counsel for Mr. Domaszewicz also examined the alleged confessions under the heading “*Goalhouse Confessions*”. In summary explained how the issue was raised in the investigation when he noted:

*“Three prisoners originally alleged that they had heard Domaszewicz confess to being responsible for Jaidyn’s death. None made statements until late in the trial (November, 1998). Only one swore up to his statement before the Coroner. The statements contained fundamental contradictions between each other, and these were compounded when one examines what “F” and “M” originally told the police, nine months before they made their statements.”<sup>219</sup>*

And Counsel for Mr. Domaszewicz made some general observations on the issue:

*1. “Goalhouse confessions” are notoriously unreliable. The law requires the tribunal-of-fact to look for corroboration of such material. Prisoners traditionally gossip about why others are in custody, and are well-known to have vivid imaginations. A comparison of the three “confessions” allegedly made to “F”, “M”, and “R” respectively underlines the need for caution. The broken arm of Jaidyn was variously supposed to have been caused (in the alleged words of Domaszewicz) by a car falling on it, when he was taken out of the house via a broken window, and when Domaszewicz lost his temper whilst playing Nintendo, and struck the deceased.*

*There was an enormous amount of publicity about the case, both before, during and after the committal and trial. The head of the investigation, Rowland Legge, often conducted press conferences, and various snippets of information were leaked to the press (eg, the injuries to Jaidyn found during the autopsy, damage to the windows, the fact that Domaszewicz told the police he was working on his car that day, and even his pre-occupation with playing Nintendo).*

*2. This was material which was available to the Crown during the trial. I was shown copies of their statements by the Crown Prosecutor, Mr Morgan-Payler QC, and drew them to the attention of the trial judge myself (in the absence of the jury). The Crown made it quite clear that it did not intend to call the evidence. An experienced Prosecutor like Mr Morgan-Payler could clearly see that they raised more problems for the Crown than they were worth. The decision of Mr Morgan-Payler Ca man who has appeared in many, many murder trials, and who was then Senior Crown Prosecutor in Victoria and ultimately became Deputy-DPP before his appointment to the Bench) ought not to be dismissed or ignored as Mr Kennan tacitly appears to urge the Coroner now. The matter was discussed at pp.1848-1854 of the trial and at p. 1854, Vincent J said,*

*“And he (ie, Mr Morgan-Payler) has made the assessment that this material is of no evidentiary value. I am conscious of the very principles that you have adverted to with respect to the use to which goal-house confessions and statements may be put and the*

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<sup>217</sup> Submission by Counsel Assisting, p. 63.

<sup>218</sup> Submission by Counsel Assisting, pp. 63 to 64.

<sup>219</sup> Submissions of Counsel for Mr. Domaszewicz, p.12.

cautionary note which the High Court in particular has sounded in relation to such matters. "

Furthermore, Mr Enright (the policeman involved in the Juric case, which was the other case where "F" alleged he had heard a confession whilst in custody) told Mr Rafter early in the First Inquest-

"Do you say that Foley has told you that he's overheard a confession to murder?---Yes, yes.

Why wouldn't they want to pursue that? -- Well look, for one reason, for example, might be because of his situation in prison, I've taken statements and I've spoken to prisoners about confessions to murder that - that have never been produced in court and haven't been used for a variety of reasons, principally because of the positions that they're in at the time.

Not because they don't believe the person?--No, no, because as I say, because of the context of that - where those people are at the particular time and the warnings that judges give them and required by law to give them, it's a consideration, best made, as I say, by those involved in the case." (my underling)

Mr Morgan-Payler was no doubt aware that the timing of the statements of the three "confessees" was such that further problems would arise before the jury. There was a nine-month gap between "F" and "M" first speaking with the police, and the making of their statements. Prisoners are notorious for having varied agendas regarding their willingness to assist police.

It is put that it flies in the face of that disinclination of the Crown - to call the evidence at the trial - to now seek to belatedly rely on such tainted material years later. Even worse, to try to do so when two of the three witnesses either refused to give evidence ("F") or pretended not to be able to remember anything about what was supposedly said by Domaszewicz, or what he told the police in a statement placed in his hands at the 1st Inquest ("M"). People in court will recall Mr Kennan's heroic attempts to have "M"'s statement read to the Coroner despite M professing to not remember even making it, or what was in it.

3. It is naive, with respect, to imagine or believe that such material did not come to light as a result of promises made, or hopes of some advantage. In the case of "M", before I saw or had any inkling of any alleged "confession", I was told during the trial (in the last week of the Crown case, in fact) by his counsel for an appeal he was running against sentence, that he had been contacted by his client, who had told him the police had asked him to make a statement in the Domaszewicz trial. They had allegedly offered to assist his appeal by providing a letter for the Court of Appeal. I now understand that this letter was ultimately provided, after "M" made his statement. I was unable to cross-examine "M" about these matters, because he had "a fit of the don't remembers", and could not even remember his counsel's name when I put it to him.

Regarding "F", Mr Enright likewise assisted him on two occasions when he was being sentenced for serious offences. This was because "F" had assisted the police by claiming, inter alia, that another man named Juric had confessed to murder to him whilst they were both in custody. One of these occasions, when Enright gave evidence for "F", was at the County Court on 13th February, 1998, when a plea was conducted for "F" for armed robbery and conduct endangering life. On the 10th February, three days before the plea, "F" happened to mention to Enright that he had overheard Domaszewicz make admissions regarding the death of Jaidyn Leskie. I wished to cross-examine "F" about that coincidence, and put that he was attempting to shore up police assistance on his plea, but "F" refused to give any evidence before the Coroner in the First (Jaidyn Leskie) Inquest. I had cross-examined "F" in the Juric matter, as I appeared in one of his trials (there were ultimately four!). Juric was formally acquitted by a jury of murder in that case, despite the alleged confession to "F", who was called

by the Crown in all four of Juric's (sic) trials. Cl drew the Coroner's attention in these proceedings to the pages where "F" was cross-examined by me in Juric trial No 3 about the alleged confession, police assistance to him, and to Enright's admissions at Juric's trial about the assistance he gave to "F".) It was clearly revealed at the Juric trial that "F" benefitted very much indeed by making his allegations against June, and the sentences he ultimately received were only about onethird of what he might otherwise have had to serve.

It is the very fact that prisoners are known to seek to curry favour with the police and sentencing courts that underlines the unreliability of alleged gaolhouse confessions.

4. As the police interviews demonstrate, Domaszewicz is an exceedingly garrulous person. He was taped soon after the homicide squad became involved until his arrest. His phone, mobile, house and car were bugged. Friends were spoken to, some on many occasions, by investigating police regarding whether he had said anything incriminating. No such material was forthcoming. No tapes of conversations made by the police were tendered in evidence at the trial. Not one word of evidence was offered alleging that Domaszewicz had made any admission. There were plenty of denials, but not a whit of an admission. On one occasion, a friend of Domaszewicz was wired by the police and taped a conversation with him at the friend's home. where he tried to obtain admissions from my client. Not one word was sought to be led by the police. We called evidence about this during the defence case. Bugs were placed in his cell and in the area used for visits, including legal visits. Police listened into, and taped, these conversations also. Not one word was sought to be placed before the jury. "F" offered to tape Domaszewicz. Nothing eventuated. Yet he (Domaszewicz) is supposed (not on tape, of course) to have carelessly let slip to a virtual total stranger ("M") clear admissions of guilt and within the hearing of another stranger ("F") and also made admissions to "R", another stranger and a person in whom it might be thought anyone would be highly unlikely to confide. And then "R" just happens to offer his help when his friend and fellow billet "M" is making a statement at the same time - towards the end of the Crown case at the much-publicized trial, almost a year after the alleged conversation."<sup>220</sup>

And, by way of a general conclusion, observed it was:

*"Little wonder that Mr Morgan-Payler opted not to rely on such material."*<sup>221</sup>

On Prisoner "F", Counsel for Mr. Domaszewicz noted the following background:

*"...F" gave evidence in the Juric trial that Juric had confessed to him in gaol regarding the torture/murder of a man in Preston. Enright and other police spoke with Foley after he asked to speak to them, and he eventually was wired to facilitate taping of further conversations with Juric in the prison. The tapes revealed:*

- *Juric made no admissions on tape, and specifically denied having anything to do with the killing of the deceased.*
- *"F", who had read the hand up brief in the case, discussed Juric's "weak" alibi, and offered to assist to obtain false alibi evidence. There followed a series of discussions, where "F" revealed himself to be both cunning and resourceful, and Juric agreed to have "F" obtain such false evidence.*

*The tapes were admitted in evidence, and Juric convicted. But the Court of Appeal ruled in the reported decision of Juric that the tapes should have been excluded. So eventually, the jury (in the last two trials) only heard "F's" allegations of untaped admissions.*

*"F" received two very light sentences, for armed robberies and a whole flotilla of*

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<sup>220</sup> *Submissions of Counsel for Mr. Domaszewicz, pp.12 to 15.*

<sup>221</sup> *Submissions of Counsel for Mr. Domaszewicz, p.15.*

burglaries, with the assistance of Mr Enright. He is a man who was tried and acquitted of double-murder. His friend, whom he drove from the scene of the fatal shooting, was convicted of both killings, and "F" remained a prison associate of him. "F" had a reputation of being a man who got away with murder in gaol and he traded on this, claiming that prisoners sought his counsel because he had "beaten a murder rap".

"F's" refusal to give evidence led to my being unable to put these matters, and a good deal of others, to him at the First Inquest. It is frankly ridiculous for counsel assisting the Coroner to now seek to place any reliance at all on what "F" told the police. And there are other criticisms one could make of "F" s" allegations in his statement regarding Domaszewicz:

(i) When one traces the detail of the account he originally gave to Enright, then expanded upon to police in the Leskie investigation, then his statement made nine months later, it is apparent that he originally claimed merely to have **overheard** Domaszewicz making **fairly general** admissions. He gradually, as police paid him more visits, expanded upon this account, and alleged that he overheard Domaszewicz talking to prisoner "M". His claim that Domaszewicz seemed to want to "get it off his chest" was exactly what he claimed Juric wanted to do in that case. Eventually, after numerous visits by the investigating police, he tells Sheather and Roberts on March 19, 1998, that Domaszewicz told him a whole lot of things **directly!** And that there were a whole series of conversations (Yet when he then, encouraged by the police, tried to "befriend" Domaszewicz, he was unsuccessful!). A comparison of the detail of what "F" alleges "M" told him, Domaszewicz "revealed" to "M" and "M's" actual statement exhibits a large number of fundamental differences of detail.

(ii) It is rather obvious, in my submission, and was from the time I first read "F's" statement back in November, 1998, during the Domaszewicz trial, that "F" had rolled together various things he'd heard about the case - rumours like:-

- a female was involved
- the car was on the jack (later mysteriously changed (more accurately) to the car was on ramps
- going to the pub
- getting in and getting spare keys
- using his mate's dinghy
- dog bit Jaidyn on the lip
- Jaidyn broke his arm when he was dragged out the broken window
- seeing Ms Penfold' s car

None of these allegations formed the subject matter of Crown allegations at the Domaszewicz trial, but these and hundreds of other rumours floated about between Jaidyn's disappearance and the jury's eventual acquittal. Legge confirmed this in his evidence at the trial. There are vast contradictions between the police notes of what "F" allegedly told them in February, and the statement he eventually made in November, 1998. Mr Kennan glosses over these contradictions in his final submissions here.

(iii) Regarding any quid pro quo, the note in Sheather's notes "Get Missus H/Comm House, Poss. Not fair dinkum" was said by Sheather to be a reference to something Domaszewicz said to prisoner "F"! Apart from the absurdity of that allegation (which reflects on Sheather's credibility), I note that in the Juric case, there were various requests made by "F" to Enright regarding his wife, who he claimed had terminal cancer. Incidentally, "F" was later to concede his wife was still alive and well five years after he first made this allegation. It is a feature of his appearances in court for plea and sentence that he has played the "dying wife" card. Among Enright's notes is one where "F" seeks Housing Commission accommodation for her, and Enright

*gave him some assistance in this area.*<sup>222</sup>

On Prisoner "M", Counsel for Mr. Domaszewicz noted that:

*"Mr Kennan relies on the fact that "M" spoke to the police in February and March, 1998 "months prior to the trial, weeks prior to the commencement of Mr Domaszewicz's committal and days prior to the service of the autopsy report outlining the injuries to the deceased's body on Mr Domaszewicz's solicitors". I submit that if there is any reliance to be placed on such matters, some proof that no details of the injuries to the deceased were leaked to the media, released by investigators, or otherwise published in the media, prior to "F" and "M" providing information, should have been submitted. There was no evidence called to that effect. This is a case where the thirst for information from the police (and others connected with the investigation) was such that any scintilla of information, real or rumour, was highlighted in the media, with the print media in particular seeking to gain an exclusive and prepared to go to unprecedented lengths to do so.*

*Of more interest is the timing of "M" s" first speaking to the police, and its relationship to "F" telling Enright on the 10th February that he had overheard Domaszewicz admit to the killing. I was unable to explore the relationship between "F" and "M" as they both did not give any relevant evidence. They obviously knew each other, and "F" told police that he heard Domaszewicz confess to "M". "F" told the police that "M" told Domaszewicz to speak to Prisoner "F" "because he knows about these things". There would therefore appear to be some relationship between "F" and "M", but it is impossible to say what that is, and whether, for example, "M" might have agreed to back up what "F" told the police.*

*The timing of "M" s" statement, coming nine months after he first spoke to police and late in the trial in November is also curious. Why did the police wait so long to attempt to obtain statements from both "P" and "M"? What motivated them to approach these two prisoners during the trial, nearing the end of the Crown case?*

*I have already dealt with the offer by the police to assist "M" in his appeal against sentence, something the police denied during cross-examination.*

*Note that nowhere in "M"s" statement does he mention "P" being present when he was supposedly told anything by Domaszewicz regarding the death of Jaidyn.*

*"M"s" account was that Domaszewicz has supposedly confessed on the day the body was found so either on January 1, or soon thereafter when the matter was publicized. "M" admitted that he **believed** that Domaszewicz had killed Jaidyn before this. He offered to attempt to have Domaszewicz confide in him. There was no evidence that this led to any further admissions, or that the police met with "M" again until November, 1998.*

*But on 13th November, the very next day after "P" made his belated statement to the police, "M" gave more details and finally made a statement 3 days later (16th Nov.)*

*"M"s" information, that Domaszewicz told him he broke the child's arm when he lost it whilst playing Nintendo, combines three things:*

- Domaszewicz was a Nintendo freak. I would be surprised if the whole gaol did not know about that,*
- The deceased had a broken arm. I was aware of many such reports prior to the committal. I often found out about the case against Domaszewicz simply by reading the morning Herald-Sun. The hand-up brief existed well before the finding of the body. I had a copy in November or early December, 1997. The Committal was originally set down for late January, 1998, but the*

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<sup>222</sup> *Submissions of Counsel for Mr. Domaszewicz, p.16 to 18.*

*finding of the body and the resulting autopsy and further investigation led inevitably to the postponement of the committal (until March, 1998)*

- *Domaszewicz broke Jaidyn's arm because he interrupted his Nintendo game. Nice try, but transparently ridiculous! And what happened to the car falling of its jack/ramp, which is hinted at by "F" and alleged by "R"? This variation in how Jaidyn sustained the broken arm is a good example of fertile imaginations in a gaol, combined with rumour and idle gossip."*<sup>223</sup>

And Counsel also supposed that:

*"we have to accept that it is simply a coincidence that both "M" and "R", who were both needing protection, were sent to the more desirable gaol at Ararat on 18th November, and that it had nothing to do with their co-operation with the authorities, and that no word was spoken by the police to facilitate the move. It was just a co-incidence - for both of them."*<sup>224</sup>

Counsel for Mr. Domaszewicz examined the evidence of Prisoner "R". He noted that he would deal:

*"...with his evidence in a little depth, because he was the only one of the "gaolhouse confessees" to basically swear up to his statement, and because, extraordinarily as it seems to me, Mr Kennan wants the Coroner to accept his account and urges this in his own final submissions!*

- *"R" claimed that on Nov. 16, when he spoke to the Homicide Squad, he just happened that day to ask to speak to them because he just happened to have some information regarding what Domaszewicz had told him, and they just happened to be there because his co-prisoner, "M", just happened to be making a statement to Homicide at the Metropolitan Assessment Prison that day and at the same time!*
- *He claims he did not want anything in return. But look at the strange loyalties that prisoners form, prejudices, etc.*
- *He needed to be in a protection unit "because me and the other prisoners were at each other's throat".*<sup>225</sup>

Counsel for Mr. Domaszewicz also examined the relationship between the two fellow prisoners in the following discussion:

*"Whilst he was a food billet with "M", Domaszewicz came into his Unit for about 8-10 days. During that time, he spoke to Domaszewicz in his cell when he went to get a cigarette (he conceded that he knew Domaszewicz did not smoke!). He was hardly a friend of Domaszewicz."*

*"You didn't know him very well, did you? Not really."*

*\* Ironically, he claims that he, somehow, suddenly obtained Domaszewicz's confidence because he ("R") said that he hated Crown witnesses!*

*\* "R" was allegedly interested in what happened in Domaszewicz's case because there were "all different stories going on around the unit".*<sup>226</sup>

Counsel discussed what "R" he alleged he was told which is as follows:

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<sup>223</sup> *Submissions of Counsel for Mr. Domaszewicz, pp. 18 to 20 .*

<sup>224</sup> *Submissions of Counsel for Mr. Domaszewicz, p.20.*

<sup>225</sup> *Submissions of Counsel for Mr. Domaszewicz, p.21.*

<sup>226</sup> *Submissions of Counsel for Mr. Domaszewicz, p.21.*

*"The child got caught under the car, which was on a jack. Domaszewicz slipped the child something because it was screaming. He then put a pillow over its head and hit it with a crowbar.*

*"R" only came forward at a late stage of the trial, in November, 1998. It is put that anyone who followed the case at all would have known that Domaszewicz was working on his car that day, that the baby was found with both broken bones and a drug (Artane is not a tranquillizer) in his system, and that a crowbar was found with the body. Interestingly, no blood-stained pillow or pillow case was ever found and the strong consensus from the radiological and orthopaedic experts was that the arm fractures were not crushing type injuries. It would be difficult to imagine how the complex arm fractures could have been caused by a car falling from an elevated position onto a child's arm. It was a rumour that I heard myself, before and after the committal, that the child had been injured whilst Domaszewicz worked on his car. The Homicide police themselves asked Greg if that was the case.*

- *"R" was a big man, who conceded he used to throw his weight around in the gaol. Hardly the type to suddenly befriend, take into your confidence, and confess to a murder that all the tapes made by investigating police could not obtain. And in your cell, of all places, which could so easily be, and at one stage was, bugged.*
- *"R" seems to have been involved in substantial other criminal activity, often involving dishonesty, plus drugs and firearm offences. He admitted to me that he was an amphetamine addict and had been since his teens - for some 8 years before the murder. He also used other hard drugs.*
- *"R"'s murder conviction was drug-related, and involved him torturing the deceased for several hours."<sup>227</sup>*

And:

*"Whilst he claimed he asked to speak to Homicide because he thought the story should be told, he could not explain why he waited until the exact day that "M" just happened to be telling (as it turned out, a somewhat different story) to Homicide at the same gaol, in the same unit! However, he admitted late in his cross-examination that he knew "M" was making a statement:*

*"When do you say you learnt that McCallum was speaking with the police?---A  
couple of days beforehand  
Not after you made a statement but before, correct?--Yes"<sup>228</sup>*

Counsel for Mr. Domaszewicz noted that this material contrasted with earlier testimony that "R" had no knowledge at all that "M" was speaking to the police.

*"We then started to get a clearer picture of what really happened between "R" and "M" .*

*"It had nothing to do with your decision to speak to - - -? Speaking to Dave  
was nothing to do with my decision to speak with police.*

*So you would have spoken to them on 16 November even if you didn't know that David McCallum was going to make a statement to them, is that what you're saying?--Yes."  
(my underlining)*

*So he did speak with "M" before he asked to speak to the Homicide police. He had earlier claimed to me, somewhat improbably, that he and "M" had never discussed the Jaidyn Leskie case.*

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<sup>227</sup> Submissions of Counsel for Mr. Domaszewicz, pp. 21 to 22.

<sup>228</sup> Submissions of Counsel for Mr. Domaszewicz, p.23.

*He agreed that the trial received a lot of publicity. Though he could not read, he saw plenty about it on TV, and it was obviously a subject of interest in the prison.*

*He admitted at the end of his cross-examination that he resented Greg getting around the gaol as if nothing had happened when he was charged with (and "R" clearly believed he was guilty of) killing a baby.<sup>229</sup>*

And finally, Counsel for Mr. Domaszewicz raised a number of questions on the prisoner confessions when he noted that:

*"Mr Kennan, in his final submissions, alleges that "R"'s account was not undermined in cross-examination. Is he seriously putting "R" forward as a witness of truth, having regard to the points made about his account above? Is he seriously asking the Coroner to accept his evidence, which was available at the trial, and make findings based upon it? Why does he ignore the relationship between "R" and "M" and the admitted contact between them shortly before "R" supposedly decided to call in the Homicide squad? And how can he ignore the background and personality of "R", his apparent violent disposition, dislike of Domaszewicz, and apparent belief that he was responsible for killing Jaidyn? Mr Kennan, it is put with respect, shows little understanding of, and does not ask the Coroner to consider, the dangers and unreliability inherent in "gaol confession" evidence."<sup>230</sup>*

Interestingly, Counsel for Mr. Domaszewicz observed, under the heading "Expert witnesses called to throw light on the injuries to Jaidyn and the possible or probable cause of death", that:

*"Mr Kennan's submissions trace the many and various heads of material called at the two inquests concerning the injuries to Jaidyn. I have no quarrel with his summary, or conclusions, save that his statement that the "fractures to the left forearm are consistent with a range of mechanisms, and may have occurred as long as 14 days before death, ignores the compelling evidence of both the radiologist, Dr McLaughlan, and the orthopaedic surgeon, Mr Bainbridge, that the injuries they examined at that site in the x-rays were most unlikely to have been sustained by a crushing type of injury, such as a car falling from elevation onto the child's arm. This has considerable significance when looking at the allegations contained in one or more of the gaolhouse confessions."<sup>231</sup>*

By way of contrast, see discussion on the evidence of Drs. Robertson and Collins under one of the following sub-sections of this report which is headed "FORENSIC EXAMINATION: THE RELEVANCE OF OTHER INJURIES - The arm fractures".

On the issue of the telephone conversation between his client and Mr. Steven Veniamin, Counsel for Mr. Domaszewicz draws attention to the concession of Mr. Kennan that the conversation was "entirely equivocal".<sup>232</sup>

## **OTHER NOMINATED INDIVIDUALS SUSPECTED OF POSSIBLE INVOLVEMENT**

### *Introduction*

A number of individuals were nominated as possibly being involved by Mr. Domaszewicz (through his solicitor) and by Ms. Casey Byrne.

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<sup>229</sup> *Submissions of Counsel for Mr. Domaszewicz, p.23.*

<sup>230</sup> *Submissions of Counsel for Mr. Domaszewicz, p.24.*

<sup>231</sup> *Submissions of Counsel for Mr. Domaszewicz, p. 9.*

<sup>232</sup> *Submissions of Counsel for Mr. Domaszewicz, p.11.*

*Mr. Domaszewicz's solicitor's list*

In November 2003 Mr. Domaszewicz's solicitor nominated the following individuals as likely to have been involved in Jaidyn's death, namely; Yvonne Penfold, Kenny Penfold, Darrin Wilson, Dean Ross, Raymond Hopkinson, Darren Farr, Sheena Farr and Rebecca Laidlaw. Counsel Assisting dealt with a number of these individuals in their submission to the Coroner by the following comment:

*"For the reasons we have outlined above, in our submission there is no evidence that indicates that Yvonne Penfold, Kenny Penfold, Darrin Wilson, Dean Ross or Raymond Hopkinson had any involvement in the disappearance or death of the deceased."<sup>233</sup>*

Effectively, that submission is a correct summation of the situation. Accordingly, that leaves three remaining potentially involved persons, namely; Darren and Sheena Farr and Rebecca Laidlaw to consider.

On the issue of Darren and Sheena Farr they made a number of statements to the police.<sup>234</sup> Mr. Darren Farr's statements were made on 13<sup>th</sup> August 1997, 6<sup>th</sup> January 1998 and 26<sup>th</sup> February 1998 and Ms. Sheena Farr also made statements to the police on 13<sup>th</sup> August 1997 and 26<sup>th</sup> February 1998.<sup>235</sup> Also they both gave evidence at the committal and trial<sup>236</sup>. Counsel Assisting summarised the evidence thus:

*"Mr Farr said that on the day of the deceased's disappearance, he worked until about 1.35pm. He spent the afternoon at home with Sheena until about 4.00pm, when they took their children and went to Tom and Liz Lindsay's house in King Street. They had a couple of drinks there and then Mr Farr drove down the street to get some more drinks. On the way he picked up Stephen Clerks. When they got back to the house in King Street, Stephen's fiancé, Sharon Downs, was also there. They stayed there until about 1.30 or 2.00am, when they walked home. Mr Farr said he was drunk and needed to be helped by Steven and Sharon while Sheena walked their kids home. Stephen put him to bed."<sup>237</sup>*

And that Mrs. Farr "gave a version of the events of the day of the deceased's disappearance that was consistent with that given by her husband."

However, in consideration of the issues raised in the letter from Mr. Domaszewicz's solicitor, additional inquiries were also undertaken by Senior Constable Gibson on behalf of the coroner. Statements taken in 1997 by the Homicide Squad from Neil Lindsay, Elizabeth Lindsay, Stephen Clerks and Sharon Downes were examined.<sup>238</sup> They each corroborated the Farr's alibis for the evening of Jaidyn's disappearance. Accordingly, Counsel Assisting submitted that "there is no evidence to establish that either Darren or Sheena Farr were involved in the disappearance or death of the deceased."<sup>239</sup>

On the issue of Ms. Rebecca Laidlaw's potential involvement, she had made a statement on 16<sup>th</sup> June 1997.<sup>240</sup> She noted she was at a party in Haigh Street, Moe, with Yvonne Penfold from about 9.00pm on 14<sup>th</sup> June to about 1.00am on 15<sup>th</sup> June 1997. She had left the party with Yvonne Penfold, Kenny Penfold and Darrin Wilson. Evidently she drove Mr. Wilson to his parents' house, and Kenny and Yvonne to the

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<sup>233</sup> *Submissions of Counsel Assisting, p. 111.*

<sup>234</sup> *First Inquest Brief, pp. 165 to 173.*

<sup>235</sup> *First Inquest Brief, pp. 174 to 179.*

<sup>236</sup> *Committal transcript (Exhibit 113), pp. 276 to 300, Trial transcript (Exhibit 105), pp. 791 to 858 (Darren Farr); Committal transcript (Exhibit 113), pp. 300 to 305 and Trial transcript (Exhibit 105), pp. 858 to 877 (Sheena Farr).*

<sup>237</sup> *Submissions of Counsel Assisting, p. 111 to 112.*

<sup>238</sup> *Statement by Senior Constable Gibson 24<sup>th</sup> February 2004 (Exhibit 89) and attachments.*

<sup>239</sup> *Submissions of Counsel Assisting, p. 112.*

<sup>240</sup> *Statement by Senior Constable Gibson (Exhibit 89 and attachments).*

intersection of Phealmans Lane and the Service Road, where Darrin turned up a short time later driving a four door sedan and Kenny and Yvonne got into this vehicle. Ms. Laidlaw then drove home arriving at about 1.30am. Apparently she did not know Jaidyn or his mother but knew Mr. Domaszewicz because he used to “go out” with Yvonne and had been giving her a “hard time” after their break up. She was not aware that the Penfolds and Mr. Wilson were intending to go to Mr. Domaszewicz’s house after they were dropped off by her. Ms. Laidlaw gave consistent evidence with her statement at the committal.<sup>241</sup> The solicitor also suggested that a “small red vehicle” had been seen in the vicinity of his client’s house on the evening of Jaidyn’s disappearance. Apparently this vehicle had been seen Messrs. John Sellens, Allan Spark and Paul Reid and also by Ms. Margaret Armstrong. It was suggested that this vehicle belonged to Ms. Laidlaw. Senior Constable Gibson was advised by Ms. Laidlaw that she drove a 1998 red Daihatsu Charade registration number NLF 624.

Mr. Sellens’ statement (2<sup>nd</sup> June 1997) noted that when he was at the BP Service Station, he observed two men who had also been at the Haigh Street party get into a red car.<sup>242</sup> There was no one else in the car and when questioned about this by Senior Constable Gibson he noted the car was not a Daihatsu Charade but it was smaller than an ordinary sedan and was probably a Gemini.<sup>243</sup>

On Mr. Spark’s evidence, Counsel Assisting noted in their submission:

*“In statements made on 15 June and 22 October 1997<sup>244</sup>, Mr. Spark made no mention of any car he had seen on the night of the deceased’s disappearance. Mr. Domaszewicz’s solicitor said that Mr. Spark told a private investigator that he had seen a small red car with four people in it parked opposite his house. When questioned about this by Senior Constable Gibson, Mr. Spark said that he had only caught a glimpse of a car that night, so he couldn’t be sure. He thought the car was not a big sedan, but was a small car.”<sup>245</sup>*

Counsel Assisting further summarised the evidence from Mrs. Armstrong and Mr. Reid thus:

*“In a statement made on 17 June 1997, Mrs. Armstrong referred to a brown coloured sedan that she had seen driving down the dirt road at the back of the service station on Narracan Drive. She said she didn’t know what sort of car it was, but it was bigger than her Gemini (which was brown). Senior Constable Gibson was unable to contact Mrs. Armstrong to obtain any further information about the car she had seen that night.”<sup>246</sup>*

And in a statement made on 20 June 1997:

*“Mr. Reid said that while he was at the BP Service Station, he had seen a red Nissan Skyline. Mr Reid repeated this evidence at Mr. Domaszewicz’s trial. When asked by Senior Constable Gibson if the car he had seen could have been a Daihatsu Charade, Mr. Reid said he could not say what type of car it was, but he was pretty sure it was red.”<sup>247</sup>*

Counsel also noted that “in addition to the sightings of vehicles by the witnesses named by Mr. Domaszewicz’s solicitor, we note that Mr. Ben Stubbs gave evidence

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<sup>241</sup> Committal transcript (Exhibit 113), pp. 335 to 337.

<sup>242</sup> First Inquest Brief, pp. 108 to 109 (Mr. Sellens did not give evidence at the committal or trial).

<sup>243</sup> Statement made by Senior Constable Gibson on 4 May 2004.

<sup>244</sup> Statement by Senior Constable Gibson (Exhibit 89 and attachments). Mr. Sparks also did not give evidence at either committal or trial.

<sup>245</sup> Submissions of Counsel Assisting, p. 114.

<sup>246</sup> Submissions of Counsel Assisting, p. 114.

<sup>247</sup> Submissions of Counsel Assisting, p. 114.

*that he had seen two men at the service station get into a faded red Commodore with two other people, one of whom was a blonde female.”*<sup>248</sup>

### Conclusion

In relation to Ms. Laidlaw, Counsel Assisting both submitted:

*“there is insufficient evidence to establish that Ms. Laidlaw was in the vicinity of Mr. Domaszewicz’s house on the evening of the deceased’s disappearance in her red Daihatsu Charade. We note that the descriptions of the vehicles are, on the whole, consistent with the vehicle that was being driven by Yvonne Penfold that night. There is no other evidence to suggest that Ms. Laidlaw was otherwise involved in the disappearance or death of the deceased.”*

### Casey Byrne’s statement

Ms. Casey Byrne made a statement on 16<sup>th</sup> September 2003<sup>249</sup> and noted that her ex-boyfriend Mr. Jay Hunter had information relevant to the death. She had been in a relationship with Hunter until about six weeks prior to the making of the statement and had taken out an intervention order against her former boyfriend. In summary, Counsel Assisting noted that Ms. Byrne had stated *“that one night while Mr. Hunter was on speed, he said “the kid was in the backpack for three days”, “the people didn’t intentionally kill the kid” and “the kid” had died in the bag then put in the bag with the crowbar.”* Apparently, Mr Hunter had referred to “Tubby” and “Monkey” as individuals who had been involved and that he had said that he had been good friends with Mr. Domaszewicz. In summary, she also stated that (see submission by Counsel Assisting):

*“Mr Hunter said that he had provided the pig’s head, which he had shot a couple of days earlier;*

*Mr Hunter said that it all had something to do with Ms. Williams owing money for a drug debt;*

*Mr Hunter “mouthed off” about the case every time he was drunk;*

*every time Mr Hunter had “mouthed off” in front of his brother Adam, Adam had either gone quiet or started crying; and*

*once when they were at the Blue Rock Dam, Mr. Hunter had said “Right where you were standing would have been where he made his last noise”, and Mr. Hunter and his brother then had a fight.”*<sup>250</sup>

Mr. Adam Hunter (Jay’s brother) made a statement to police on 23<sup>rd</sup> November 2003.<sup>251</sup> He was 13 at the time of Jaidyn’s disappearance. He did not consider that his brother knew anything about the disappearance and that he was just *“big noting”* himself when drunk. He also did not remember having a fight with his brother at the Blue Rock dam about Jaidyn. On the same day Mr. Jay Hunter also made a statement.<sup>252</sup> He stated that he did not know anything about the matter other than what he had found out from watching TV or reading the papers. Apparently he knew some of the individuals involved, including Raymond “Tubby” Hopkinson. He noted that “Monkey” is Moe’s drug dealer but that he did not know if Monkey had anything to do with the disappearance. He also stated that the pig’s head came from Tubby’s freezer. Evidently he and Mr. Hopkinson had been hunting six months earlier and captured a couple of piglets to grow and eat. He also stated that he was with Mr.

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<sup>248</sup> *Submissions of Counsel Assisting, pp. 114 to 115.*

<sup>249</sup> *See Exhibit 89 and attachments.*

<sup>250</sup> *Submissions of Counsel Assisting, p. 115.*

<sup>251</sup> *See Exhibit 8 and attachments.*

<sup>252</sup> *See Exhibit 89 and attachments.*

Hopkinson on the night Jaidyn disappeared and was present when Kenny Penfold, Yvonne Penfold and Dean Ross came over. However, he did not know Ms. Williams or Jaidyn and was not present at Narracan Drive when the pig's head was thrown. He knew nothing about Jaidyn being in a backpack and admitted that he had "made things up" about the disappearance.

Counsel Assisting submitted "there is no evidence that Mr Jay Hunter was involved in the disappearance or death of the deceased."<sup>253</sup>

#### **ADDITIONAL INFORMATION PROVIDED DURING THE CORONER'S INVESTIGATION**

There were a number of individuals who provided additional information to the Coroner during the running of the investigation.

- *Individuals named by Elizabeth Leskie and Lori Leskie*

In August 2002<sup>254</sup>, Mrs. Elizabeth Leskie and Mrs. Lori Leskie made reference to Messrs. Jason Horscroft and Jason Clothier. Ms. Lori Leskie informed the Coroner that Mr. Horscroft advised he checked Mr. Domaszewicz's property on the night Jaidyn disappeared and he had not given evidence at the trial. However, Mr. Horscroft had made a statement to the Homicide Squad in October 1997. Mr. Clothier also had made a statement (June 1997). Mr. Horscroft had told police he had gone to Mr. Domaszewicz's on Friday 13 June 1997 (the night before Jaidyn's disappearance) and they had made arrangements to play Nintendo with Mr. Domaszewicz the following night (Saturday). The next day Mr. Horscroft was picked up by Mr. Clinton McCarthy after 7.30pm. Mr. Horscroft was advised by McCarthy that he had been to Mr. Domaszewicz's house but that he did not appear to be home. Mr. McCarthy tried to telephone Mr. Domaszewicz from his mobile telephone. They both then went to another friend's where they played Nintendo all night and did not hear from Mr. Domaszewicz.

Mr. Clothier stated that sometime in the afternoon on Saturday 14 June 1997, he saw Ms. Katie Leskie's car broken down on Wirraway Street. He pulled over and spoke to Katie and Bilynda and then left them fixing the car.

- *Individuals named by Robyn Bowles*

Author, Ms. Robyn Bowles advised it was possible that Ms. Jacqueline Answer, who was a friend of Mr. Domaszewicz's, had information of relevance to Jaidyn's death.

Apparently, during the trial <sup>255</sup> Ms. Katie Leskie had stated that when Mr. Domaszewicz arrived at the hotel to pick up her sister on the night of Jaidyn's disappearance, she noticed that her nephew was not in the car and presumed he had left him at Narracan Drive with his friend "Jackie". At the First Inquest, Ms. Leskie said<sup>256</sup> that "Jackie" was "Charlie's girlfriend", and that she had never met her. She said that she had no knowledge that Jackie was at Mr. Domaszewicz's house that afternoon. In January and February 2004, Senior Constable Gibson took statements from Ms. Answer.<sup>257</sup> She explained that her fiancé was Mr. David Mallia<sup>258</sup> (known by the nickname "Charlie"). Evidently, she had not met Jaidyn but

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<sup>253</sup> *Submissions of Counsel Assisting, p.117.*

<sup>254</sup> *See statements made by Elizabeth Leskie on 20 August 2002 and by Lori Leskie on 21 August 2002.*

<sup>255</sup> *Trial transcript (Exhibit 105), p. 243.*

<sup>256</sup> *First Inquest transcript, pp. 1532 to 1533.*

<sup>257</sup> *Statements annexed to Statement made by Senior Constable Gibson 24<sup>th</sup> February 2004 (Exhibit 89).*

<sup>258</sup> *Mr Mallia gave evidence at the trial – see pp. 2100 to 2102 Trial transcript (Exhibit 105).*

she stated that Mr. Mallia was good friends with Mr. Domaszewicz and they would visit him at his home once or twice a week. She had not met Ms. Leskie before the disappearance but had seen Ms. Penfold once at Narracan Drive. On the night Jaidyn disappeared she stated that she and her finance had friends for dinner to celebrate his birthday and the friends left at about 9.00pm.

Ms. Robyn Bowles also suggested that Mr. Michael Dunne, a private investigator, might also have information relevant to Jaidyn's disappearance.<sup>259</sup> Written inquiries were made of Mr. Dunne but he provided no information.<sup>260</sup>

#### **FORENSIC EXAMINATION: EVIDENCE AND CONCLUSIONS ON THE CAUSE OF DEATH**

- *The autopsy and toxicological examination*

Following discovery of Jaidyn's body, Dr. Shelley Robertson, Forensic Pathologist, Victorian Institute of Forensic Medicine (the "Institute"), performed an autopsy. Dr. Byron Collins, Consultant Forensic Pathologist, was also present as an observer.<sup>261</sup> Professor David Ranson, another Forensic Pathologist, working at the Institute also attended for some of the autopsy.<sup>262</sup>

In her report, Dr. Robertson determined that there was no significant natural disease present and body showed:

- moderately advanced decomposition,
- apparently normal development for its age,
- a recent fracture to the mid-shaft of both the left radius and ulna, and
- a recent fracture to the skull.<sup>263</sup>

Toxicological analysis was undertaken by Mr. Iain McIntyre, a Toxicologist from the Institute, and his report indicated the presence of the Benzhexol at a level of 0.3 milligrams per kilogram of liver tissue<sup>264</sup>. No other drugs were found to be present. Benzhexol is an antimuscarinic agent used predominantly in symptomatic treatment of Parkinsonism. It is also used to help alleviate side-effects of certain antipsychotic medications. It is available in Australia under the name "Artane", in tablets of two and five milligrams.

- *Radiological analysis*

At autopsy radiographs were taken of the skull, arms, legs and torso.<sup>265</sup> Dr. Andrew McLaughlan, Radiologist, analysed the radiographs which disclosed a comminuted fracture of the mid-shaft of the left ulna and a simple fracture of the shaft of the left radius. He also noted that there was a suspicion of an undisplaced healing fracture involving the left lateral aspect of the left seventh rib.<sup>266</sup>

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<sup>259</sup> See pp. 15 to 20 statement made by Senior Constable Gibson 24<sup>th</sup> February 2004 (Exhibit 89).

<sup>260</sup> See Senior Constable Gibson's statement 24<sup>th</sup> February 2004. Mr. Dunne was subpoenaed to produce certain phone records. On 11 February 2004 he produced those phone records to the Principal Registrar of the State Coroner's Office (statement of Rick Roberts annexed to the Statement made by Senior Constable Gibson on 24<sup>th</sup> February 2004 (Exhibit 89). Copies of the phone records are annexed to Senior Constable Gibson's statement.

<sup>261</sup> Trial transcript p.1515 to1516.

<sup>262</sup> Report, Exhibit 38, p. 2.

<sup>263</sup> Autopsy Report, Exhibit 36.

<sup>264</sup> Toxicology Report (undated), Exhibit 5.

<sup>265</sup> Two of the radiographs are Exhibit 119.

<sup>266</sup> Radiology Report (Exhibit 35).

- *Evidence and opinions about the cause of death*

#### *Head injury*

Dr. Robertson was of the view that the most likely cause of death was head injury<sup>267</sup>. She observed a Y-shaped linear fracture of the right occipital bone (the bone at the base of the skull where the head joins the neck).<sup>268</sup> She also noted a dark discolouration of the tissue overlay of the skull that resembled bruising. However this discoloration may have been due to decomposition changes.<sup>269</sup> She stated that nature and site of the fracture was such that it almost certainly would have been associated with significant underlying brain injury of a similar severity to that seen in motor vehicle fatalities.<sup>270</sup> Dr. Robertson considered that the immediate effect of the fracture to be loss of consciousness with death supervening in a relatively short period.<sup>271</sup> She also opined that the skull fracture pattern was consistent with having been sustained by a direct blow with a “fairly solid” instrument, such as a crowbar<sup>272</sup> and the lack of a defect in the skin overlying the fracture could be explained by the protective effect of a pillow used in conjunction with a blunt instrument.<sup>273</sup> She considered that the nature and site of the fracture (an area protected by muscle and tucked beneath the back of the head) made it extremely unlikely that it could have been produced by a fall from a table on to a hard surface, a fall on to the corner of a table or from accidental contact with a crowbar.<sup>274</sup>

Dr. Robertson also considered that the fracture was consistent with Jaidyn having been thrown or shaken so that his head hit a fireplace. However if this direct contact had been made with the fireplace it would be expected to see a defect in the skin overlying the fracture.<sup>275</sup> The doctor considered that the site of the skull fracture made the probability of the blow having been delivered after death through rough handling or dropping of the body extremely unlikely.<sup>276</sup> Further, Dr. Robertson opined that the fracture could have been caused by a fall from a motorbike.<sup>277</sup>

Dr. Collins considered that the cause of death is undetermined.<sup>278</sup> He explained that this was due to the difficulty in determining whether the skull fracture and haemorrhage occurred before or after death, and because of the effects of decomposition on the body.<sup>279</sup> However, the most likely cause of death was the fractured skull and the considerable possibility of resultant damage to the brain.<sup>280</sup>

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267 Autopsy Report (Exhibit 36), Committal transcript (Exhibit 113), pp. 17 and 38, Trial transcript (Exhibit 105), p.1525, First Inquest transcript, p. 531.

268 Trial transcript (Exhibit 105), p. 1519.

269 Trial transcript (Exhibit 105), p. 1521, see also the First Inquest transcript, p. 543.

270 Autopsy Report (Exhibit 36), p. 6, Committal transcript (Exhibit 113), p.20, Trial transcript (Exhibit 105), p. 1521, First Inquest transcript, p. 544.

271 Trial transcript (Exhibit 105), p. 1525.

272 Autopsy Report, Exhibit 36, p.6, Committal transcript (Exhibit 113), pp. 20 and 23, Trial transcript (Exhibit 105), p.1521.

273 Supplementary Report dated 2<sup>nd</sup> January 2001, (Exhibit 37), p.1, First Inquest transcript, p.533.

274 Committal transcript (Exhibit 113), pp. 20 and 23, First Inquest transcript, p. 535.

275 Supplementary Report dated 2 January 2001 (Exhibit 37), p. 2, First Inquest transcript, pp. 534 to 535.

276 Autopsy Report (Exhibit 36), p.6, Committal transcript (Exhibit 113), p.19. See also Trial transcript (Exhibit 105), p.1547.

277 First Inquest transcript, p.535.

278 Trial transcript (Exhibit 105), p. 1985, First Inquest transcript, p.577.

279 Trial transcript (Exhibit 105), p.1985.

280 Trial transcript (Exhibit 105), pp.1990 to 1991.

On the skull fracture, Dr. Collins observed that it was very fine<sup>281</sup> and could have been produced by a range of forces, including a motor car accident, a “*complicated*” fall onto a hard surface from a height of a number of feet or a sharp, hard blow to the back of the neck.<sup>282</sup> However, he was unable to say whether the skull fracture was inflicted by deliberate force<sup>283</sup> and it would have required a moderate/severe degree of force.<sup>284</sup>

Dr. Collins noted that there was no haemorrhage or healing in the region of the fracture site, so that it was not possible to establish whether the fracture was produced before or after death.<sup>285</sup> He also noticed reddish discolouration on the surface of the brain, which he believed to be a thin film of blood<sup>286</sup> and that if this was an indication of haemorrhage then it was highly likely that the skull fracture occurred during life.<sup>287</sup>

Professor Ranson said that he was unable to state unequivocally that the medical cause of death was head injury, although he agreed that this was a possible, if not the most probable, cause of death.<sup>288</sup> The Professor concluded that there was no evidence of any substantive scalp haematoma, laceration or tool mark type injury, which suggested that the impact force to the head was of a diffuse type applied over a relatively wide area.<sup>289</sup> He considered that a fracture of the skull of this type was unequivocal evidence of application of significant force to the head.<sup>290</sup> He also suggested that the characteristics of the fracture suggested that the impact point on the head lay in the vicinity of the fracture itself, rather than another area of the head.<sup>291</sup> Also the characteristics of the fracture were consistent with a blow from a crow bar, with or without a pillow as an intervening object,<sup>292</sup> with the application of force as a result of a fall,<sup>293</sup> with the head striking an object capable of causing a fracture,<sup>294</sup> with injuries sustained in a car or motorcycle accident<sup>295</sup> and with a multitude of other possible causes.<sup>296</sup>

Professor Ranson was also of the view that the characteristics of the fracture suggested any such blow was likely to have been inflicted very low down on the back of the head, which might occur most easily in circumstances where the head is flexed forward with the chin near the front of the chest.<sup>297</sup> He was unable to tell whether the skull fracture occurred before or after death.<sup>298</sup> However, if the area of reddening to the brain tissue was accepted to be a haemorrhage, this added support to the notion that the skull fracture occurred during life (although it was not unequivocally probative of an ante-mortem injury).<sup>299</sup> Professor Ranson also concluded that the only major

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281 *Trial transcript (Exhibit 105)*, p. 1983. *Report 4<sup>th</sup> December 2003 (Exhibit 39)*, p.2.

282 *Trial transcript (Exhibit 105)*, pp.1983 and 1994.

283 *Trial transcript (Exhibit 105)*, pp. 1983 to 1984.

284 *Report 4<sup>th</sup> December 2003 (Exhibit 39.)*, p.3.

285 *Exhibit 39*, p.2.

286 *Trial transcript (Exhibit 105)*, p.1984.

287 *Report (Exhibit 39)* p. 2. See also *Trial transcript (Exhibit 105)*, p.1985.

288 *Report (undated)*, *Exhibit 38*, p.7, see also *First Inquest transcript*, p.567.

289 *Exhibit 38*, pp. 3 to 4.

290 *Report (undated)*, *Exhibit 38*, p. 4.

291 *Exhibit 38*, p.4.

292 *Exhibit 38*, p. 4.

293 *First Inquest transcript*, p.551.

294 *First Inquest transcript*, p.555.

295 *First Inquest transcript*, pp. 561 to 562, see also *Exhibit 38*, p.7.

296 *First Inquest transcript*, p.561.

297 *Exhibit 38*, p. 4.

298 *First Inquest transcript*, p. 563.

299 *Exhibit 38*, p. 5. See also *First Inquest transcript*, p.554.

injury to the body capable of being associated with a fatal trauma was the skull fracture.<sup>300</sup>

#### *The role of the drug "Benzhexol"*

As a result of toxicological analysis following the autopsy the drug Benzhexol was discovered in Jaidyn's system.

Benzhexol, which is commonly known as Artane (and also referred to as trihexyphenidyl) was a drug used to treat Parkinson's disease and people who are suffering extrapyramidal side effects (rigidity and tremors) from use of anti-psychotic medication. This medication included Largactil, Melleril, Stelazine, Modecate, Serenace and Droleptan, drugs which are called "*typical antipsychotics*" which was prescribed to patients suffering from schizophrenia and other psychotic illnesses.

Dr. Robertson considered that she could not exclude Benzhexol as the cause of death.<sup>301</sup> Dr. Collins thought that Benzhexol could be life-threatening in children.<sup>302</sup> Professor Olaf Drummer (a forensic pharmacologist and toxicologist at the Institute) said<sup>303</sup> that fatalities associated with Benzhexol had been reported, although all of these were in relation to adults. He did not rule out significant consumption of Benzhexol as a possible cause of death.<sup>304</sup> Dr. Malcolm Dobbin (a public health physician in the Drugs and Poisons Unit of the Department of Human Services) said that very few deaths resulting from Benzhexol were reported in the literature, and most involved the presence of other drugs or other factors.<sup>305</sup>

#### *The use of Benzhexol in the community*

Evidence about the use of Benzhexol was given by Mr. McIntyre, Professor Drummer, Drs. Robertson, Collins, Lampel and Dobbin.

All these experts gave evidence that Benzhexol, which is commonly known as Artane (and also referred to as trihexyphenidyl) was a drug used to treat Parkinson's disease and people who are suffering extrapyramidal side effects (rigidity and tremors) from use of anti-psychotic medication.<sup>306</sup> This medication included Largactil, Melleril, Stelazine, Modecate, Serenace and Droleptan, drugs which are called "*typical antipsychotics*"<sup>307</sup> which was prescribed to patients suffering from schizophrenia and other psychotic illnesses.<sup>308</sup>

Professor Drummer and Dr. Lampel gave evidence<sup>309</sup> that use of Benzhexol had declined as doctors and psychiatrists had shifted towards use of a number of safer antipsychotic drugs that did not have such side effects, which are called "*atypical antipsychotics*". Dr. Lampel said<sup>310</sup> Benzhexol was not routinely prescribed with antipsychotic medication, as not all patients on such medication developed movement disorder symptoms. For patients with such symptoms, another drug

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<sup>300</sup> Exhibit 38, p. 6.

<sup>301</sup> First Inquest transcript, p.532.

<sup>302</sup> Trial transcript (Exhibit 105), p. 1988; see also First Inquest transcript, p.577.

<sup>303</sup> Report 27<sup>th</sup> October 2003 (Exhibit 6), First Inquest transcript, pp.60 and 63.

<sup>304</sup> First Inquest transcript, pp. 63 to 64.

<sup>305</sup> Report 21st November 2003, Exhibit 23, p.1.

<sup>306</sup> Trial transcript (Exhibit 105), pp. 1603 and 1607 (McIntyre), 1525 (Robertson), 1987 to 1988 (Collins), Report 27<sup>th</sup> October 2003, Exhibit 6, and First Inquest transcript, p. 62 (Drummer), Statement 1st October 1998, Exhibit 9, (Lampel), Report 21<sup>st</sup> November 2003, Exhibit 23, First Inquest transcript, p. 348 (Dobbin).

<sup>307</sup> See statement of Lampel 1<sup>st</sup> October 1998 (Exhibit 8), First Inquest transcript, p.77.

<sup>308</sup> First Inquest transcript, p. 348 (Dobbin).

<sup>309</sup> First Inquest transcript, p. 66 to 67 (Drummer), p.77 (Lampel).

<sup>310</sup> Statement 1<sup>st</sup> October 1998 (Exhibit 8).

known as Cogentin, which has less stimulating properties than Benzhexol, was preferred. Dr. Lampel also stated<sup>311</sup> that by 1998, use of Benzhexol for Parkinson's disease had essentially stopped, although it may still be used by patients who had been prescribed the drug for many years.

Dr. Robertson said<sup>312</sup> Artane was usually ingested in tablet form. Mr. McIntyre gave evidence<sup>313</sup> that Artane was obtained by prescription, with the usual dose being up to 15 milligrams per day in divided doses three or four times a day. Professor Drummer and Dr. Lampel said<sup>314</sup> Artane was available on the Pharmaceutical Benefits Scheme. According to Dr. Dobbin<sup>315</sup> in 1997, 21,338 prescriptions for 2 milligram tablets of Artane and 9,380 prescriptions for 5 milligram tablets of Artane were supplied in Australia. He said the eighty-two per cent of the prescriptions for 2 milligram tablets supplied in that year were provided as PBS prescriptions.

Dr. Robertson<sup>316</sup> was not aware of any condition in an infant requiring the prescription of Artane. Dr. Collins and Mr. McIntyre said<sup>317</sup> prescribing Artane to a child would be most uncommon. Dr. Lampel testified<sup>318</sup> that he had never prescribed Artane to a child and had not heard of any case where this drug was prescribed.

Dr. Robertson said<sup>319</sup> she had heard anecdotally of Artane being used as a recreational drug. Mr. McIntyre testified<sup>320</sup> that illegal use of Artane had been reported in the United States and possibly in Europe, but he had not heard of it in Australia. Professor Drummer said<sup>321</sup> Artane is a drug which is capable of abuse. Dr. Dobbin agreed that Artane<sup>322</sup> is subject to sporadic abuse, usually by psychiatric patients, but also sometimes by abusers of other substances. Although he also said<sup>323</sup> that there was little information about the misuse of the drug in Victoria. Dr. Lampel stated<sup>324</sup> Artane had been a commonly misused drug in the Moe area for a long time. It is a relatively cheap drug to purchase.<sup>325</sup> Dr. Dobbin stated<sup>326</sup> in 1998, the dispensed price for 220 2 mg tablets was \$10.24 and \$12.74 for 200 5 mg tablets, with the patient contribution for a Health Care Card holder being \$3.20 in each case.

#### *The effects of Benzhexol*

The witnesses Mr. McIntyre and Dr. Dobbin gave evidence<sup>327</sup> that Benzhexol has numerous side effects, including dizziness, drowsiness, nausea, dry mouth, blurred vision and (in larger doses) euphoria and hallucination.

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311 Statement 1<sup>st</sup> October 1998 (Exhibit 8), First Inquest transcript, pp.76 and 82.

312 Trial transcript (Exhibit 105), p.1548.

313 Trial transcript (Exhibit 105), p.1603. See Professor Drummer's report 27<sup>th</sup> October 2003 (Exhibit 6).

314 Report 27<sup>th</sup> October 2003, Exhibit 6 (Drummer), Statement 1<sup>st</sup> October 1998, Exhibit 8 (Lampel).

315 Report 21<sup>st</sup> November 2003 (Exhibit 23), p.2.

316 Trial transcript, Exhibit 105, pp.1548 to 1549.

317 Trial transcript, pp.1988 (Collins) and 1605 (McIntyre).

318 First Inquest transcript, p.77.

319 Trial transcript (Exhibit 105), p.1525.

320 Trial transcript (Exhibit 105), p.1604.

321 Report 27<sup>th</sup> October 2003 (Exhibit 6), First Inquest transcript, p. 68.

322 Report 21<sup>st</sup> November 2003 (Exhibit 23).

323 Exhibit 23.

324 First Inquest transcript, pp. 74 to 75. See also pp. 81 to 82.

325 First Inquest transcript, p.83.

326 Exhibit 23, p.1.

327 Trial transcript (Exhibit 105), p.1603 (McIntyre), Exhibit 23, p.1 (Dobbin).

Professor Drummer and Dr. Robertson noted that Benzhexol could cause hallucinations.<sup>328</sup> Professor Drummer and Dr. Dobbin said<sup>329</sup> it was a drug that was related to naturally occurring substances such as atropine and plants sometimes abused by the community. Professor Drummer, Dr. Robertson and Mr. McIntyre and Dr. Dobbin all were of the view<sup>330</sup> that Benzhexol would not alter pain. However, Professor Drummer gave evidence<sup>331</sup> that it could cause drowsiness or sedation. By contrast, Dr. Lampel considered<sup>332</sup> Benzhexol would give more of a lift than sedation. Dr. Robertson said<sup>333</sup> that Benzhexol would probably have the same effects in children as in adults, but to an exaggerated extent. Dr. Lampel thought<sup>334</sup> administering Artane to a child aged 14 months was undesirable, although it was possible that a small dose would have little effect because young children have a very good metabolism. Dr. Dobbin opined<sup>335</sup> the toxic dose required for a child would be considerably less than that for an adult.

*Amount of Benzhexol found in Jaidyn's body*

Dr. Robertson gave evidence<sup>336</sup> that the period for Benzhexol to find its way through the liver, when taken orally, was extremely variable, but would be in the order of hours. Professor Drummer and Mr. McIntyre said<sup>337</sup> the half-life of Benzhexol in the blood (the time it takes for half of the concentration to disappear from the blood) was four hours, but no data was available for the liver. Professor Drummer considered<sup>338</sup> it would take between "some hours" and one day for the drug to be removed from the body.

Professor Drummer gave evidence<sup>339</sup> that the quantity of Benzhexol discovered in Jaidyn's liver at autopsy did not indicate the quantity that would have been present at the time of death. Given the state of decomposition of his body, it was not possible to estimate the concentration of the drug at the time of death. The concentration could have been lower or higher, depending on the dynamics of tissue decomposition. He also considered<sup>340</sup> that the Benzhexol found in the body could have been associated with other drugs that were lost in the decomposition process, such as antipsychotic medication or hypnotic benzodiazepines.

*Submissions on the Benzhexol issue by Counsel for Mr. Domaszewicz*

Counsel for Mr. Domaszewicz commented, under the heading "*Further investigations into the possible source of the drug Artane in Jaidyn's blood at autopsy*", that:

*"The deceased having been found to have ingested Benzhexol (Artane), extensive investigations did not reveal that any of a list of named persons who might be logically suspected to have possibly given Jaidyn Artane had been, at any relevant time, or*

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328 Committal transcript (Exhibit 113), pp. 32 to 33, Trial transcript (Exhibit 105), pp. 1524 to 1525, 1548 (Robertson), First Inquest transcript, p. 60 and 70 (Drummer).

329 First Inquest transcript, p. 60 (Drummer), Exhibit 23, p.1 (Dobbin).

330 Committal transcript (Exhibit 113), p. 35, Trial transcript (Exhibit 105), pp. 1525 (Robertson), and 1604 (McIntyre), First Inquest transcript, p. 67 (Drummer), p.352 (Dobbin).

331 First Inquest transcript, p.67.

332 First Inquest transcript, p.74.

333 Trial transcript (Exhibit 105), p.1549.

334 First Inquest transcript, pp. 84 to 85.

335 First Inquest transcript, p. 353.

336 Committal transcript (Exhibit 113), p. 31, Trial transcript (Exhibit 105), pp. 1549 to 1551.

337 Trial transcript (Exhibit 105), p.1606 (McIntyre), First Inquest transcript, pp. 62 and 64 to 65 (Drummer).

338 First Inquest transcript, p.63. See also p.66.

339 Report 27<sup>th</sup> October 2003 (Exhibit 6), First Inquest transcript, pp. 58 to 60.

340 Exhibit 6.

perhaps at all (with the irrelevant exception of Dean Ross) prescribed access to Artane. The records were not complete however. The list, it should be noted, included Domaszewicz. He had no apparent access to, or use for, the drug. Despite the further scouring of Gippsland and the Latrobe Valley for any hint of Domaszewicz being in possession of the drug, none was discovered. Mr Kennan concludes his submissions on this topic by stating:

**"In conclusion, the investigations conducted by Senior Constable Gibson and the evidence given by Mr Cockwill, Dr Lampel, Dr Ibrahim and Dean Ross, have failed to establish the source of the Benzhexol (Artane) found in the body of the deceased."**<sup>341</sup>

#### THE INVESTIGATION INTO THE SOURCE OF THE BENZHEXOL

A wide ranging investigation was undertaken by the Police Officer Assisting the Coroner in order to identify the source of the drug Benzhexol (or Artane) which was found in Jaidyn's body.

This investigation included (following access to Health Insurance Commission Records) examining the prescription histories of a number of individuals who had, or may have had, contact with Jaidyn. Also inquiries were made of local medical practitioners, hospitals and pharmacies and the medical histories of all individuals who may have had some involvement were examined. Prescribing records of a number of pharmacies in the Latrobe Valley were also examined.

A summary of the detail of this investigation can be found in the submission by Counsel Assisting<sup>342</sup> and also in the statement of Senior Constable John Gibson dated 24<sup>th</sup> February 2004. Other than disclosing a single prescription of Artane for one individual that occurred after Jaidyn's disappearance, these investigations have not uncovered any relevant information.<sup>343</sup>

#### *Other possible causes of death*

A number of forensic pathologists gave evidence on other possible causes of death.

Dr. Robertson said she had not found any other pathology that may have been consistent with being a cause of death.<sup>344</sup> She considered there was no defect or abnormality of the heart.<sup>345</sup> She opined that it was possible that Jaidyn had died from a sudden asthma attack.<sup>346</sup> She noted that there would be no post-mortem signs if the deceased had died from an epileptic seizure.<sup>347</sup> Dr. Robertson said that she could not exclude asphyxiation as a possible cause of death<sup>348</sup> and also could not exclude drowning as a possible cause of death.<sup>349</sup>

Dr. Collins noted that: asthma could not be excluded as a cause of death, because the features of an acute asthmatic attack would have been obliterated by the

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<sup>341</sup> Submissions of Counsel for Mr. Domaszewicz, pp. 8 to 9. Note the bolding of the quotation is from the submission.

<sup>342</sup> See generally Submissions of Counsel Assisting, pp. 86 to 90.

<sup>343</sup> Mr. Dean Ross. See discussion in the Submissions of Counsel Assisting, pp. 89 to 90.

<sup>344</sup> Committal transcript (Exhibit 113), p.37.

<sup>345</sup> Trial transcript (Exhibit 105), p 1539.

<sup>346</sup> Committal transcript (Exhibit 113), p.29. Trial Transcript (Exhibit 105), p.1540.

<sup>347</sup> Trial transcript (Exhibit 105), p. 1540.

<sup>348</sup> First inquest transcript, p. 532.

<sup>349</sup> First Inquest transcript, p.532.

decomposition<sup>350</sup> and, for the same reason an epileptic seizure could not be excluded as a cause of death.<sup>351</sup>

Dr. Ranson gave evidence considered that asphyxial changes may be very difficult to detect during an autopsy on a decomposed body. Therefore he could not exclude asphyxiation as a possible cause of death.<sup>352</sup> Likewise he could not exclude either an asthma attack or an epileptic seizure as the cause of death.<sup>353</sup> He noted that pressure on the neck resulting in vasovagal inhibition would be unlikely to leave observable abnormalities at autopsy<sup>354</sup> and could not say whether Jaidyn was alive when immersed in water and accordingly drowned.<sup>355</sup>

## FORENSIC EXAMINATION: THE RELEVANCE OF OTHER INJURIES

### *The arm fractures*

Dr. Robertson said that these fractures were most commonly seen as a result of a direct blow to the region<sup>356</sup> with a blunt instrument, but could have been associated with a fall.<sup>357</sup> The fracture was consistent with a “*crush injury*” sustained when a car fell off blocks or ramps and on to the deceased’s arm.<sup>358</sup> She also opined that the fractures to the radius and the ulna were likely to have occurred as a result of a single blow,<sup>359</sup> alternatively it was possible that they could have been sustained in a fall from a motorbike.<sup>360</sup>

Dr. Collins noted that the arm fractures were unusual, as both bones were extensively damaged and there was a difference in the type of fracturing involving each bone.<sup>361</sup> He observed that there was extensive separation of the bone ends and this would have required a severe force.<sup>362</sup> He opined that the most likely mechanism was the application of a direct blow or fulcrum to the mid region of the left forearm.<sup>363</sup> The doctor noted that fractures in forearm bones are not commonly seen in falls. Also it was at least theoretically possible that a fall from a motorbike may have caused the injuries.<sup>364</sup> He was also of the view that these fractures were unlikely to have resulted from a “*crush injury*” sustained when a car fell off ramps and on to Jaidyn’s arm, although such a mechanism could not be excluded under very specific circumstances.<sup>365</sup> Dr. Collins also thought that it was theoretically possible that the arm fractures occurred at different times through two distinct episodes of blunt force.<sup>366</sup>

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350 Trial transcript (Exhibit 105), pp. 1986 to 1987.

351 Trial transcript (Exhibit 105), p.1987.

352 Report (undated), Exhibit 38, p. 6, First Inquest transcript, p. 552.

353 First Inquest transcript, p. 567.

354 Exhibit 38, p. 6.

355 First Inquest transcript, p.552.

356 Trial transcript (Exhibit 105), p.1523.

357 Trial transcript (Exhibit 105), pp. 1533 to 1534.

358 Supplementary report 2<sup>nd</sup> January 2001 (Exhibit 37), p.1, First Inquest transcript, pp. 532 to 534, 543.

359 First Inquest transcript, p.534.

360 First Inquest transcript, p.535.

361 First Inquest transcript, p.576.

362 Report 4<sup>th</sup> December 2003 (Exhibit 39), p.4.

363 Exhibit 39, p.4, First Inquest transcript, pp. 575 to 576.

364 Exhibit 39, p.4.

365 Exhibit 39, p.4.

366 First Inquest transcript, pp. 580 to 581.

Dr. McLaughlan stated that the fracture to the ulna was a comminuted fracture (a fracture with several lines through the bone)<sup>367</sup> and could have been produced by a direct blow or fall.<sup>368</sup> The doctor noted that the fracture to the radius was a simple fracture (a fracture with a single line through the bone).<sup>369</sup> The fractures could be explained by a car falling on to the forearm as long as only the forearm was beneath the car – otherwise multiple fractures would be present.<sup>370</sup>

Dr. Ranson considered that the fractures did not seem to have the same appearance, which could be explained by the fractures occurring at different times from different mechanisms or from the fractures occurring at the same time but with different parts of the arm being affected by different forces in the same incident.<sup>371</sup> He thought that the fracture to the radius could have occurred as the result of a direct application of force to the forearm, resulting in increased fragility of the arm, permitting the fracture to the ulna to occur more easily as the result of a later bending type injury.<sup>372</sup> Dr. Ranson also considered that the fractures could also have occurred as a result of a crushing type force striking a blow to the arm where the arm lies on a rough surface, although in a “*sustained crushing-type injury*”, one would expect a lot more surrounding damage.<sup>373</sup> He thought that the fractures could have occurred at the same time.<sup>374</sup> These arm injuries could occur in a settling of trauma infliction in which a fatal injury occurred.<sup>375</sup> He noted that it was not possible to say with any certainty whether the forearm injury occurred in a motorcycle incident.<sup>376</sup>

Dr. Bainbridge, an orthopaedic surgeon, also examined the radiographs of the body. He considered that it was extremely unlikely that the fractures to the left forearm were created by a fall or by a direct blow – a direct blow almost always occurs to the ulna side of the forearm so that the ulna is the first broken bone and the fracture is concave to the ulna side, and the same pattern is seen in falls on the outstretched hand.<sup>377</sup> He opined that the mechanism for the fractures had to be one that stretched the radial side of the forearm, which is shown in the radiographs to have lengthened<sup>378</sup> and noted that the mechanism was almost certainly holding the forearm from the ulna side and stretching the radial side of the forearm over a fault along the ulna, breaking the bone like a twig.<sup>379</sup> He had never seen this pattern of injury associated with a fall or a crush injury<sup>380</sup> and thought that it would be exceptional if the fracture to the radius and ulnar occurred at different times<sup>381</sup>.

Dr. Robertson considered that the arm fractures were quite recent, having occurred within 48 hours prior to death.<sup>382</sup> Microscopic examination of sections of the end of

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367 Report (undated), Exhibit 35, First Inquest transcript, p.590.

368 Exhibit 35.

369 Exhibit 35, First Inquest transcript, p.590.

370 First Inquest transcript, p.603.

371 Report (undated), Exhibit 38, p.5.

372 Exhibit 38, p.5.

373 Exhibit 38, p. 5, First Inquest transcript, pp. 564 and 1341 to 1342.

374 First Inquest transcript, p.553.

375 Exhibit 38, p.6.

376 Exhibit 38, p.7, First Inquest transcript, p.551.

377 Report 5<sup>th</sup> August 2005 (tendered 1<sup>st</sup> September 2005), Second Inquest transcript, pp. 77 to 78, 80.

378 Second Inquest transcript, p. 81.

379 Report dated 5 August 2005 (tendered 1 September 2005), Second Inquest transcript, p.78.

380 Second Inquest transcript, p. 81.

381 Second Inquest transcript, pp. 83 to 84.

382 Committal transcript (Exhibit 113), pp. 26 and 34, Trial transcript (Exhibit 105), pp. 1553 to 1554, First Inquest transcript, pp. 538 to 539. Dr. Robertson indicated that the arm fractures were likely to have occurred between 24 and 48 hours prior to death.

the bones showed no evidence of callous formation. This callous formation can start between 48 and 72 hours after a fracture occurs.<sup>383</sup> Evidently she did not observe any signs of periosteal reaction.<sup>384</sup>

Dr. Collins<sup>385</sup> stated there was no evidence of healing of the bones in the arm visible with the naked eye at the post-mortem examination. He considered that this indicated that the fracture would have occurred at or about the time of death and perhaps up to three to four days prior to death.

In evidence Dr. McLaughlan noted that a traditional callous starts to occur in a relatively healthy individual three to six days after the initial injury and tends to be well established within a couple of weeks (the formation of callous is also known as a periosteal reaction).<sup>386</sup> The fracture to the radius (but not the ulnar) showed linear density which had the appearance of a periosteal reaction. However this defect may be explainable as a post-mortem artefact (a change to the body caused by gas associated with decomposition).<sup>387</sup> He opined that the more the body was protected in the water, the less likely it was that the linear density was a post-mortem artefact, and the more likely it was to be a body response to an injury.<sup>388</sup> Dr. McLaughlan noted that since producing his original report he became aware of articles that led him to suspect that the bandage applied to the arm would probably have protected the tissues from external interference, meaning that the linear density was probably a periosteal reaction and not a post-mortem artefact.<sup>389</sup> He noted it was difficult to explain why one of the two bones in the arm should have a periosteal reaction while the other does not, but this may be because the two fractures occurred at different times, or because the two bones were healing at different rates.<sup>390</sup> He considered that the linear density in the radius was a periosteal reaction and that the injury was possibly between four and fourteen days old.<sup>391</sup> He noted that if the linear density in the radius was a post-mortem artefact, then the fracture could have occurred at death, within one to two days prior to death or at any time after death.<sup>392</sup> Dr. McLaughlan considered that the final arbiter on whether a periosteal reaction is present is the pathologist, as microscopic examination of pathological slides will show repair cells.<sup>393</sup> However he also considered that, given the similarity of the possible periosteal reaction associated with the radial fracture and that associated with the rib fracture, it was possible that one blow could have caused not only the two arm fractures, but also the rib fracture; but it was also possible that each fracture occurred on separate occasions, days apart.<sup>394</sup>

Dr. Ranson examined the pathological slides. However he was not able to identify any callous formation that would be consistent with the arm fractures occurring days or weeks prior to death, although he considered that this could be due to the degree of decomposition present.<sup>395</sup> He noted that the appearances on the slides were

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<sup>383</sup> *Trial transcript (Exhibit 105), pp. 1522 to 1523, 1554.*

<sup>384</sup> *Trial transcript (Exhibit 105), pp. 1530 to 1532.*

<sup>385</sup> *Trial transcript (Exhibit 105), p. 1981, Report 4<sup>th</sup> December 2003 (Exhibit 39), p.3.*

<sup>386</sup> *First Inquest transcript, pp. 594 to 595.*

<sup>387</sup> *Report (undated), Exhibit 35, First Inquest transcript, p.591.*

<sup>388</sup> *First Inquest transcript, p.598.*

<sup>389</sup> *First Inquest transcript, p.592.*

<sup>390</sup> *First Inquest transcript, pp. 592 to 593.*

<sup>391</sup> *Exhibit 35.*

<sup>392</sup> *First Inquest transcript, pp. 601 and 603.*

<sup>393</sup> *First Inquest transcript, p. 600.*

<sup>394</sup> *First Inquest transcript, pp. 597 and 605.*

<sup>395</sup> *First Inquest transcript, pp. 1334 to 1336, 1338, letter from Professor Ranson to the State Coroner 17<sup>th</sup> February 2004 (Exhibit 76).*

similar to those present for a fracture that had occurred at time of death, immediately after death, immediately before death, or a day or so before death.<sup>396</sup>

Dr. Bainbridge stated that, in a child of Jaidyn's age he would have expected to see callous formation at about ten days<sup>397</sup> but that he could not see any callous on any of the x-rays. Accordingly, this indicated that the fractures occurred less than 10 days before death and possibly after death.<sup>398</sup>

Drs. Robertson, McLaughlan, Bainbridge along with Dr. David Wells (a medical practitioner employed at the Victorian Institute of Forensic Medicine) all considered that<sup>399</sup> the pain associated with the arm fractures would have been severe. Dr. Robertson was of the view<sup>400</sup> that the bandaging of the arm demonstrated a minimal amount of skill – it was a little more than totally haphazard. Dr. Wells considered<sup>401</sup> that the fracture was such that the mere application of the bandage would have produced severe distress to Jaidyn.

#### *The rib fracture*

Dr. Robertson<sup>402</sup> did not observe an un-displaced healing fracture of the left seventh rib during the autopsy. She considered that the changes of decomposition rendered the conditions of the autopsy far from optimal. A rib injury as described by Dr. McLaughlan would not have caused the death.<sup>403</sup> Dr Collins<sup>404</sup> did not see or feel a fracture of the left seventh rib during the autopsy. He<sup>405</sup> subsequently examined the x-rays and observed features in the lateral aspect of the left seventh rib consistent with a healing fracture. However, the post-mortem examination findings did not confirm the presence of any such fracture.<sup>406</sup>

Dr. McLaughlan said<sup>407</sup> he had a high degree of suspicion (he was over ninety per cent certain) that there was an undisplaced healing fracture involving the left lateral aspect of the left seventh rib. He had observed a periosteal reaction in the radiograph, the features suggestive of the fact that the fracture had a duration of four to fourteen days.<sup>408</sup> It occurred prior to death, and would not necessarily have rendered Jaidyn immobile.<sup>409</sup> He considered that it was unlikely to have been caused by a major crush injury such as a car falling on to the body.<sup>410</sup> He thought that a pathologist would have to be "very specifically looking" in that area to detect the fracture which could easily have been missed.<sup>411</sup>

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<sup>396</sup> First Inquest transcript, p. 1335, see also Exhibit 76.

<sup>397</sup> Second Inquest transcript, p. 85.

<sup>398</sup> Report 5<sup>th</sup> August 2005 (tendered 1 September 2005), Second Inquest transcript, p.86.

<sup>399</sup> Committal transcript (Exhibit 113), p.34, Trial transcript (Exhibit 105), p.1523. First Inquest transcript, pp. 531, 602 and 1661, and Second Inquest transcript, p.84.

<sup>400</sup> Committal transcript (Exhibit 113), pp. 33 to 34. See also Trial transcript, (Exhibit 105), pp. 1536 to 1537.

<sup>401</sup> First Inquest transcript, p.1661.

<sup>402</sup> Trial transcript (Exhibit 105), p. 1529. See also First Inquest transcript, pp. 531 to 532 and 536.

<sup>403</sup> First Inquest transcript, p. 536.

<sup>404</sup> Trial transcript (Exhibit 105), p. 1982, First Inquest transcript, p. 579.

<sup>405</sup> Trial transcript (Exhibit 105), p.1982.

<sup>406</sup> First Inquest transcript, p.579.

<sup>407</sup> Report (undated), Exhibit 35, First Inquest transcript, pp. 595 to 596.

<sup>408</sup> Exhibit 35, First Inquest transcript, pp. 593 and 600.

<sup>409</sup> First Inquest transcript, pp. 601 and 604.

<sup>410</sup> First Inquest transcript, p. 603.

<sup>411</sup> First Inquest transcript, p. 594.

Dr. Ranson noted<sup>412</sup> that rib fractures, if displaced and associated with other internal chest injuries, including damage to heart and lungs, could result in death. However, he was unable to comment on the existence of a rib fracture in this case.<sup>413</sup> He did say that there did not appear to be any displacement of fracture rib ends shown in the x-rays that would be necessary for chest injuries to be a sufficient mechanism to cause death in this way.<sup>414</sup>

#### *Submissions of Counsel for Mr. Domaszewicz on the injuries*

Counsel for Mr. Domaszewicz observed, under the heading “*Expert witnesses called to throw light on the injuries to Jaidyn and the possible or probable cause of death*”, that:

*“Mr Kennan’s submissions trace the many and various heads of material called at the two inquests concerning the injuries to Jaidyn. I have no quarrel with his summary, or conclusions, save that his statement that the “fractures to the left forearm are consistent with a range of mechanisms, and may have occurred as long as 14 days before death, ignores the compelling evidence of both the radiologist, Dr McLaughlan, and the orthopaedic surgeon, Mr Bainbridge, that the injuries they examined at that site in the x-rays were most unlikely to have been sustained by a crushing type of injury, such as a car falling from elevation onto the child’s arm. This has considerable significance when looking at the allegations contained in one or more of the gaolhouse confessions.”*<sup>415</sup>

Counsel for Mr. Domaszewicz also noted that Mr. Bainbridge only came forward during the second inquest, and that:

*“He had been approached by Ms Williams some time in 2004, but only wrote to the Coroner after reading that there would be a Second Inquest, expressing some disagreement with the opinions regarding Jaidyn’s injuries reported in the papers at the First Inquest.”*<sup>416</sup>

However, Dr. Robertson (the forensic pathologist who conducted the autopsy) was of the view that the fracture to the left arm was consistent with a “*crush injury*” sustained when a car fell off blocks or ramps and on Jaidyn’s arm.<sup>417</sup> Dr. Collins, although considering it unlikely, was of the view that he could not exclude it occurring this way if it happened under very specific circumstances.<sup>418</sup>

## **DNA DISCOVERED ON JAIDYN’S CLOTHING – A POTENTIAL LINK TO ANOTHER DNA PROFILE?**

### *Introduction*

Along with Jaidyn’s body a plastic bag was recovered from the Blue Rock Dam on 2<sup>nd</sup> January 1998. Items in that plastic bag yielded a female DNA profile and early comparative investigations of the profiles of a number of individuals were negative.

Eventually, once the Coroner’s preliminary investigation commenced in 2003 (and before a decision was made to hold an inquest), a search of the Victoria Police Forensic Services Centre’s (VPFSC) database revealed that a DNA profile of an

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<sup>412</sup> Report (undated), Exhibit 38, p. 6.

<sup>413</sup> First Inquest transcript, p.555.

<sup>414</sup> Exhibit 38, p. 6, see also First Inquest transcript, p.555.

<sup>415</sup> Submissions of Counsel for Mr. Domaszewicz, p. 9.

<sup>416</sup> Submissions of Counsel for Mr. Domaszewicz, p. 10.

<sup>417</sup> Supplementary report 2<sup>nd</sup> January 2001 (Exhibit 37), p.1, First Inquest transcript, pp. 532 to 534, 543.

<sup>418</sup> Exhibit 39, p.4.

individual (a female rape victim who was also recorded on the database) was linked to items found in the bag. This raised questions of whether there was an ability to link a specific individual to Jaidyn's disappearance. Following investigation it appeared that this rape victim ("P") was unlikely to have had links. It then became an issue as to whether *contamination* occurred in the VPFSC laboratory as the samples from both the Leskie and the rape victim's case were examined by the same scientist within a relatively close time frame.

The VPFSC position was that the link between the two DNA profiles was likely to be *adventitious match* rather than contamination in the laboratory. If it was to be adventitious match then there was *another* individual in the community who had the same DNA profile as "P" and, from the Coroner's investigation perspective, therefore was a person of interest in the investigation into Jaidyn's death. All persons known to have some connection with the incident gave samples and the DNA results were all negative.

Returning to the recovery of the plastic bag in January 1998, an evidentiary chain of custody followed with the bag being eventually handed, on 5<sup>th</sup> January 1998, to Mr. Trevor Evans, Crime Scene Division, VPFSC.<sup>419</sup> The clothing found in the plastic bag was placed in the VPFSC drying room.

On 9<sup>th</sup> January the contents of the plastic bag were photographed and examined and on 13<sup>th</sup> January Mr. Evans lodged the contents of the plastic bag with the VPFSC Evidence Tracking Unit.<sup>420</sup> Counsel Assisting, in their submission to the Coroner describe the process of forensic scientific examination on the material obtained from Blue Rock Dam thus:

*"320 At 2.55pm on Friday 30 January 1998, Mr. Maxwell Jones, a forensic scientist employed at the VPFSC, received the plastic bag and its contents from the Evidence Tracking Unit. Mr. Jones took the plastic bag and its contents to the examination area within the VPFSC. He believed that he did not examine the items that afternoon. The items would have been stored over the weekend with other exhibits in a storage area that consisted of a part of a metal rack that was assigned to Mr. Jones..*

*321. Mr. Jones believed that he commenced examining the clothing items from the plastic bag on Monday 2 February 1998. He observed staining on a bib and pants contained in the plastic bag. A presumptive test on the stain on the bib gave a positive (but weak) reaction for human blood.*

*322. Mr. Jones lodged a sample that he cut from the bib and a sample that he cut from the pants for DNA profiling on 3 February 1998. The DNA analysis took place in a separate part of the VPFSC to the examination of the exhibits, and was conducted by different people. Each sample was analysed using the "Green Star 1" DNA analysis system, which tests for results at five loci, or locations on the DNA strand. At each locus on a piece of DNA there are two "alleles", or types of DNA. One allele originates from the mother of the person whose DNA is being tested, and the other from the father. The two alleles may be the same, or different. A DNA profile consists of a list of loci (which are identified by numbers and letters), and the two alleles identified at each locus (which are identified by numbers).*

*323. DNA was extracted from the samples from the bib and pants on 4 February 1998. The extracted DNA was quantified on 5<sup>th</sup> February 1998 and amplified and separated on 5 and 6 February 1998. The DNA was typed on 6, 9 and 13 February 1998.*

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<sup>419</sup> See "Sequence of Events" by Trevor Evans 11<sup>th</sup> November 2003 (Tab 3 of a folder of documents provided to the Coroner by the VPFSC during the First Inquest).

<sup>420</sup> See the (undated) statement made by Mr. Simon Jones based on his searches of the computer records recording the movements of the exhibits related to Jaidyn Leskie at p. 650 of the First Inquest Brief.

324. A partial DNA profile (results at three loci and the gender-determining locus called Amelogenin) was obtained from each sample. The three loci profile was the same for both the sample from the bib and the sample from the pants. The profile indicated that the donor of the human biological matter on the bib and the pants was a female.

325. On 17 February 1998, Mr. Jones received swabs from Jessikah-Jayd Murphy, Harley Murphy-Leskie and Shannon Leskie (cousins of the deceased). Samples from the swabs were submitted for DNA analysis. The results of the DNA analysis excluded each of these individuals as being the source of the human biological matter on the bib and pants. Breehanna Leskie, Yvonne Penfold and Julie-Anne Brassington (the babysitter of the deceased) were also excluded as being the source of the human biological matter on the bib and pants.

326. On 9 December 1998, Mr. Jones received biological reference samples from Ellen Evans, Sheena Farr and Mariann McKinnon. Each of these individuals had voluntarily submitted for DNA testing. Portions of each sample were subjected to DNA analysis. The results of the DNA analysis also excluded each of these individuals as being the source of the human biological matter on the bib and pants

327. On the same date, Mr. Jones again subjected the DNA from the bib and pants to DNA analysis, this time using the Profiler Plus DNA analysis system, which had not been available at the time of the earlier testing. The Profiler Plus DNA analysis system tests for results at nine loci (different to the earlier test), plus the Amelogenin locus. The DNA profiles produced from this analysis were again partial. In relation to the pants, results were obtained at five loci (and at the Amelogenin locus, which again indicated that the source of the biological material on the pants was female). In relation to the bib, the same five loci profile was obtained (as well as the same result at the Amelogenin locus), and results were also obtained at an additional two loci. Combining the results from the two rounds of DNA analysis, results were now recorded at 10 loci for the bib and eight loci for the pants.<sup>421</sup>

#### *The VPFSC DNA database and the background to the linking of two profiles*

Mr. Jones also placed the profiles from the material from the Blue Rock Dam on the VPFSC database for comparison with profiles generated from other police investigations. Evidently, this database was established in June 2000 and contains the DNA profiles of convicted offenders, suspects or persons associated with unsolved crimes.<sup>422</sup>

As indicated, the 2003 Coroner's re-investigation of Jaidyn's death prompted a search of the VPFSC database and profiles were found to match the profile of a person whose DNA had been discovered on a condom examined in a police rape investigation. This person has been referred to throughout these proceedings as "P".<sup>423</sup>

Following this discovery, on 27<sup>th</sup> May 2003, Mr. Jones tried to extract a fresh DNA sample from the bib and pants. Apparently, although human biological material was discovered on both the bib and pants, the DNA failed to give rise to any detectable DNA profile. Mr. Jones considered that this was likely to be due to presence of degraded biological material.<sup>424</sup>

Mr. Jones then extracted five additional samples from areas surrounding the sampled areas of the bib along with an additional six samples from areas surrounding the sampled areas of the pants. Using a different technique a general sample was also

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<sup>421</sup> *Submissions of Counsel Assisting*, pp. 91 to 93 and see related footnotes 398 to 420 (in Counsel's submissions).

<sup>422</sup> See the *First Inquest transcript*, pp. 771 to 773 (Scheffer). Note the evidence of Mr. Scheffer that as at December 2003, approximately 10,500 profiles were recorded on the database. Established pursuant to S. 464 Crimes Act 1958 (Victoria).

<sup>423</sup> Statement of Mr. Jones 8<sup>th</sup> September 2003 (Exhibit 60).

<sup>424</sup> Exhibit 60.

taken from each of the bib and pants. Evidently human biological material was confirmed to be present in all samples but it was not possible to extract a DNA profile.<sup>425</sup>

*The VPFSC forensic history of "P"'s DNA profile*

On 12<sup>th</sup> November 1997, VPFSC's Evidence Tracking Unit VPFSC received a number of evidential items relating to "P"'s alleged rape. These items were:

- (1) a condom;
- (2) a swab from "P" (hymen);
- (3) an oral swab from "P";
- (4) a vaginal swab from "P";
- (5) slides containing "P"'s biological samples; and
- (6) "P"'s clothing.

A few days later, on 22<sup>nd</sup> December (with the exception of the clothing) Mr. Jones received all of these items from the Evidence Tracking Unit.<sup>426</sup> He then placed them in a refrigerator without further testing.<sup>427</sup>

Early the following year, on 22<sup>nd</sup> January 1998, Mr. Jones deposited the samples from the condom for DNA profiling.<sup>428</sup> He was unable to recall the day on which he had taken the samples from the condom. However, he considered that, as the sampling process was short, it was likely that the samples were taken on the same day as they were lodged for DNA profiling.<sup>429</sup>

Then, on 30<sup>th</sup> January 1998 at 3.02pm Mr. Jones obtained "P"'s clothing from the Evidence Tracking Unit (this was seven minutes after Mr. Jones received Jaidyn's bib and pants).<sup>430</sup> Following this process, on 2<sup>nd</sup> February 1998, DNA was obtained from the condom samples.<sup>431</sup>

*Evidently, the DNA was quantified and amplified on 3<sup>rd</sup> February and separated on 4<sup>th</sup> and 5<sup>th</sup> February 1998. It was then typed on 5<sup>th</sup> and 6<sup>th</sup> February.<sup>432</sup> Apparently partial DNA profiles were obtained from a sample taken from the inner surface of the condom and also from a sample taken from the outer surface.<sup>433</sup> Counsel Assisting notes by way of footnote that the evidence "indicates that it is not possible to establish which of the surfaces of the condom was on the inside when the condom was used, but we have adopted the terminology used in the Scheffer Briefing Paper for ease of reference."<sup>434</sup>*

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<sup>425</sup> Exhibit 60.

<sup>426</sup> See statement made by Mr. Simon Jones based on his searches of the computer records recording the movements of the exhibits associated with "P" and the First Inquest transcript, p. 1017.

<sup>427</sup> First Inquest transcript, pp. 1018 to 1019.

<sup>428</sup> First Inquest transcript, pp. 1018 to 1019, Table 2 annexed to the Scheffer Briefing Paper (Exhibit 50).

<sup>429</sup> First Inquest transcript, p. 1018.

<sup>430</sup> See statement made by Mr. Simon Jones based on his searches of the computer records recording the movements of the exhibits associated with "P" and the First Inquest transcript, p. 1017.

<sup>431</sup> See Table 2, Scheffer Briefing Paper (Exhibit 50).

<sup>432</sup> See Table 2, Exhibit 50.

<sup>433</sup> According to Counsel Assisting (p. 95 of Submission footnote 434): The profile obtained from "inside" of the condom was: THO1 locus: 6,9.3; TPOX locus: 9,11; CSF locus: 11,11. The profile obtained from the "outside" of the condom was: THO1 locus: 9.3,6 (8); TPOX locus: 9,11 (8); CSF locus: 11,11 (10), vWA locus: 17,17 (18): see Table 1 annexed to the Scheffer Briefing Paper.

<sup>434</sup> See Submissions of Counsel Assisting, p.95, footnote 432.

Counsel Assisting noted in their submission that the

*“three loci profile from the “inside” of the condom (obtained using the “Green Star 1” DNA analysis system) matched the original three loci profile obtained from the deceased’s bib and pants. The profile obtained from the “outside” of the condom was a mixed profile (it contained the DNA of two people, one of whom was assumed to be the alleged rapist).”<sup>435</sup>*

And that the “results of the mixed sample analysis also included alleles which matched the three loci profile” which was originally obtained from Jaidyn’s bib and pants.<sup>436</sup>

The submission of Counsel Assisting also explained that:

*“Like the samples from the exhibits associated with the deceased, the samples from the “inside” and “outside” of the condom were subsequently submitted for DNA analysis using the Profiler Plus DNA Analysis System. A nine loci profile was obtained from each sample. This time each sample showed a mixed profile, although the profile obtained from the “inside” of the condom was a “weak” mix, in that only one allele was from a second contributor. Each of the results that had been obtained at 10 loci from the DNA analysis of the deceased’s bib matched the results that had been obtained at each of those loci from the “inside” of the condom. Similarly, each of the results that had been obtained at eight loci from the DNA analysis of the deceased’s pants also matched the results that had been obtained at each of those loci from the DNA analysis of the “inside” of the condom.”<sup>437</sup>*

On 27<sup>th</sup> February 1998 Mr. Jones returned “P”’s clothing to the Evidence Tracking Unit<sup>438</sup> and, a few days later (2<sup>nd</sup> March) he also returned the remaining exhibits for the alleged rape.<sup>439</sup> Two days later all of these exhibits (except the condom) were collected by an investigating police officer and destroyed.<sup>440</sup>

Counsel Assisting explained that, on 6<sup>th</sup> October 1999, “P”’s blood sample was taken to the Evidence Tracking Unit and collected from there by Mr. Jones on 25<sup>th</sup> October. On that day he submitted a blood sample for DNA profiling. The DNA was extracted from the sample and quantified on 29<sup>th</sup> October 1999. The DNA was amplified on 3<sup>rd</sup> November, separated on 4<sup>th</sup> November and was typed on 5<sup>th</sup> November 1999. A DNA profile was obtained with results at all nine loci (plus the Amelogenin locus, confirming that the sample was from a female). These results also matched the results obtained from the “inside” of the condom at each locus.<sup>441</sup>

Counsel Assisting in their submission further noted the history thus:

*“On 5 October 2000 (more than 18 months after the examination of the exhibits associated with the deceased), Mr. Jones returned the condom to the Evidence Tracking Unit. The condom was collected from the VPFSC by another police officer on 31 January 2001.”<sup>442</sup>*

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<sup>435</sup> Submissions of Counsel Assisting, p. 95.

<sup>436</sup> Submissions of Counsel Assisting, p.95.

<sup>437</sup> Submissions of Counsel Assisting, p.95 and footnotes to the submissions, Footnotes 434 and 435.

<sup>438</sup> Statement made by Mr. Simon Jones based on his searches of the computer records recording the movements of the exhibits associated with “P”.

<sup>439</sup> Statement by Mr. Simon Jones based on his searches of the computer records recording the movements of the exhibits associated with “P”.

<sup>440</sup> Statement by Mr. Simon Jones based on his searches of the computer records recording the movements of the exhibits associated with “P”. First Inquest transcript, p. 807 (Scheffer). First Inquest transcript, p. 807 (Scheffer).

<sup>441</sup> Submissions of Counsel Assisting, p. 96 and footnotes 440 to 442.

<sup>442</sup> Submissions of Counsel Assisting, p. 96.

Then:

*“In December 2003, the VPFSC sent DNA extracted from the “inside” and “outside” of the condom, from the deceased’s pants and from “P”’s blood sample to the Northern Territory Police, Fire and Emergency Services Forensic Science Centre so that DNA profiles could be generated using the “Identifiler” DNA analysis system. The Identifiler DNA analysis system was not available in Victoria. It tests for results at 16 loci.”<sup>443</sup>*

And Counsel finally submitted that:

*“The DNA analysis conducted in the Northern Territory revealed matches between the DNA profile from the deceased’s pants and “P”’s DNA profile (as obtained from the condom and the blood sample) at additional loci. The match was increased to between 10 and 13 loci (depending on whether partial results at loci were incorporated).”<sup>444</sup>*

*Alternative explanations for the match between the DNA from the bib and pants sample profile and “P”’s DNA profile*

- Introduction

Three possible explanations have been given by the experts for the match between the DNA profiles obtained from Jaidyn’s bib and pants and “P”’s DNA profile (from the blood sample and the condom). These are:

- Direct involvement by “P” with the bib and pants;
- Contamination in the VPFSC laboratory; and
- The profile from the bib and pants was not “P”’s, but that of another unrelated individual (an “*adventitious match*”).

These alternatives are considered below.

- Involvement by “P”

As part of the Coroner’s investigation “P” was required to make a statement. That statement was made on 20<sup>th</sup> June 2003. She was 17 at the time Jaidyn disappeared. She was raped in the Melbourne suburb of Altona in about the middle of 1997 and at that time she was living in Werribee.<sup>445</sup> She had only left the Melbourne area once and that was to go to Kaniva and had never been to Gippsland. Accordingly, she had not visited Moe, Morwell or Traralgon. “P” stated that she did not know anyone from Moe, Morwell, Traralgon or Gippsland and had never heard of Jaidyn Leskie before there was discussion about his disappearance in the news. She had never heard of Bilynda Murphy, Katie Leskie (nee Murphy), Ken Penfold, Yvonne Penfold, Raymond Hopkinson, Darren Wilson, Dean Ross, Neville Hibbins or Greg Domaszewicz.

On 20<sup>th</sup> June 2003, Detective Senior Sergeant Rowland Legg (Homicide Squad and in charge of the investigation into Jaidyn’s death) made a statement for the Coroner and concluded that nothing could be found to connect “P” with the Latrobe Valley or anyone who was a subject of their investigation.

Along with Detective Senior Constable Sheather, Mr. Legg also had obtained statements from a number of individuals who all basically said they did not know “P”. These individuals included Bylinda Williams, Yvonne Penfold, Raymond Hopkinson, Katie Leskie, Neville Hibbins, Brett Leskie, Glen and Lori Leskie, Elizabeth Leskie and Raymond Leskie, Paul Lietzau, Darren and Sheena Farr; and Julia Walker. Ms.

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<sup>443</sup> *Submissions of Counsel Assisting*, pp. 96 to 97.

<sup>444</sup> *Submissions of Counsel Assisting*, p. 97

<sup>445</sup> See pp. 663 to 664 of the *First Inquest Brief*.

Williams gave evidence to this effect.<sup>446</sup> Counsel Assisting noted that they have been unable to ascertain who Julia Walker is and her connection with the individuals in the investigation.<sup>447</sup>

Detective Senior Sergeant Legg concluded that there was no association between “P” and any person connected with Jaidyn’s case.

- Contamination

*Mr. John Scheffer*

Mr. John Scheffer (Assistant Director (Biology) of the VPFSC) provided a briefing paper (dated 30<sup>th</sup> July 2003) dealing with the alternative explanations for the DNA match.<sup>448</sup> He also gave evidence at the Inquest<sup>449</sup> and provided an additional statement that was tendered in the Second Inquest.<sup>450</sup> This statement set out the contamination minimisation techniques employed at the VPFSC.

In considering contamination incidents Mr. Scheffer noted that the incidents are discovered in laboratories from time to time.<sup>451</sup> Evidently there had been contamination incidents in the VPFSC laboratory.

According to Mr. Scheffer some of the incidents had involved contamination of the “reagent blank” used in DNA analysis.<sup>452</sup> Some had also involved the DNA of staff members working in the laboratory<sup>453</sup> and others had involved DNA from an unknown source.<sup>454</sup> Apparently, between 1999 and 2003, there were two instances of contamination from an unknown source.<sup>455</sup>

Mr. Scheffer did not think contamination had occurred in Jaidyn’s case. However he could not rule it out. In his view any contamination would need to have occurred twice – once in relation to the sample for the pants and once in relation to the sample for the bib.<sup>456</sup> He considered that evidence suggested that the examination of the bib and track pants had taken place on different days, so the contamination would also have had to occur on two separate days.<sup>457</sup> Counsel Assisting noted that:

*“In support of his view that the deceased’s samples had not been contaminated with biological material from the condom, Mr. Scheffer pointed to the absence of any contamination in three cases that could be identified as cases that Mr. Jones had worked on during the period between the date on which he examined the condom and the date on which he believed he examined the items associated with the deceased. Although Mr. Scheffer had also originally pointed to the lack of a mixed DNA profile on the deceased’s samples as evidence that there had been no contamination from the condom, he conceded that the “inside” of the condom did not show a strong mixed profile, so that contamination from that side of the condom would not necessarily result in the transfer of a mixed profile to the samples from the deceased’s exhibits.”<sup>458</sup>*

Additionally, as submitted by Counsel Assisting:

*“Mr. Scheffer relied on “monthly statistics running sheets” completed by Mr. Jones. Based on these sheets, he believed that it was likely that the deceased’s clothing was*

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<sup>446</sup> *First Inquest transcript, p. 1506.*

<sup>447</sup> *Submissions of Counsel Assisting, p. 98, footnote 447.*

<sup>448</sup> *Exhibit 50*

<sup>449</sup> *See pp. 764 to 864, 920 to 973 and 1001 to 1014 First Inquest transcript.*

<sup>450</sup> *Exhibit 101.*

<sup>451</sup> *First Inquest transcript, p. 780.*

<sup>452</sup> *First Inquest transcript, p. 799.*

<sup>453</sup> *First Inquest transcript, p. 781.*

<sup>454</sup> *First Inquest transcript, p. 809.*

<sup>455</sup> *First Inquest transcript, p. 813.*

<sup>456</sup> *First Inquest transcript, p. 828.*

<sup>457</sup> *First Inquest transcript, p. 828.*

<sup>458</sup> *Submissions of Counsel Assisting, pp. 99 to 100.*

examined before “P”s clothing, rendering contamination from the clothing impossible.”<sup>459</sup>

And Counsel Assisting observed:

*“The deceased’s clothing items were listed by Mr. Jones in his January 1998 monthly return and the “P” clothing items were listed in his February 1998 monthly return. The deceased’s items were not examined in January, but Mr. Jones sometimes did not complete his monthly return until the first couple of days of the month.”*<sup>460</sup>

Mr. Scheffer said that VPFSC complied with the requirements of its accreditation from the National Association of Testing Authorities. This accreditation establishes quality control assurance programs and some of these programs deal with prevention of contamination.<sup>461</sup> The laboratory had a system of “*diagnostic and corrective actions*” and it attempted to diagnose exactly how contamination occurred and undertake corrective action to ensure that it did not reoccur.<sup>462</sup>

Mr. Scheffer explained the system of examination and stated that the practice of the scientist was to only ever open one bag and examine one specific exhibit at a time. However, he noted that there was no specific protocol, procedure or direction requiring forensic scientists to adopt this practice.<sup>463</sup> He explained that before opening a bag containing an exhibit, the scientist would put gloves and a lab coat on, spray the examination bench with 0.05 per cent hypochlorite, wipe the bench down thoroughly, allow the bench to dry and place a clean piece of butcher’s paper on the bench.<sup>464</sup> Evidently the scientists would change gloves on a regular basis throughout the examination, and dispose of those gloves in a biohazard container.<sup>465</sup> The scientists are now required to wear masks to prevent saliva mixing with the exhibits. However, they were not required to follow this process at the time.<sup>466</sup> He explained that during the DNA analysis process a “*reagent blank*” was used to identify cases in which a sample was contaminated by the chemicals used in the process.<sup>467</sup> Also along with each sample was a “*DNA Science Branch Sheet*” recording the details of the analysis process, including the witnessing by a staff member of any transfer of material between test tubes by another staff member.<sup>468</sup>

Counsel Assisting noted that “*a number of experts who examined the VPFSC documentation associated with the “P” exhibits and the deceased’s exhibits made criticisms of the procedures adopted by those at the VPFSC*”. By way of example, Counsel Assisting noted that the experts observed that:

*“(1) no records were kept of where a particular exhibit was examined (that is, on large stainless steel examination tables or on smaller examination tables) or when a particular exhibit was examined (making it difficult to work out retrospectively what cases were analysed during a specified period);*

*(2) no control samples or “substrate samples” were taken from an exhibit, which could have established the existence of contamination of that exhibit;*

*(3) the recording of case numbers, item numbers and sample numbers on tubes containing samples submitted for DNA testing was done with an ink pen on the exterior of the tube, which sometimes did not survive when a tube was placed in a freezer (in*

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<sup>459</sup> *Submissions of Counsel Assisting, p. 100.*

<sup>460</sup> *Submissions of Counsel Assisting, p. 100 and footnote 462..*

<sup>461</sup> *First Inquest transcript, pp. 807 to 808.*

<sup>462</sup> *First Inquest transcript, pp. 808 to 809.*

<sup>463</sup> *First Inquest transcript, p. 780.*

<sup>464</sup> *First Inquest transcript, p. 780.*

<sup>465</sup> *First Inquest transcript, p. 782.*

<sup>466</sup> *First Inquest transcript, p. 780.*

<sup>467</sup> *First Inquest transcript, p. 798.*

<sup>468</sup> *First Inquest transcript, pp. 793 to 794 and 802 (Scheffer).*

*the view of the experts, this may have been the reason for the loss of the reagent blank used in the DNA analysis of the condom, which could alternatively have been consumed in testing); and*

*(4) the proficiency tests conducted by VPFSC to ensure that its scientists had the necessary abilities to conduct testing were not “blind” proficiency tests.”<sup>469</sup>*

*Mr. Robert Goetz*

Mr. Robert Goetz (Senior Forensic Biologist, Forensic Biology/DNA Laboratory, Division Analytical Laboratories, NSW) considered the following items: VPFSC working notes; Mr. Scheffer’s Briefing Paper and reports produced by other experts. Unlike the other experts, Mr. Goetz inspected the VPFSC laboratory on 27<sup>th</sup> and 28<sup>th</sup> October 2003.

Mr Goetz stated that<sup>470</sup> although he could find no direct evidence of contamination, the match between the DNA profile on the bib and pants and “P”’s DNA profile was more likely to be the result of contamination than an adventitious match. His view was that the source of the contamination was either the condom or “P”’s clothing. Significantly, in this regard, Counsel Assisting noted that:

*“this is the ultimate conclusion expressed by Mr. Goetz in his oral evidence, which differs from the conclusion expressed in his letter to the Victorian Government Solicitor’s Office dated 5 November 2003 (Exhibit 62).”<sup>471</sup>*

Counsel Assisting also observed that because “P”’s blood sample:

*“was not received by the VPFSC until October 1999, Mr. Goetz could not envisage how DNA from the blood sample could have contaminated the deceased’s bib and pants.”<sup>472</sup>*

Counsel Assisting summarised the points relied on by Mr. Goetz:

*“(1) the samples from the bib and pants were examined within a few days of the samples from the condom;*

*(2) the samples from the condom were examined prior to the samples from the bib and pants;*

*(3) the samples were examined by the same biologist;*

*(4) the stains from which the samples had been taken on the bib and pants were diluted and weak, which was not “particularly supportive” of the proposition that the bib and pants had been stained with blood;*

*(5) the initial DNA analysis of the samples from the bib and pants was done within a couple of days of the initial DNA analysis of the samples from the condom;*

*(6) attempts to obtain a DNA profile from the samples from the bib and pants in mid-2003 were unsuccessful, suggesting that the samples had been contaminated in 1998 during or prior to the amplification stage (or that the most viable sample had been removed in February 1998 and there was insufficient material remaining on the sample);*

*(7) the bib and pants were examined consecutively and also proceeded through the DNA analysis steps adjacent to each other; and*

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<sup>469</sup> Submissions of Counsel Assisting, pp. 101 to 102 and explanations in the footnotes.

<sup>470</sup> The evidence of Mr. Goetz is contained in a letter to Mr. Scheffer 20<sup>th</sup> September 2003 (Exhibit 61), a letter to the Victorian Government Solicitor’s Office 5<sup>th</sup> November 2003 (Exhibit 62) and pp. 1156 to 1191 First Inquest transcript.

<sup>471</sup> Submissions of Counsel Assisting, p. 103, footnote 479.

<sup>472</sup> Submissions of Counsel Assisting, p. 104, footnote 480.

*(8) it would be unusual to recover DNA from an item that had been immersed in water for a number of months.”<sup>473</sup>*

Counsel Assisting also pointed to the following evidence:

*“Like Dr. Harbison, Mr. Goetz did not regard the lack of a mixed DNA profile on the bib and pants as indicating that there had not been contamination. Mr. Goetz noted that the mixed profile from the “inside” of the condom was a weak mixed profile and that the sole allele from the second contributor need not necessarily have been transferred in the event of contamination.”<sup>474</sup>*

And that although the matters listed:

*“pointed towards contamination, Mr. Goetz noted that it was unusual for two samples from the one case to become contaminated. Mr. Goetz also observed that the procedures used at the VPFSC showed a general awareness of good laboratory practice and the problems of contamination.”<sup>475</sup>*

*Dr. Sally Ann Harbison*

Dr. Sally Ann Harbison (Science Leader, Forensic Biology Group, Institute of Environmental Science and Research Ltd, Auckland, New Zealand) considered a variety of information from this case including the VPFSC working notes, photographs of the bib and pants, notes from VPFSC file, the Briefing Paper produced by Mr. Scheffer, reports produced by other expert witnesses who were to be called to give evidence in the Inquest and other material relevant to the handling of Jaidyn’s and “P”’s exhibits by the VPFSC. She did not consider that there had been deliberate contamination of the Leskie exhibits with biological material associated with “P”.<sup>476</sup> Dr. Harbison considered that, on the balance of probabilities, accidental contamination by DNA from the condom was the most likely explanation for the DNA results produced from the bib and pants. She relied on the following information (the summary points are taken from the submission of Counsel Assisting):

*“(1) given the period of time that the bib and pants appeared to have been immersed in water, she was surprised that any DNA profile could have been obtained from these items (Dr Harbison did not know of any instance where DNA had been recovered from material that had been immersed in water for six months);*

*(2) even if a DNA profile could have been obtained from the bib and pants, she was surprised that no DNA from the deceased was detected, particularly on the front of the bib, where the samples were taken from;*

*(3) if the DNA profiles obtained from the bib and pants did originate from the apparent bloodstaining on those items, she was surprised that the same DNA profiles had not been obtained when DNA analysis was conducted again in 2003 – instead, the subsequent testing produced a greater amount of DNA than that extracted in the original testing;*

*(4) the samples in the “P” case and the deceased’s case were analysed over a short period of several days, rendering it possible that biological material from the condom could have been deposited on a surface or implement that was then in contact with the exhibits in the deceased’s case, either during examination or during DNA analysis; and*

*(5) the lack of a mixed DNA profile on the bib and pants did not necessarily point away from contamination – due to the amounts of DNA apparently amplified for each sample,*

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<sup>473</sup> *Submissions of Counsel Assisting, p. 104.*

<sup>474</sup> *Submissions of Counsel Assisting, p. 104..*

<sup>475</sup> *Submissions of Counsel Assisting, p.104.*

<sup>476</sup> *Report dated 26 November 2003 (Exhibit 55) and the First Inquest transcript, pp. 868 to 919.*

*it was possible that the very low minor component of the apparent mixture on one side of the condom would not be detected in the DNA profile from the bib and pants.*<sup>477</sup>

Dr. Harbison considered that it was less likely, that there had been contamination from a transfer of biological material from “P”’s clothing to the bib and pants during the examination process (before the DNA analysis process). She thought that it was not possible to ascertain from VPFSC notes when the clothing was examined. Counsel Assisting summarised her evidence on this issue thus:

*“If biological transfer had taken place, it would have been of “wearer DNA”, that is DNA found on everybody’s clothes from normal everyday wear. Because amounts of “wearer DNA” are normally low, and because the transfer of DNA would have had to occurred in an indirect manner (from “P”’s clothes to the bench to the deceased’s clothes), this scenario was less likely than contamination of the DNA extracts during processing.”*<sup>478</sup>

*Professor William Thompson*

Professor William Thompson (Department of Criminology, Law and Society, University of California, Irvine) considered the possibility of laboratory contamination.<sup>479</sup> Since 1986 he had been studying the legal applications of genetic technology and published numerous articles on forensic DNA evidence. Also he was familiar with the DNA testing procedures used in this case.<sup>480</sup> He looked at the VPFSC laboratory notes, the Scheffer Briefing Paper and other expert reports.

Professor Thompson also could find no direct evidence of contamination. The Professor considered the match between the two DNA profiles was more likely to be due to accidental laboratory contamination than an adventitious match. Professor Thompson regarded the fact that the two cases were processed through the laboratory in close temporal proximity as the key factor in this conclusion. Counsel Assisting noted that Professor Thompson also relied on:

*“(1) the results obtained from the testing conducted in the Northern Territory, which not only replicated the findings previously reported by the VPFSC, but also extended the results at which a match was observed, and therefore “greatly strengthened the evidence favouring the proposition that the DNA came from “P”;*

*(2) a review that he had conducted of the electronic data collected by the VPFSC during the DNA testing incorporated results that fell below the reporting threshold used by the VPFSC – Professor Thompson’s review suggested that the DNA profile from the bib matched “P”’s DNA profile at two further loci and the DNA profile from the pants matched “P”’s DNA profile at four further loci.”*<sup>481</sup>

The Professor’s evidence (as with Dr. Harbison and Mr.Goetz) was that absence of a mixed profile on the bib and pants did not rule out the possibility of contamination from the condom.

*Dr. Dan Krane*

Dr. Dan Krane (Associate Professor, Department of Biological Sciences, Wright State University in Dayton, Ohio) also considered the possibility of laboratory contamination.<sup>482</sup> He also examined the VPFSC laboratory notes, the Scheffer Briefing Paper and reports produced by other experts.

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<sup>477</sup> *Submissions of Counsel Assisting, pp. 102 to 103.*

<sup>478</sup> *Submissions of Counsel Assisting, p.103.*

<sup>479</sup> *Report 3<sup>rd</sup> December 2003 (Exhibit 65), a supplementary report 29<sup>th</sup> January 2004 (Exhibit 66) and pp. 1196 to 1235 First Inquest transcript.*

<sup>480</sup> *Professor Thompson’s curriculum vitae (Exhibit 67).*

<sup>481</sup> *Submissions of Counsel Assisting, p.105.*

<sup>482</sup> *Report 4<sup>th</sup> December 2003 (Exhibit 68), a supplementary report 3<sup>rd</sup> February 2004 (Exhibit 69) and pp. 1241 to 1291 First Inquest transcript.*

Dr. Krane thought accidental contamination was the most likely cause of the DNA obtained from the bib and pants.

Dr. Krane, like Professor Thompson, was of the view that the key factor suggesting contamination was the fact that the same personnel processed samples from the two cases. He thought that it was “*within a plausible window of opportunity for contamination to have occurred*”.<sup>483</sup> He considered contamination from the “*inside*” of the condom was the most likely source of the DNA results obtained from the deceased’s bib and pants.

As Counsel Assisting submitted, “*like Professor Thompson*” Dr. Krane “*relied heavily*” on:

*“(1) the results obtained from the testing conducted in the Northern Territory, which in his view rendered it “profoundly unlikely” that someone other than “P” (including her relatives) was the source of the DNA found on the deceased’s bib and pants; and*

*(2) a review that he had conducted of the electronic data collected by the VPFSC during the DNA testing (that also incorporated results below the VPFSC reporting threshold), which in his view lent “substantially more credence to the already compelling proposition” that “P” was the source of the DNA on the deceased’s bib and pants.”<sup>484</sup>*

Counsel Assisting noted:

*“Like Dr. Harbison, Mr. Goetz and Professor Thompson, Dr. Krane also did not regard the absence of a mixed profile on the deceased’s bib and pants as demonstrating that there had been no contamination from the “inside” of the condom.”<sup>485</sup>*

And also:

*“Like Mr. Goetz, Dr. Krane expressly excluded the possibility that the source of the contamination was “P”’s blood sample, noting that it did not arrive in the VPFSC laboratory until October 1999.”<sup>486</sup>*

*Professor Barry Boettcher*

Professor Barry Boettcher (retired Professor of Biological Sciences, Newcastle University) gave evidence<sup>487</sup> about the possibility of contamination in this case.

Professor Boettcher believed that the DNA results were caused by contamination and that the possibility of deliberate contamination should be considered. As Counsel Assisting submitted:

*“However, contrary to evidence of the other experts, Professor Boettcher did not believe that the most likely source of the contamination was the condom. In Professor Boettcher’s view, the likely source of the contamination was the blood sample of “P”. When informed that the VPFSC had not received “P”’s blood sample until October 1999 (well over 18 months after the examination and analysis of the deceased’s exhibits), Professor Boettcher maintained that an earlier blood sample must have been taken. However, Dr. Wells gave evidence<sup>488</sup> that he had examined “P”’s medical file, and no blood sample had been taken until 5 October 1999.”<sup>489</sup>*

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<sup>483</sup> Exhibit 68, p.8.

<sup>484</sup> Submissions of Counsel Assisting, p. 106.

<sup>485</sup> Submissions of Counsel Assisting, p. 106.

<sup>486</sup> Submissions of Counsel Assisting, p. 106.

<sup>487</sup> Professor Boettcher’s evidence is contained in a series of letters to legal representative of Ms. Williams and to the State Coroner (Exhibit 108) and in pp. 1115 to 1155 and 1300 to 1324 First Inquest transcript.

<sup>488</sup> See pp. 1295 to 1297 First Inquest transcript.

<sup>489</sup> Submissions of Counsel Assisting, p. 107.

*VPFSC submissions on the role of immersion in the dam on the exhibits*

Counsel for VPFSC noted:

*“37. Little precise detail is available as to the conditions under which the bib and track pants existed on the floor of the Blue Rock Dam. The items were found in 5.7 metres of water. There is no information as to conditions at that level over the period of the immersion of the items or of the levels of clarity of the water during that time. The temperature was below 8 degrees in January 1998, however, nothing is known of water temperature at 5.7 metres at any other time. The items were located in a tied off plastic bag. Other than the fact that the contents were wet, nothing is known as to the degree to which water was able to enter or leave the bag. Nothing is known as to what bacteriological conditions existed on the floor of the dam.*

*38. In these circumstances, it has been the view of all scientific witnesses that there is no valid experiment which could be conducted to seek to replicate the conditions in which the Leskie exhibits existed with sufficient particularity to give a result which might lead to some meaningful conclusion as to the possibility of the survival of DNA in what were presumed to be blood stains on the items of clothing analysed. All the scientific evidence also suggested that there has been no study as to the survival of DNA in water.*

*39. Despite this lack of information Dr Harbison was prepared to express what appears to have been an intuitive view that she was surprised that DNA had survived under water over the period stated. Mr Goetz expressed a similar view. All scientific witnesses, including Dr Harbison acknowledged that degradation of DNA under water arises from a washing effect, light or from bacterial attack. The lower the water temperature, the less light, the less washing effect the greater prospect there is that there will be less degradation. Indeed, Dr Harbison ultimately stated that if the items were in a sealed bag at low temperatures not subject to water flow and if there had been significant blood staining, it may not be all that surprising that a DNA result was ultimately obtained.*

*40. Mr Jones gave a detailed account as to his enquiries in respect of the precise conditions in which the track pants and bib existed at the bottom of the Blue Rock Dam. He pointed out that it is usually “bugs” in water which destroy DNA, not the water itself (absent a washing effect). He also commented on the impossibility of replicating conditions for the purpose of further tests which might have any meaningful implications. He observed that the Quantiblot result obtained when the items were extensively re-tested demonstrated that, contrary to Dr Harbison’s hypothesis, large quantities of human DNA had in fact survived on the items.*

*41. Mr Jones also gave evidence that the reason he went ahead to take the samples he did from the bib and track pants was because they were the darkest part of apparent blood stains which had responded positively to a Haemastix test for presumptive blood. The bib provided a weak positive result and an even weaker result was obtained on the track pants.*

*42. Mr Goetz observed that the coldness of the water could act as a refrigerant in fact preserving DNA. He was unable to say what the effect of immersion in water of less than 8 degrees might be. Professor Krane expressed surprise that DNA was found given the immersion of clothing in water but his understanding of the conditions which had existed was quite different from those which in fact existed.*

*43. It is submitted that ultimately there is no valid scientific basis for concluding that the conditions surrounding the immersion of the bib and track pants were such as to make it unlikely that DNA would not have survived in stains which were apparent at the time of examination and which were sampled.”<sup>490</sup>*

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<sup>490</sup> Submissions of Counsel for VPFSC, pp. 12 to 15.

### Overall submissions on 'contamination' by VPFSC

Counsel for VPFSC examined the possibility of contamination from the condom and observed:

*"19. Material from the condom and swabs was lodged for DNA testing on 22 January 1998. Examination of the bib and track pants commenced on 2 February 1998. There was, therefore, a gap of at least 11 days between the two sets of examinations.*

*20. The condom analysis was conducted on a small bench which was Mr Jones' workstation. He later examined the Leskie exhibits on a large bench at the end of the room. The condom and swabs were handled with scissors and forceps. Mr Jones used only one pair of scissors and one pair of forceps. He later used those scissors to cut and lift material from the Leskie exhibits. They were in a container which was carried to the large bench at the time he examined the Leskie exhibits.*

*21. Laboratory procedures in 1998 were such that it is difficult to identify all cases in which Mr Jones used his scissors between 22 January 1998 and 2-3 February 1998. The system was altered in September 1999 to ensure that this difficulty did not recur. Mr Jones was nevertheless able to identify three cases in which he used his scissors and in which DNA profiles were obtained during the intervening period. These cases involved multiple cutting of fabric and swabs and the cutting up of nine disposable gloves. The DNA results obtained in those cases revealed the identification of only one allele which was reported in the Leskie profile and that was an allele which occurs in one third of the population.*

*22. Mr Jones explained that before and after each examination the scissors were placed in a 70% alcohol solution which was the accepted method of removing DNA. Before each use the blades were wiped and cuts are made in fresh tissue.*

*23. It is submitted that in these circumstances, even allowing for the possibility of inadvertence, it is impossible that the DNA from the condom or swabs was transferred by the scissors to both the bib and track pants samples. Furthermore, the tags on the Leskie exhibits indicate that the bib was examined on 2 February and the track pants on 3 February."<sup>491</sup>*

And VPFSC's Counsel (when leading into discussion on the possibility that the scissors were involved) also noted that Counsel Assisting expressed the view that it was possible that contamination occurred from the condom sample. But that at:

*"no stage were expert witnesses able to identify how this might have occurred given the processes described above. These conclusions were not based on any scientific view but rather on presumptions that the statistical evidence was such that contamination was likely, it had to come from somewhere and, because of the time frames involved, contamination from the condom could not be excluded. It is noted that Dr Harbison concluded that the most likely occasion for contamination was during the DNA extraction process although transfer during examination was "not impossible."<sup>492</sup>*

And that:

*"25. Theoretically, there was a possibility that DNA was transferred from the "P" items to the Leskie items by the scissors, which were used to cut samples from the bib and track pants, or, that there was a secondary or tertiary transfer from the container in which the scissors were kept. Mr Goetz viewed the possibility of transfer from the container as "extremely unrealistic.*

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<sup>491</sup> Submission by Counsel for VPFSC, pp. 7 to 8.

<sup>492</sup> (sub-paragraph 24) Submission by Counsel for VPFSC, pp. 8 to 9.

26. Mr Jones gave unchallenged evidence that the possibility of the transfer of DNA from the scissors container did not arise given the way in which he handles exhibits. He is always acutely aware of the possibility of DNA on any surface. He does not handle any item and then touch an exhibit without first changing gloves. This is elementary and second nature because the DNA of any number of persons could be on an item such as the scissors container.<sup>493</sup>

On the glove changing process Counsel for the VPFSC submitted:

*"27. Dr Harbison observed that, although there was no specific protocol published in respect of changing gloves, it is a process which is generic because DNA scientists are critically aware of the possibility of contamination.*

*28. In addition, it is submitted that it is inconceivable that the glove-changing process broke down both at the time of the bib sampling and at the time of the taking of the sample from the track pants, and, that the only DNA which was transferred was the DNA from the condom sample which had survived unmixed for a period of 11 days.*

*29. On examination of the condom, an allele relating to a second contributor was found on both sides of the condom. The allele on "side 1" of the condom was weak. There was, however, a strong secondary profile found on the second side.*

*30. Mr Jones' view was that the strong profile would certainly have shown up if "side 2" was the source of a transfer of DNA to the Leskie exhibits. As the same scissors and forceps were used on both sides of the condom, given the normal procedure for cleaning between taking consecutive samples, it is untenable that not only did the scissors contain DNA from the condom when they were ultimately used on the bib and track pants, but also that any DNA which did adhere to them came from the side of the condom which was first tested. Mr Goetz expressed the view that it was most unlikely the contamination could have come from "side 2" of the condom. The absence of a mixed profile is, however, not conclusive.*

*31. Mr Goetz also concluded that it was extraordinarily unlikely that a transfer of DNA would occur after 11 days from scissors which were used for other tests in the interim. The only expert to suggest that the contamination might have arisen from the sampling process applied to the condom was Mr Thompson. He could do no more than "guess" that DNA from the condom somehow got on the bib and track pants.<sup>494</sup>*

Counsel for VPFSC also discussed the point of contamination from "P"'s clothing and noted:

*"32. As Counsel Assisting in their submissions have explained, the statistics sheets completed by Mr Jones make it likely that the Leskie bib and track pants were examined before "P" clothing. This accords with Mr Jones' recollection. If this is correct clearly the "P" clothing could not have been the source of contamination.*

*33. In any event, the possibility of secondary transfer of DNA from the clothing of "P" to the bench and then to the areas of staining on both the track pants and bib is remote in the extreme. The unlikelihood of this occurring has been acknowledged by Counsel Assisting.*

*34. Mr Jones is a leader in the field in the study of trace DNA. He was co-author of an article in Nature magazine in June 1997. His evidence was that the coverage and amount of DNA on a re-test of the Leskie exhibits was inconsistent with secondary*

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<sup>493</sup> Submission by Counsel for VPFSC, p. 9.

<sup>494</sup> Submission by Counsel for VPFSC, pp. 9 to 10.

transfer. Such transfers usually provide DNA which is at a low level and which is a mixture.

35. Dr Harbison concluded that clothing-to-clothing transfer was unlikely. Mr Goetz stated that he was not convinced that this could have occurred. Mr Scheffer explained that secondary transfers can occur even where items do not contact one another but such transfers are very rare.

36. Mr Jones observed that as no samples were taken from the "P" clothing, no opportunity arose for direct contamination by the use of implements. The same bench was used but, before each item of the clothing was looked at, the bench was cleaned with a hypochlorite solution and clean paper was laid out. He also pointed out that the amounts of DNA ultimately found on re-testing could not have been attributable to secondary transfer. The quantity of 0.125 nanograms per microlitre is considerably higher than trace levels."<sup>495</sup>

On the quantity of DNA on analysis Counsel for VPFSC argued that:

"44. When the bib and track pants samples were analysed in 1997, tests showed the presence of only a small quantity of DNA. Dr Harbison observed that in about 50% of cases a stain analysis will yield a mixed result. These facts raise for consideration the possibility that there was no DNA other than contaminating DNA on the bib and track pants samples at the time of analysis. It is submitted that upon examination this hypothesis is untenable.

45. When the samples were analysed in 1997, the 'Yield Gel' process was employed. Dr Harbison explained that the Yield Gel test was a notoriously unreliable indicator of the quantity of DNA available on the sample taken for analysis. On some occasions DNA would be obtained when a Yield Gel test had indicated that no DNA was present. Since then, Yield Gel tests have been replaced by the more accurate 'Quantiblot' test. The Quantiblot tests conducted on numerous samples from the bib and track pants in 2003 showed that there was in fact a large quantity of human DNA which had survived on the exhibits. Mr Jones also drew attention to the fact that the 1997 samples were taken from the darkest areas of apparent blood staining and that concentrated stains of human biological material will contain DNA for longer than areas where the concentration is less.

46. The fact that in 2003 no profile could be obtained from the significant quantities of DNA extracted is consistent with degradation of DNA on the items in question between tests between 1998 and 2003 during which time they were in police custody. Dr Harbison, relying on the statement of Mr Sheather, observed that during that period of time the items were stored in a plastic bag. Her view is that such storage conditions were conducive to the promotion of bacterial growth and degradation. Mr Jones made similar comments and noted that the storage of items in plastic bags can cause a large amount of degradation.

47. Professor Thompson suggested that substrate controls may have been of assistance in this case. However he acknowledged that the trend has been away from substrate testing in the United States and that even in this case it was likely it would be unhelpful as one would have expected that diluted material would have covered the whole of the fabric. Mr Scheffer explained that substrate testing was routinely undertaken in the days of ABO blood testing because of the possibility that the chemicals contained in a fabric would skew the result. There is no suggestion that routine substrate tests are either desirable or appropriate."<sup>496</sup>

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<sup>495</sup> Submissions of Counsel for VPFSC, pp. 11 to 12.

<sup>496</sup> Submissions of Counsel for VPFSC, pp. 15 to 16.

And, as one of the arguments of Counsel Assisting:

*“48. Counsel Assisting have raised the issue as to whether the lack of “wearer” DNA on the bib is an indication that no DNA had survived on the bib. This reflects Dr Harbison’s assertions in evidence that she expected to see DNA from the child on the bib.*

*49. The above hypothesis is flawed. Firstly, there is no evidence that the child was wearing the bib for any period of time. Secondly, Dr Harbison had incorrectly assumed that the bib was on the decomposing body. Thirdly, there was in fact a considerable amount of human DNA on the unstained areas of the Leskie exhibits from which a profile could not be obtained as Mr Jones pointed out in rebuttal of Dr Harbison’s suggestion. Finally, there is no reason to suggest that traces of dribble would involve the same degree of concentration of DNA or resistance to dilution that the stains observed by Mr Jones possessed.*

*50. It is submitted that the results of the two series of tests conducted on the Leskie exhibits are wholly consistent with the proposition that at all times there was human DNA on the stained and unstained areas and that the failure to obtain a profile in 2003 occurred because the DNA on the items had degraded during storage in plastic bags during much of the intervening period or the DNA on the unstained areas was diluted human biological material from the more concentrated stained areas.”<sup>497</sup>*

- “Adventitious match”

*Mr. John Scheffer*

Mr. Scheffer considered that the match between the DNA profile on the bib and pants and “P”’s DNA profile was more likely to be adventitious match than as a result of contamination.<sup>498</sup> He noted that there were two other cases involving an adventitious match. One was a six loci match found in the United Kingdom. The other was a nine loci match in the Northern Territory.<sup>499</sup> There was also a case in New Zealand that may have been an adventitious match, or may have resulted from contamination<sup>500</sup>.

*Mr. Robert Goetz*

Mr Goetz stated the highest number of loci at which he was aware of an adventitious match was nine. This was a match between a brother and a sister in the Northern Territory.<sup>501</sup> He was also aware of an adventitious match that had been observed in his laboratory in New South Wales (between apparently unrelated people) at eight loci. However, as Counsel Assisting noted that in:

*“attempting to assign a statistical probability to the possibility of an adventitious match in this case, Mr. Goetz made reference to a previous calculation by Professor Weir that a match a nine loci used in the Profiler Plus DNA analysis system would be expected to occur once in a sample of 600,000 Australians.”<sup>502</sup>*

*Professor William Thompson*

Professor Thompson noted the highest number of loci at which he had heard of an adventitious match was nine.<sup>503</sup> But he was of the view that an adventitious match in

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<sup>497</sup> *Submissions of Counsel for VPFSC, p. 17.*

<sup>498</sup> *First Inquest transcript, p. 856.*

<sup>499</sup> *First Inquest transcript, pp. 838 to 840.*

<sup>500</sup> *Report dealing with the match observed in New Zealand is Exhibit 56.*

<sup>501</sup> *Evidence of Mr. Goetz is contained in a letter to Mr. Scheffer dated 20<sup>th</sup> September 2003 (Exhibit 61), a letter to the Victorian Government Solicitors Office dated 5<sup>th</sup> November 2003 (Exhibit 62) and pp. 1156 to 1191 First Inquest transcript.*

<sup>502</sup> *Submissions of Counsel Assisting, p. 108.*

<sup>503</sup> *See Exhibit 65, Exhibit 66 and pp. 1196 to 1235 First Inquest transcript.*

this case to be “so extraordinarily unlikely” that it was not worthy of much consideration.<sup>504</sup>

Professor Thompson also undertook a number of calculations in an attempt to establish the statistical probability of an adventitious match in this case. In his view, the probability that the 10 loci DNA profile from the bib was the same as that of another unrelated individual was one in 171 billion.

*Dr. Dan Krane*

Dr Krane considered that the match observed in this case could not reasonably be explained as an adventitious match.<sup>505</sup> He also noted that the statistical probability that the match observed in this case was an adventitious match was one in a thousand billion billion. However, it is noted that Professor Weir did not agree with the statistical basis for this calculation.

*Professor Bruce Weir*

Professor Bruce Weir from the William Neal Reynolds Professor of Statistics and Genetics, North Carolina State University gave evidence at the inquest.<sup>506</sup> He examined the statistical probability of an adventitious match having occurred. He considered the Scheffer Briefing Paper, the reports produced by other experts and the DNA profiling results from the Northern Territory.

Professor Weir opined that using allelic frequency data provided by VPFSC (where nine of the twelve Profiler Plus loci at which a complete match had been recorded) that the statistical probability of a match between the specific DNA profile on Jaidyn’s pants and an unrelated individual was one in 3.4 billion. For the eleven loci match (Northern Territory results) the Professor considered that statistical probability of a match between the specific DNA profile on the pants and one of “P”’s half-siblings<sup>507</sup> is between 1 in 73 million and one in 11 million. Counsel Assisting summarised the balance of the Professor’s views thus:

*“the possibility that there was not in fact a match between the DNA profile from the deceased’s pants and the profile of “P” (because of the number of loci at which no results could be recorded and at which only a partial result had been recorded) was reduced in the light of the analysis conducted in the Northern Territory, but he was still uncomfortable in saying absolutely that there was a match...”<sup>508</sup>*

And that Counsel Assisting also observed:

*“although Dr. Goetz had made reference to a previous calculation by Professor Weir that a match at nine loci involving the genetic markers used in the Profiler Plus analysis system would be expected to occur once in a sample of 600,000 Australians, this calculation was not the relevant calculation where the question was the probability of a match between a specific profile and the profile of a random individual.”<sup>509</sup>*

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<sup>504</sup> First Inquest transcript, p. 1221.

<sup>505</sup> Dr. Krane’s evidence is contained in Exhibit 68, Exhibit 69 and pp. 1241 to 1291 First Inquest transcript.

<sup>506</sup> The evidence of Professor Weir is in a report 10<sup>th</sup> November 2003 (Exhibit 57), a second report 24<sup>th</sup> November 2003 (Exhibit 58), “notes” 15<sup>th</sup> January 2004, “notes” prepared with Amy Anderson 10<sup>th</sup> May 2004 (Exhibit 107), the First Inquest transcript, pp. 976 to 1001 and a response to a set of questions put to him by the VPFSC 30<sup>th</sup> August 2005 (Exhibit 110). Professor Weir’s qualifications appear at p.976 First Inquest Transcript.

<sup>507</sup> On 5 February 2004, Senior Constable Gibson spoke with the parents of “P”, and established that “P” has 20 half-siblings (with 16 half-sisters) and no full-siblings: see the statement made by Senior Constable Gibson on 24 February 2004 (Exhibit 89).

<sup>508</sup> Submissions of Counsel Assisting, p. 109.

<sup>509</sup> Submissions of Counsel Assisting, p. 109.

*Submissions on improbability of Adventitious Match by Counsel for VPFSC*

Counsel for VPFSC made submissions on the improbability of adventitious match and noted:

*“13. If “P” has been excluded as the contributor of the DNA found in the Leskie samples, the question arises as to the possibility that the DNA derives from a person who has the same profile as “P” at the loci tested. We support the submission of Counsel Assisting that the calculations of Professor Weir should be adopted. Professor Weir was, however, uncomfortable with the idea of aggregating the results from two samples tested at different laboratories at different loci. We agree with Counsel Assisting that the “birthday probability” of 1 in 230,000 is not the relevant calculation where the issue is not the likelihood of two profiles within the VPFSC database matching but of one profile in that database matching another which has already been specifically identified.*

*14. It is submitted that the appropriate figure as to the probability of a person other than “P” being the source of the DNA on the bib and track pants is as low as 1:11,000,000. That is the figure arrived at by Professor Weir having been provided with information that “P” had 16 half-siblings.*

*15. Although the probability of adventitious match decreases as profiles are found to correspond at additional loci, it is submitted that the ultimate probability figure arrived at is not relevant in determining whether there was or was not contamination. The figure is of such an order as to indicate that the possibility of adventitious match is extremely unlikely. On the other hand, it is not of an order which could positively exclude that possibility.*

*16. Mr Goetz, who is the only independent scientist to have reviewed protocols and procedures at VPFSC, was of the view that both adventitious match and contamination were unlikely. The time delay is such that neither can be proven. Although initially, having examined the possibility of contamination by reviewing the processes which were in fact used and observing VPFSC procedures, he tended to the view that adventitious match was more likely than contamination, he ultimately stated that he “tends to favour contamination over adventitious match. For the reasons stated below, it is submitted that such a “balancing” process is invalid. It is to be noted that Mr Goetz is not a statistician.*

*17. Mr Scheffer wished to defer to Professor Weir’s calculations as to probabilities. He agreed that the probability of adventitious match declined as more alleles were identified. He addressed the issue on the basis that, looking at physical facts rather than statistical differences, one must conclude that contamination through human error, in the circumstances of this case, was extremely unlikely. He expressed the view that the probability of adventitious match does not bear directly on the issue of contamination. He, like Mr Goetz, was unable to identify any part of the process where contamination may have occurred. Mr Jones also was unable to determine where there was any realistic possibility for the opportunity to have arisen for contamination to have occurred.*

*18 Professor Weir is acknowledged to be pre-eminent in his field. He supports the view of Messrs Jones and Scheffer as to the relevance of statistical calculations to the probability of the occurrence of contamination. According to Professor Weir, the probabilities of adventitious match and contamination are totally independent. The probability of one having occurred does not impact on the probability of the other having occurred. The information available to him gave him no basis for concluding which of the possible explanations were more likely.”<sup>510</sup>*

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<sup>510</sup> Submissions of Counsel for VPFSC, p. 4 to 6.

### *Conclusions about the source of female DNA on the clothing*

In summary, Counsel Assisting submitted that *“the evidence establishes to a comfortable level of satisfaction that the source of the DNA found on the deceased’s bib and pants was “P”.*”

However, Counsel also submitted that:

*“There is no evidence to establish any direct involvement by “P” with the deceased, or with the deceased’s bib and pants. There is no basis to challenge the evidence from “P” on this topic or the numerous witness statements that led Senior Sergeant Legg to conclude that “P” had no connection with anyone associated with the deceased.*”<sup>511</sup>

And:

*“The evidence establishes to a comfortable level of satisfaction that the DNA of “P” came to be on the deceased’s bib and pants as a result of contamination at the VPFSC laboratory. This was the conclusion reached by all of the experts who gave evidence in the First and Second Inquests. However (contrary to the suggestion made by Professor Boettcher), in our view, there is no evidence to suggest that the contamination was deliberate. For the purposes of this proceeding, it is unnecessary to establish precisely where or how the contamination occurred. Contamination must have occurred either in the examination or DNA analysis stages. Similarly, it is unnecessary to establish what the precise source of the contamination was (although we submit that, it could not have been “P”’s blood sample, and was most likely to be the condom).*”<sup>512</sup>

But that:

*“The evidence falls far short of establishing to a comfortable level of satisfaction that the DNA found on the deceased’s bib and pants was the result of an adventitious match with another, unidentified, individual. Each of the experts who gave evidence regarded this as extraordinarily unlikely. We submit that, the differences between the statistical calculations performed by the various experts are not material. On the evidence of Professor Weir (whom we regard as the witness with the greatest expertise in this area), the statistical probability of an adventitious match with an unrelated individual in this case was as small as one in 3.4 billion.*”<sup>513</sup>

On the possibility of contamination in the laboratory, Counsel for the VPFSC submitted:

*“51. There has been evidence as to the painstaking procedures adopted to avoid contamination during the analysis of samples in the DNA laboratory. This process was demonstrated to the Coroner and Counsel Assisting in the course of the view of the relevant areas at VPFSC.*

*52. Other than the quality of ink on a label in 1998 and the loss of a reagent blank, no criticism has been made in respect of processes in the DNA laboratory. Indeed, insofar as the DNA Science Branch is totally separate in terms of geography and personnel from the exhibit examination areas, and all transfers are witnessed and recorded, the VPFSC standards appear to exceed those applying in many other laboratories, particularly smaller laboratories. The laboratory adheres to a “continuous improvement programme” which includes benchmarking for contamination minimisations.*

*53. The quality control processes in the DNA laboratory are, however, not in issue in considering whether there was contamination of the Leskie samples. The fact is that the Leskie DNA result could not have arisen as a result of contamination in the DNA laboratory. The only time at which Leskie and “P” samples came together in the DNA laboratory was when a re-run of amplified product was conducted on 5 February 1998.*

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<sup>511</sup> Submissions of Counsel Assisting, p. 110.

<sup>512</sup> Submissions of Counsel Assisting, p. 110.

<sup>513</sup> Submissions of Counsel Assisting, p. 110.

*The samples were physically separated on the separation medium by a considerable space such that there could not have been any mixing. Furthermore, the amplified material re-run on 5 February 1998 could not be responsible for the contamination suggested here because the analysis was conducted only at the VWA and FES loci. Correspondence between profiles has occurred at seven or eight loci in addition to these.”<sup>514</sup>*

Counsel for VPFSC submitted that:

*“54. Ultimately, the evidence leads to a comfortable degree of satisfaction that there is nothing in the DNA analysis which would suggest that “P” was in any way involved in the death of Jaiydn Leskie. This is wholly consistent with the view of Mr Scheffer. On the other hand, it is impossible positively to conclude that the profile obtained from the Leskie exhibits arose by way of contamination from material from the “P” exhibits.”<sup>515</sup>*

And:

*“55 In order positively to conclude that contamination occurred in the way suggested it would be necessary to identify some point at which there was a realistic possibility of transfer of DNA between samples. Looking at temporal overlaps a number of points have been identified at which it was appropriate to examine in detail the processes which were undertaken. A detailed analysis in respect of each of these “windows of opportunity” makes it clear that there is no point at which there can be identified any realistic prospect of contamination having occurred.”<sup>516</sup>*

In the reply to submissions of the VPFSC Counsel Assisting briefly pointed to a telling issue:

*“We note that it is asserted on behalf of VPFSC that the condom in the “P” case was examined by Mr. Jones on a small bench in a different location within the room in which Mr. Jones worked to a large bench on which he examined the deceased’s exhibits. No reference to the evidence is given in support of this assertion. As noted in the principal submissions, the VPFSC kept no records at this time of where or when a particular exhibit was examined (or what instruments were used in the examination process). This was a matter on which experts who examined VPFSC documentation associated with the case of the deceased and the case of “P” criticised VPFSC procedures. This criticism and other criticisms of VPFSC procedures are listed in paragraph 358 of the principal submissions. The assertion by VPFSC that no criticisms were made of in respect of processes at the VPFSC laboratory other than the quality of ink on a label and the loss of a reagent blank is incorrect.”<sup>517</sup>*

Counsel Assisting noted, by way of conclusion on the overall relevance of the DNA issue for the Coroner’s investigation that, at the time of Mr. Domaszewicz’s trial,:

*“the DNA results suggested the existence of an unidentified female whose biological material was on the bib and pants recovered from the Blue Rock Dam, and was therefore a suspect in the death of the deceased. As a result of the further DNA analyses conducted throughout the First and Second Inquests (and the extensive expert evidence about the correct interpretation of those results), this unidentified female has now been conclusively eliminated as a suspect in the death of the deceased.”<sup>518</sup>*

Ms. “P” was not involved and adventitious match is highly unlikely. It is unlikely in that, whilst statistically there remains the *possibility* that there is some individual in the community that has the same DNA profile as “P”, the possibility is so slender as

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<sup>514</sup> Submissions of Counsel for VPFSC, pp. 18 to 19.

<sup>515</sup> Submissions of Counsel for VPFSC, p. 19.

<sup>516</sup> Submissions of Counsel for VPFSC, p. 19.

<sup>517</sup> Submissions in Reply of Counsel Assisting, p. 2.

<sup>518</sup> Submissions of Counsel Assisting, p. 110 to 111.

to be practically meaningless. Accordingly, there is a comfortable degree of satisfaction that adventitious match does not apply to provide an answer that there is some other individual who was involved in the case of Jaidyn Leskie.

Realistically, as the majority of the independent experts conclude, contamination in the VPFSC laboratory is the only logical answer. From a coronial perspective, irrespective of not being able to identify precisely how this contamination occurred, there is also that comfortable degree of satisfaction to enable this conclusion to be reached. The evidentiary material from the two separate and distinct cases was dealt with by the same laboratory scientist within a period of time that was, on any construction, proximate. In addition, there have been other cases where contamination has occurred but precisely how this has happened has not be able to be discovered.

Ultimately, Mr. Goetz (who observed the laboratory practices at VPFSC) along with the other Australian and international experts (other than those from VPFSC) have concluded that *contamination* is the answer. Initially Mr. Goetz considered *contamination* was the explanation and, after a laboratory visit, changed his mind to *adventitious match*. During his evidence he moved back towards *contamination*. He was of the view that the source of the *contamination* was either the condom or "P"'s clothing. It must also be emphasised that these contamination incidents are rare and Mr. Goetz observed that "...the procedures used at the VPFSC showed a general awareness of good laboratory practice and the problems of contamination."<sup>519</sup> However, by comparison, some of the other experts had some concerns about the existing record keeping at the laboratory.<sup>520</sup>

#### **SUBMISSIONS AS TO THE CAUSE OF DEATH**

Counsel Assisting in their submission to the Coroner suggested that:

*"the most likely cause of death is the fracture to the skull and the associated injury to the brain. Whilst it is possible that the administration of Benzhexol was fatal, or that the deceased died from an asthma attack, an epileptic seizure, asphyxiation or drowning, the evidence suggests that each of these scenarios are much less likely."*<sup>521</sup>

And also submitted that:

*"the most likely mechanism for the skull fracture is a direct blow with a blunt instrument, although the fracture is also consistent with a variety of other mechanisms.*

*The evidence establishes that neither the fractures to the left forearm or the possible rib fracture were a likely cause of death. The fractures to the left forearm are consistent with a range of mechanisms, and may have occurred as long as 14 days before death. However, we submit that the lack of any callous formation observed by Dr. Robertson and Professor Ranson suggests that the arm fractures were more likely to have occurred much closer to death (or at the time of death)."*<sup>522</sup>

#### *Submissions of Counsel for Mr. Domaszewicz on the injuries*

As part of his submission on the possible or probable cause of death, Counsel for Mr. Domaszewicz observed, under the heading "*Expert witnesses called to throw light on the injuries to Jaidyn and the possible or probable cause of death*", that:

*"Mr Kennan's submissions trace the many and various heads of material called at the two inquests concerning the injuries to Jaidyn. I have no quarrel with his summary, or conclusions, save that his statement that the "fractures to the left forearm are consistent with a range of mechanisms, and may have occurred as long as 14 days*

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<sup>519</sup> *Submissions of Counsel Assisting, p.104.*

<sup>520</sup> *Submissions of Counsel Assisting (para.358, p.101) and Reply, p.2,*

<sup>521</sup> *Submissions of Counsel Assisting, p. 85.*

<sup>522</sup> *Submissions of Counsel Assisting, p. 85.*

before death, ignores the compelling evidence of both the radiologist, Dr McLaughlan, and the orthopaedic surgeon, Mr Bainbridge, that the injuries they examined at that site in the x-rays were most unlikely to have been sustained by a crushing type of injury, such as a car falling from elevation onto the child's arm. This has considerable significance when looking at the allegations contained in one or more of the gaolhouse confessions.<sup>523</sup>

#### **SUBMISSIONS ABOUT HOW, WHEN AND WHERE THE DEATH OCCURED?**

- *When and where death occurred*

Counsel Assisting submitted that:

*"The evidence establishes that Mr. Domaszewicz was the last person to see the deceased alive.*

*(1) After dropping Ms. Williams and Breehanna at Katie Leskie's house at approximately 1.30-2.00pm on 14 June 1997, there is no evidence that anyone else saw the deceased again.*

*(2) There is no evidence from anyone who saw the deceased at Mr. Domaszewicz's house at any time that afternoon or evening. We note that Ms. Williams spoke to the deceased by telephone in the late afternoon and Ms. McKinnon said she heard a noise she believed to be from the deceased in the background during a phone conversation at about 10.00pm. Ms. Williams may also have heard the deceased in the background during one of the phone calls she made to Mr. Domaszewicz's house from Ryan's Hotel, although she said she couldn't be sure about this.*

*(3) There is no evidence from anyone who saw Mr. Domaszewicz between 1.30-2.00pm on 14 June 1997 (when he was seen by Ms. Williams) and 2.00am on 15 June 1997 (when he was observed by Kenny Penfold and Darrin Wilson to come out of his house, put something in his bin, and then drive away).<sup>524</sup>*

And that during this 12 hour period:

*"the deceased may have died either as the result of an accident or as a result of the actions of Mr. Domaszewicz. If Ms. McKinnon's evidence is accepted, the period within which the deceased died is reduced to the four hour period between 10.00pm on 14 June 1997 and 2.00am on 15 June 1997. It is unlikely that the deceased was still alive when Mr. Domaszewicz left the house at approximately 2.00am. Kenny Penfold and Darrin Wilson did not hear a baby when they threw the pig's head at Mr. Domaszewicz's house at this time. Mr Sparks also did not hear a baby crying at this time. In addition, upon returning from Ryan's Hotel shortly before 3.00am, Ms. Williams did not see the deceased at Mr. Domaszewicz's house.<sup>525</sup>*

That Mr Domaszewicz's "account of the approximate 12 hour period when the deceased was in his care has...curious features." These are:

*"(1) Although Mr. Domaszewicz said that he was at home for the entire 12 hours, there is no other witness to corroborate this. In fact, Mr. McCarthy gave evidence that when he drove past Mr. Domaszewicz's house at about 7.30pm, he did not see Mr. Domaszewicz's car. This is a time when, on Mr. Domaszewicz's account, the car was out the front of his house. In addition, Ms. Williams gave evidence that she rang Mr. Domaszewicz's home repeatedly in the late afternoon, but there was no answer. There was also no answer when Mr. McCarthy telephoned Mr. Domaszewicz that afternoon, nor when Ms. McKinnon telephoned in the evening.*

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<sup>523</sup> Submissions of Counsel for Mr. Domaszewicz, p. 9.

<sup>524</sup> Submissions by Counsel Assisting, p. 66.

<sup>525</sup> Submissions by Counsel Assisting, p. 66 to 67.

(2) Mr. Domaszewicz said that during the 12 hours when the deceased was in his care, the deceased did not eat much and was not hungry. This is in contrast to evidence given by Ms. Williams (and other statements made by Mr. Domaszewicz) that the deceased had a big appetite. We note that Ms. Williams said the deceased would cry when hungry.

(3) Although Mr. Domaszewicz said that he had run out of nappies by 10.00pm, there is no evidence that he bought any more nappies, despite Ms. McKinnon telling him that he could get nappies at the nearby service station.

(4) Mr. Domaszewicz appears to have given a variety of different accounts of the deceased's whereabouts and well-being to Ms. Williams during this period, including a version of events involving trips to hospitals to deal with burns suffered by the deceased.

(5) Mr. Domaszewicz said nothing to Ms. Williams about the absence of the deceased when they returned to his house from Ryan's Hotel.<sup>526</sup>

Counsel Assisting both submitted that:

*"There is no evidence to establish that the deceased was removed from Mr. Domaszewicz's house during the relatively short period of time when Mr. Domaszewicz was away from the house and picking Ms. Williams up from Ryan's Hotel".<sup>527</sup>*

They pointed out that it is open for the Coroner to find that Jaidyn "died at Mr. Domaszewicz's house (whilst in Mr. Domaszewicz's care) during the late hours of 14<sup>th</sup> June 1997 or the early hours of 15<sup>th</sup> June 1997" because:

*"(1) The house was secure, and despite the broken windows, the evidence suggests that no one entered or exited the premises through those windows.*

*(2) Despite their admitted attendance in the vicinity of Mr. Domaszewicz's house while Mr. Domaszewicz was collecting Ms. Williams, there is no evidence (physical or otherwise) to establish that Yvonne Penfold, Kenny Penfold, Darrin Wilson or Dean Ross removed the deceased from Mr. Domaszewicz's house. Each of these individuals has consistently denied doing so. Indeed, witnesses who observed Mr. Penfold and Mr. Wilson coming from the direction of Mr. Domaszewicz's house that night did not see either of them carrying anything. The evidence of these witnesses suggests that neither Mr. Penfold nor Mr. Wilson were making any attempt to remain unseen as they walked away from Mr. Domaszewicz's house that night, but to the contrary, were drawing attention to themselves by shouting and throwing rocks at passers-by.*

*(3) Despite suggestions during Mr. Domaszewicz's trial and committal that Raymond Hopkinson removed the deceased from Mr. Domaszewicz's house, there is no evidence that places Mr. Hopkinson in the vicinity of Mr. Domaszewicz's house during the period when Mr. Domaszewicz was collecting Ms. Williams (or at any time on the day of the deceased's disappearance)*

*(4) There is no other individual whom the evidence suggests removed the deceased from Mr. Domaszewicz's house that evening."<sup>528</sup>*

As to Jaidyn's probable age when he died, in summary, Counsel for Mr. Domaszewicz commented on the relevance of the expert witnesses called:

*"This was largely dental opinions, together with some evidence concerning the examination and condition of the body, the clothing, how long it had been immersed in water, etc. It seems clear that the evidence seemed to confirm that Jaidyn's teeth development was typical of a 14 month old child. Beyond that, no further light is thrown on just when Jaidyn died. The evidence does not remotely prove that Jaidyn died on the night he disappeared. There is nothing in this body of evidence that contradicts the*

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<sup>526</sup> Submissions by Counsel Assisting, p. 67.

<sup>527</sup> Submissions by Counsel Assisting, p. 67.

<sup>528</sup> Submissions by Counsel Assisting, pp. 67 to 68.

*possibility he died a couple of weeks later, for example. A clumsy attempt was made to paper over the issue at the trial of the hair-length of Jaidyn when he disappeared, compared to its length when his body was found. Put simply, that evidence discloses the strong likelihood that Jaidyn survived for some days, if not weeks, after he disappeared.*<sup>529</sup>

- *The circumstances of death*

Counsel Assisting also suggested that, on the evidence, it is not possible “to say whether the death of the deceased was the result of an intentional act, an accident, a spontaneous act or a combination of accidental, spontaneous or deliberate events.” And they also noted that Mr. Domaszewicz had “no apparent motive to kill the deceased.”<sup>530</sup>

Counsel Assisting also noted that:

*“The evidence about the injuries to the deceased’s body when retrieved from the Blue Rock Dam (which is discussed in detail in Part E below) is significant. The deceased’s left forearm was broken in two places and was wrapped in a bandage. On the medical evidence, it is open to find that the arm was broken shortly prior to death. The fractures to the arm would have caused intense pain and distress. If the deceased was conscious after sustaining the fractures, he would be expected to be crying loudly. However, there is no evidence of any witness having heard the noise of a baby crying from Mr. Domaszewicz’s house that night.”*<sup>531</sup>

Counsel Assisting further suggested that:

*“The alleged confession by Mr. Domaszewicz to Prisoner “R” contains a version of events that consists of an accidental event (Mr. Domaszewicz’s car falling on the deceased and breaking his arm), followed by a spontaneous act by Mr. Domaszewicz (“slipping” the deceased a drug to settle him down), followed by a deliberate act by Mr. Domaszewicz (hitting the deceased over the head with a crowbar). Although, as noted above, we regard the probative value of the evidence of an alleged confession in these terms as diminished by the timing of Prisoner “R”’s statement, we note that there is no evidence that contradicts the key details of the alleged confession.”*<sup>532</sup>

And concluded by submitting that “there is ultimately no reliable evidence that establishes the precise circumstances of the deceased’s death.”<sup>533</sup>

Counsel for Mr. Domaszewicz submitted:

*“In the section of his submissions so headed (pp.66-68), Mr Kennan’s submissions blatantly seek to point the finger at Domaszewicz.*

*He turns the fact that Domaszewicz was the last known person to see the deceased alive into a bald statement that he was the last person to see Jaidyn alive.*

*He invites the Coroner to find that Jaidyn died at the Domaszewicz house, whilst in Domaszewicz’s care during the late hours of 14th June or the early hours of 15th June, 1997.*

*He ignores the lack of forensic signs that that was the case, including the almost total lack of findings of blood at the house, and the total lack of forensic signs that the child’s body was placed in Domaszewicz’s car.*

*He ignores the entire trial defence submissions on the issues, and selectively asks the Coroner to accept evidence from members of the Pig’s Head team (Kenny Penfold and*

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<sup>529</sup> Submission of Counsel for Mr. Domaszewicz, p.9.

<sup>530</sup> Submissions by Counsel Assisting, p. 68.

<sup>531</sup> Submissions by Counsel Assisting, pp. 68 to 69.

<sup>532</sup> Submissions by Counsel Assisting, p. 69.

<sup>533</sup> Submissions by Counsel Assisting, p. 69.

*Damn Wilson) that they did not hear a baby cry when they trashed the windows and threw the pig's head inside (note they swore convincingly at the trial that they threw the pig's head **inside** the lounge room, yet it was found outside).*

*He seems to simultaneously accept that a neighbour, Mrs McKinnon, spoke to Domaszewicz on the phone at about 10 pm, and heard a child happily in the background (whom she actually said she recognized from its voice as Jaidyn); then, in the next breath, he seems to be saying that all sorts of sinister things happened **before** this, due to the odd piece of evidence such as that a friend did not notice his car outside some hours earlier, or that Domaszewicz did not answer his phone that afternoon, inferentially, whilst working outside on his car. In other words, just grab an isolated, though illogical, piece of evidence and run with it.*

*He places considerable importance on the allegedly wet money found under the mattress at Domaszewicz's home. No new evidence was called here, simply a fresh attempt is made to repeat what was said by the Crown at the trial, and which I answered in my final address.*

*I do not propose to go over these aspects of the trial evidence. We were told at the beginning of the First Inquest that the enquiry would only call new material, and not re-hear the trial evidence. Nothing that emerged at either the First Inquest, or indeed the Second (which was a fairly transparent attempt at justifying not abandoning what had become a sad waste of public monies) actually justifies a different conclusion to that reached by the jury at the trial. So Mr Kennan has a short rumination around the evidence at the trial, and invites the Coroner to come to a different conclusion to the jury. This submission is scandalous in its flouting of what was said by Mr Justice Ashley in his judgement ruling the First Inquest invalid, and the law as it has emerged in cases such as Carroll, in the High Court.*

*At the trial, in my final address, I spent a considerable period showing how the police theory that the baby was placed in the Blue Rock Dam that night was impossible, both because of a lack of time to go there and actually put a body in the dam in the way it seems to have been done, and other accompanying features of the disposal of the body. I referred to the issue as the "window of opportunity", and of how times, distances, methods (see next paragraph), and surrounding evidence of when Domaszewicz took phone calls, was spoken to, seen by police etc, effectively closed this "window" altogether. I suggest that those such as Mr Kennan, who apparently wish to simply blame Domaszewicz, read these submissions. They are part of the transcript tendered at the First Inquest. And Mr Kennan breathlessly ignores other issues at the trial, such as the credibility of the police crime-scene evidence, and the whole crowbar/shovel issue regarding the item leaning against the fence photographed the next day in the backyard of Domaszewicz's house.*

*When I refer to "methods", I am pointing to various surrounding details of how the Crown scenario could have been achieved (eg, a crowbar would not fit in the boot of Domaszewicz's car; a rough bandage was on the injured arm; drugs were in the child's body; complex knots - see the evidence called in the defence case - were used to attach the crowbar to the sleeping bag; there were clear difficulties associated with scaling a wet, steep, dam wall with such a heavy object at night).<sup>534</sup>*

#### **SUBMISSIONS ABOUT THE DISPOSAL OF JAIDYN'S BODY**

Counsel Assisting submitted that it was open for the Coroner to find that "Mr. Domaszewicz was involved in the disposal of the deceased's body at the Blue Rock Dam." It is suggested that Mr. Domaszewicz had:

*"the opportunity to drive to the Blue Rock Dam and dispose of the deceased's body during the four hour period between 10.00pm and 2.00am or during the later two hour*

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<sup>534</sup> Submissions of Counsel for Mr. Domaszewicz.

period between dropping Ms Williams at her house and returning to tell her that the deceased was missing.<sup>535</sup>

Counsel Assisting regarded the:

*“lack of an explanation by Mr. Domaszewicz for the wetness of both the wallet that was subsequently found in his car and the notes found under a mattress in his house, as well as the lack of an adequate explanation for his movements during the later two hour period, as significant. The significance of the wetness of the wallet and notes is increased in light of the evidence of Senior Constable Veitch that it would have been necessary to wade deep into the water at Blue Rock Dam in order to push a bundle of the weight of deceased, attached to a crowbar of similar weight to that found near the deceased, to a distance from the shore similar to that where they were found.”*<sup>536</sup>

But that Counsel Assisting regarded the *“evidence of Mr. and Mrs. Hasson about Mr. Hasson’s sighting of a car resembling Mr. Domaszewicz’s car in the vicinity of the Blue Rock Dam as of much less significance.”* Counsel noted it was given six years after the disappearance and was *“insufficiently precise in terms of dates and details to have any persuasive value.”*<sup>537</sup> As indicated earlier, the submission by Counsel for Mr. Domaszewicz is effectively to a similar effect.

Counsel Assisting observed that the evidence establishes that *“the disposal of the body must have taken place before Mr. Domaszewicz and Ms. Williams arrived at the Moe Police Station at approximately 5.00am on 15 June 1997.”*<sup>538</sup>

Counsel Assisting suggested that this conclusion is open because Jaidyn’s body was not found:

*“(1) at Mr. Domaszewicz’s house during the crime scene examination that Mr. Evans commenced at 3.40pm that afternoon (while Mr. Domaszewicz was still being interviewed at the Moe Police Station); or*

*(2) in Mr. Domaszewicz’s car, which remained at the Moe Police Station until Mr. Evans commenced to examine it the following day.”*<sup>539</sup>

As indicated above, Counsel for Mr. Domaszewicz takes a different view.

By way of conclusion Counsel Assisting submitted that, in any event:

*“a finding that Mr. Domaszewicz disposed of the deceased’s body does not assist in establishing whether death was accidental or the result of a deliberate or spontaneous act. The act of disposing of the body could have been motivated by feelings of guilt in either event.”*<sup>540</sup>

#### **SUBMISSIONS ABOUT “CONTRIBUTION”**

Counsel Assisting in their submission to the Coroner on the issue of the identity of any person who contributed to the death noted that:

*“The requirement in s.19(1)(e) of the Coroners Act to make findings as to the identity of any person who contributed to the cause of death was repealed by s.10(b) of the Coroners Amendment Act 1999 (Vic).*

*The 1999 Amending Act also inserted a new set of transitional provisions into the Coroners Act.<sup>541</sup> Relevantly, s.76(3) was inserted into the Coroners Act to provide that s.19 of the Coroners Act, as amended by s.10 of the 1999 Amending Act, applied only*

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<sup>535</sup> Submissions by Counsel Assisting, p. 69.

<sup>536</sup> Submissions by Counsel Assisting, p. 69.

<sup>537</sup> Submissions by Counsel Assisting, p. 69.

<sup>538</sup> Submissions by Counsel Assisting, p. 69.

<sup>539</sup> Submissions by Counsel Assisting, p. 70.

<sup>540</sup> Submissions by Counsel Assisting, p. 70.

<sup>541</sup> Section 18 of the 1999 Amending Act for the Coroners Act 1985.

*to investigations into deaths initiated after the commencement of s.10 of the 1999 Amending Act.*<sup>542</sup>

And said that “*because the investigation into the death of the deceased commenced prior to the repeal of s. 19(1)(e), it is open to the Coroner to make findings of contribution in this case.*”

Counsel Assisting also noted that, in considering the question of the identity of any person who contributed to the death, it is necessary to examine a number of issues. Specifically, these issues relate to the source of the Benzhexol found in Jaidyn’s body, the source of the female DNA found on the clothing recovered with the Jaidyn’s body and the other individuals nominated as suspects.<sup>543</sup>

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<sup>542</sup> *Submissions of Counsel Assisting, pp. 85 to 86.*

<sup>543</sup> *Submissions of Counsel Assisting, p. 86.*

## FINDINGS

The death of Jaidyn Raymond Leskie occurred either on the 14<sup>th</sup> or 15<sup>th</sup> June 1997 most probably at 150 Narracan Drive, Newborough and was from 1(a) head injuries.

1. At the time of his death Jaidyn was a vulnerable, 14 month old child, who was being baby sat by Mr. Greg Domaszewicz at his house at 150 Narracan Drive, Newborough.

In the early morning of 15<sup>th</sup> June 1997 Jaidyn was reported as missing to police by Mr. Domaszewicz and Ms. Williams. Extensive searches were undertaken. Later, his body was discovered in Blue Rock Dam on 1<sup>st</sup> January 1998. Other than the head injuries, there were confirmed fractures to Jaidyn's left arm. It had been bandaged. The child would have been in considerable pain as a result of these fractures. Because the arm had been bandaged, the inference that the fractures occurred at some time shortly before and proximate to the head injuries, cannot be excluded.

2. Mr. Domaszewicz was a friend of Jaidyn's mother, Ms. Bylinda Williams and had previously looked after the child on a number of occasions. About a month before the disappearance there was a previous incident where Mr. Domaszewicz admitted to Ms. Williams that he had "*lost it*" in relation to Jaidyn. Jaidyn had some bruising to the face after this incident.

3. Mr. Domaszewicz approached Ms. Williams to look after Jaidyn for the afternoon of the 14<sup>th</sup> June. He picked Jaidyn up from Ms. Williams' house in the early afternoon with the intention of taking him to Narracan Drive. It was arranged that he was to drop the child back to Ms. Williams' sister's house for him to be looked after overnight by another babysitter. In the early evening Ms. Williams unsuccessfully tried to contact Mr. Domaszewicz over the telephone and, rather than going to his house to locate Jaidyn, she went to a party and later to a local hotel where she was drinking until the early hours of the morning. Whilst at the hotel she had two telephone conversations about Jaidyn having been injured with Mr. Domaszewicz. Mr. Domaszewicz collected Ms. Williams from the hotel and drove her to his house in Narracan Drive. He left his house at about 2 am and returned with Jaidyn's mother at about 3 am. After a short stay at Narracan Drive Ms. Williams was then driven to her house where Mr. Domaszewicz left her and returned at about 5 am when they both went to the police.

4. Over the telephone and after picking up Ms. Williams from the hotel, Mr. Domaszewicz gave Ms. Williams a number of explanations about how the child was injured and had been taken to the hospital. The last of these explanations given to Ms. Williams was in the drive from the hotel to the Narracan Drive house. This final explanation was that Jaidyn was injured and in the hospital. All these explanations were false. They are however, explanations that could reasonably be construed as having been designed to set the scene for a child that is missing. At this stage, Mr. Domaszewicz was not aware of the "*pigs head*" incident as it had occurred while he was away for about an hour picking up Ms. Williams from the hotel (see discussion under paragraph 6 below).

5. There are puzzling aspects of Mr. Domaszewicz's reactions on his return to his house with Ms. Williams on 15<sup>th</sup> June and later that morning. After discovering the damage to the house (and the pigs head) he did not mention to Ms. Williams that Jaidyn was missing. His explanation was (in part) that he did not want to alarm Ms. Williams by telling her that the child was missing. Yet, a little earlier he had been

prepared to alarm her by telling her that her son was injured and in hospital. It is noted that at the hotel Ms. Williams' concerns about Mr. Domaszewicz's comments over the telephone were allayed by her sister (who had also spoken to Mr. Domaszewicz over the telephone) when she was advised that he was joking.

It is noted that, in his record of interview, Mr. Domaszewicz indicated that he noticed Jaidyn was missing when they went inside the house. According to Mr. Domaszewicz, Jaidyn was left on the couch when he left for the hotel. He also noted that it was not possible that the child had injured himself while he was away. Also, although Mr. Domaszewicz considered Ms. Penfold was possibly involved and he had driven past her house (and briefly telephoned her), he only looked through the windows of the house. He did not try to raise her in order to try and find out where Jaidyn was. When he was in his car in the early hours of the morning (between leaving Ms. Williams at her residence and allegedly visiting Ms. Penfold's house), ostensibly looking for Jaidyn, he did not comment to police who intercepted him that he was looking for a missing child.

6. Immediately following the incident surrounding the throwing of the pig's head at the front window of Mr. Domaszewicz's house by the group of individuals involved, it appears that the house was not entered. The windows were unopened and the doors were locked. There was no disturbance of the broken glass on the living room floor. There is no clear evidence to establish any involvement of the individuals engaged in throwing the pig's head in the death of Jaidyn.

7. In the following two days Mr. Domaszewicz's wallet was found by the Crime Scene Forensic Investigator under his car's accelerator and his money was discovered under a mattress in a bedroom in his house. Both of these items were wet. The carpets on the floor of the car were wet and a jacket on the back seat of the vehicle was also wet. Mr. Domaszewicz's explanation for the wet wallet was that it was left on the roof of the car in the rain.

These items were discovered in a wet condition during the conduct of the police forensic investigation which occurred from mid afternoon on 15<sup>th</sup> June and, of the car, on 16<sup>th</sup> June. The wet nature of the money indicated more than getting wet when he had been working under the car (an explanation given by Mr. Domaszewicz). Immersion in water is the explanation. Tests undertaken during the coronial inquiry indicated that a person would have to wade out into the dam in order to place the body in position on the dam floor. The lack of an adequate explanation given by Mr. Domaszewicz as to how the money got wet and how long the wet money had been under the mattress is telling.

Mr. Domaszewicz had both the time and opportunity to dispose of Jaidyn's body between when he left Ms. Williams at her house and when he took her to the police in the early hours of the morning of 15<sup>th</sup> June. Alternatively, there may have been a window of opportunity before Ms. Williams was collected from the hotel.

However, as noted by Counsel Assisting the conclusion on disposal of the body "*does not assist in establishing whether death was accidental or the result of a deliberate or spontaneous act. The act of disposing of the body could have been motivated by feelings of guilt in either event.*"

8. During the conduct of the preliminary investigation (before it was decided to undertake an inquest) the female DNA allegedly taken from the bib that was discovered with the body was matched with a DNA profile in the Victorian Police Forensic Science database. This profile was from a rape victim who was subsequently found to be unrelated to the Leskie case. The match to the bib occurred as a result of *contamination* in the laboratory and was not an *adventitious*

*match*. The samples from the two cases were examined by the same scientist within a close time frame.

Had the identification of the two DNA profiles been a case of *adventitious match* then there would have been an unidentified individual in the community who was an additional person of interest in the Leskie case. As Counsel Assisting noted, that at the time of Mr. Domaszewicz's trial:

*"...the DNA results suggested the existence of an unidentified female whose biological material was on the bib and pants recovered from the Blue Rock Dam, and was therefore a suspect in the death of the deceased. As a result of the further DNA analyses conducted throughout the First and Second Inquests (and the extensive expert evidence about the correct interpretation of those results), this unidentified female has now been conclusively eliminated as a suspect in the death of the deceased."*

9. Benzhexol (Artane) was found in Jaidyn's body. Because of decomposition it was not possible to determine the concentration of the drug in the body at the time of death. It is a drug capable of abuse and is sometimes used by abusers of other substances.

There has been no Benzhexol discovered at the Narracan Drive address or any of the other relevant sites and, effectively, no link been made between the drug and any of the relevant parties. However, that does not exclude the possibility of the introduction of the drug into Jaidyn's body by an involved individual. It also does not exclude the possibility that Jaidyn found and digested the drug by accident.

#### **CONCLUSION AND CONTRIBUTION**

At the time of his death Jaidyn Leskie was a vulnerable, 14 month old infant child, who was totally reliant on his adult carers for protection, support and sustenance. It must be remembered that he was a 'toddler' who could mention but three words and had only just started to walk.

Ultimately, responsibility for his care and protection rested with his parents, Ms. Bylinda Williams (nee Leskie) and Mr. Brett Leskie who were then separated. But, because of the separation, day-to-day care and protection was in the hands of his mother, Ms. Williams.

On the days in question (14<sup>th</sup> and 15<sup>th</sup> June 1997) Ms. Williams had temporarily relinquished her responsibility to a friend, a Mr. Greg Domaszewicz, while she visited her sister in the afternoon, went to a party and then spent some considerable time during the evening and the morning of the next day drinking in one of the local hotels. Thus, Mr. Domaszewicz became the baby-sitter and temporarily had the responsibility for the care of Jaidyn.

It was during Mr. Domaszewicz's period of caring for Jaidyn that he died. The cause of death is most probably from head injuries. Precisely how he died remains a matter of contention and conjecture – whether the circumstances leading to the death occurred by accident, by omission or otherwise. Precisely how he suffered the injuries to the arm also remains largely a matter of conjecture, other than the fact that it occurred shortly prior to death.

However, as a helpless 14 month old infant, requiring total support, care and protection by an adult, ultimately it was Mr. Domaszewicz who failed to provide that adequate and very necessary level of protective supervision, care and support to look after the infant – otherwise he would not have received the injuries from which

he died. Whatever happened to result in the injuries that were occasioned to Jaidyn occurred on Mr. Domaszewicz's temporary watch, thus he has contributed to the death.

No satisfactory alternative explanation of the circumstances has been given by Mr. Domaszewicz.

After Jaidyn's death Mr. Domaszewicz disposed of his body in nearby Blue Rock Dam. Clearly, he had the opportunity and time to do so. The indicators that lead to this conclusion and comfortable satisfaction are:

- (a) The last known person to see Jaidyn alive was Mr. Domaszewicz;
- (b) After the incident or incidents that eventually resulted in Jaidyn's death, Mr. Domaszewicz had time to dispose of the body in the dam either before collecting Ms. Williams from the hotel or in the early hours of the morning of 15<sup>th</sup> June or after leaving her at her home and before they both went to the police to report that the child was missing;
- (c) Mr. Domaszewicz gave false explanations to Ms. Williams about Jaidyn's whereabouts and state of health both before and after she was picked up by him from the hotel;
- (d) Ms. Williams was not shown Jaidyn when she returned to Mr. Domaszewicz's house from the hotel (when Mr. Domaszewicz says that he realised the child was missing); and
- (e) Mr. Domaszewicz's wallet and money were wet (consistent with having entered the water in order to dispose of the body).

The fact that a decision has been made that Mr. Domaszewicz disposed of Jaidyn's body does not enable any conclusion to be reached about precisely how the child died – whether by accident or otherwise.

The facts of this case starkly illustrate that responsibility for caring for young children requires a level of constant protective supervision and attention. For a parent leaving a young child with another individual on a temporary basis, even for a short time, requires a very careful assessment of that individual's ability and history of care and the environment where the child is being looked after. The role of the parent, in this case Ms. Williams, is to act protectively towards the child. By leaving Jaidyn in the care of Mr. Domaszewicz, who had a previous history of at least one incident of inappropriate care, she did not act protectively towards her son. Also in the late afternoon of 14<sup>th</sup> June, Ms. Williams was concerned to find out where her son was. She could not get a lift to Mr. Domaszewicz's house and, in the evening, she unsuccessfully attempted to telephone him on a number of occasions. When she could not connect with Mr. Domaszewicz on the telephone rather than beginning by going to Narracan Drive in an attempt to find her son, she went to a party and from there to a drinking session at the local hotel. Thus, Ms. Williams did not act responsibly towards her son, a fact which she appears now to have acknowledged.

## RECOMMENDATIONS AND COMMENTS

### PARENTAL AND CARER RESPONSIBILITY – THE DEGREE OF GUIDANCE AVAILABLE

To state the obvious, as already indicated, young children are totally reliant on their adult carers for protection, support and sustenance. In this tragic case the infant child, Jaidyn, was a 14 month old ‘*toddler*’ who could mention but three words and had only just started to walk. He disappeared while in the temporary care of a male baby sitter who was a friend of his mother’s. There was a previous unrecorded history of violent related injury having occurred to the child while in the care this particular baby sitter. The mother was well aware of this incident, yet she continued to allow the child to be placed in the baby sitter’s care. Objectively, following that incident, the carer ought not to have been allowed by the mother to continue in this temporary role.

Normally, on a daily basis, throughout our community there will be many occasions when very young children are cared for on a temporary basis by friends and relatives, both male and female. Generally, these caring situations are a positive, appropriate and practical part of daily life and occur without any incident or detriment occurring to the child. However, this case has shown that there are exceptions.

Whilst Jaidyn Leskie’s case has generated a good deal of public comment and attention it is not an isolated example. Yet, it is because of this publicity, that our community becomes regularly aware of other cases where the responsible adults have not provided the degree of supervision, protection and support to the young children in their care that our community expects.

The Department of Human Services has an internal guide for “*Assessing Parents/Carers of very young children*” (called the “*Rekonr Guide*”). The guide was last updated in May 2000. The introduction to the guide notes that the listed factors should be “*considered and documented...are not exhaustive but are a guide...*” and the context and application “*need to be considered in conjunction with other literary sources, specialist consultancy and normal supervisory structures.*” The guide is drawn from existing Departmental reports and guidelines and is aimed at providing “*increased detail and depth to the existing Departmental materials for the use by the protective worker*”.

There are various areas tackled by the guide like; unsafe sleeping, high risk infants known to Child Protection, high risk infants parenting assessment and skill development and finally, in “*...assessing the impact of family violence on child safety and family functioning*”. In the latter area there is a list of guidelines for assessing the male care giver, looking by way of example at the history of violence or “*poor understanding of the needs of an infant*” and in a summary note is the comment:

*“A lack of knowledge concerning infant behaviour and appropriate forms of response may increase the risk...that they will maltreat their children either unwittingly, through neglect, or from misinterpreting infant responses resulting in violence.”<sup>544</sup>*

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<sup>544</sup> See Department of Human Services, Guide notes, p.14

The Department's guide defines an infant as a baby up to two years of age. "*Risk factors*" are defined as:

*"Signs which suggest that an infant is already subject to abuse, such as bruising on the infant,...may also refer to characteristics within a family which increase the likelihood that abuse will occur".*<sup>545</sup>

But there appears to be little information available to guide parents in the selection of an appropriate part-time or occasional outside carer or baby sitter. Reliance is obviously placed on the "*common sense*" of the average parent to make this assessment for herself/himself.

Unfortunately one person's "*common sense*" may well differ from another's. "*Common sense*" very much depends on one's own upbringing, education and life experience. It may differ from individual to individual or even within a group with similar experience. Hence, in order to provide a degree of uniformity, we find the need to guide some areas of our society by way of tools like regulation, codes of practice or guidance notes (i.e.; regulation in road safety and codes of practice in various areas of work safety). In the area of assessing parents and carers the Department of Human Services, understandably, has found it necessary to provide a standardised guide for this assessment process for its workers in the area of child protection. It shows what the worker needs to consider.

Whilst this material and comment applies to an assessment process by child protection workers and to the parents or other carers in a more permanent and direct relationship with the child, it also provides a useful starting point to the type of guide or advice that parents may need when selecting an occasional carer or baby sitter.

It should also be noted that the protective worker is also trained; the new parent is not. As indicated, there appears to be a dearth of material to help guide carer selection for the new parent, the busy parent, or the parent who, by dint of circumstance, has low levels of outside professional or experienced support. This guidance would be focused towards understanding and assessing the *risk factors* that should raise a degree of wariness and, in appropriate circumstances, provide a lead to more protective behaviour.

However, in the last few weeks the Victorian Child Safety Commissioner has released a guide "*Information for Parents – things to look at when selecting child safe activities or services for your child*". There guide is general in nature and does not deal with the issue of the temporary carer. It does highlight some useful "*concerning or warning signs*".

There is some general material on professional carer selection in England. That country publishes an 80 page guidance booklet called "*Looking for Childcare? A SureStart guide to help you make the right choices*".<sup>546</sup> The booklet deals with choosing a child care centre, pre-school or a nanny. It covers some "*do's and don'ts*" and "*what to look out for*". It does not deal with choosing the occasional friend or temporary baby sitter. Also in Australia there is a recent edition of *Choice* (May 2006) which provides some guidance in an article headed "*Finding a Nanny*". The *Choice* article provides a reference to the Australian Institute of Family Services

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<sup>545</sup> See Department of Human Services, *Guide notes, p.17 and the reference "High Risk Infants Literature Review", p.4).*

<sup>546</sup> *Sure Start, Extended Schools and Child Care Group which is part of the Department of Education and Skills and the Department for Work and Pensions. Published 2006.*

Website ([www.aifs.gov.au](http://www.aifs.gov.au)) which deals with “*Safety Issues*”. However, an inspection of the website indicates that it provides links to some guidance from the “*National Child Protection Clearinghouse project*” about criminal record checks. It does not provide basic or general guidance for the parent in what to look for from the safety perspective when selecting a temporary carer or baby sitter.

The facts of this case starkly illustrate that responsibility for caring for young children requires a level of constant protective supervision and attention. For a parent leaving a young child with another individual on a temporary basis, even for a short time, requires a very careful assessment of that individual’s ability and history of care and the environment where the child is being looked after. The role of the parent is to act protectively towards the child and for the temporary carer the role is not something to be treated lightly but requires a constant level of supervision and attention.

### **Recommendation 1**

*There may be a need to have an educative focus by the various agencies directed towards issues of safe care for children. Obviously the issue of safe selection of the temporary carer should be considered.*

### **Recommendation 2**

*A booklet or information guides designed to help parents in their deliberations about safety and other issues associated with selection of appropriate child care may be useful.*

*In the event that the Child Safety Commissioner and/or the Department of Human Services supports the development and publication of a booklet like the British “Looking for Childcare? A SureStart guide to help you make the right choices”, then it may be worthwhile to look at including a section on safety issues in selecting the temporary baby sitter. Alternatively, guidance for new parents on safe carer/baby sitter selection by way of pamphlets distributed at community health centres may need to be considered.*

## **FORENSIC AND SCIENTIFIC ERROR; THE NEED FOR AN INDEPENDENT AUDIT PROCESS**

It is apparent that from early in the Coroner’s investigatory process and in preparation for the First Inquest, the Victoria Police Forensic Services Centre took an approach which focused on *adventitious match* as being the preferred answer to the existence of DNA on the bib rather than being from *contamination* in the laboratory.

In order to address this issue it was necessary for the coroner to seek independent expertise which largely came from overseas, namely New Zealand and the United States. One expert was sourced from the Northern Territory. Once this expert evidence was introduced and tested, the answer became significantly clearer and led to *contamination* as being far more likely than not. In fact, as illustrated in the finding, eventually *contamination* became very much the probable answer. Clearly, *contamination* occurred somewhere in the laboratory process. Precisely how and where this has occurred in the laboratory has not been able to be determined.

The difficulty for the system occurred when it became necessary to test the two alternative theories (either laboratory *contamination* or *adventitious match*) to the very end of all possible evidence (as it was disputed by VPFSC). This took a considerable amount of time for the inquest process and has raised some concern by the writer about the strength of internal incident audit processes in the State’s

forensic science laboratory. Had the conclusion been that *adventitious match* was a realistic possibility then the outcome of this inquest may well have been different. It is noted that even in the final submissions of the VPFSC, the laboratory's Counsel submitted that, the "*fact is that the Leskie DNA result could not have arisen as a result of contamination in the DNA laboratory.*" Accordingly, this question was an open one until final assessment of all of the evidence and submissions by the Coroner.

It is of potential concern for the criminal justice system and its investigatory processes that, in the event that it is possible that a laboratory process error or *contamination* occurs within the State's forensic laboratory, it has become necessary for international experts to be obtained by an external inquiry process (like a coroner) and a lengthy hearing to occur in order to determine the likely answer. Fortunately, these incidents appear to be relatively rare.

In the future, consideration should be given to internal audit processes (once *contamination* is identified as a possibility) operating within a structure that is seen to be independent enough to alleviate the necessity for a lengthy public hearing process. Those working within the criminal justice system should be made aware of the possibility for *contamination* having occurred and be advised of the processes selected to look at any system issues or determining whether *contamination* is likely to have occurred.

The confidence in the forensic sciences that underpin our criminal justice system necessitates a careful and, if necessary, publicly available review or audit process. In those rare instances where there is potential disagreement about whether or not *contamination* occurred, the system should provide an audit or assessment process that brings in outside and, if necessary, international expertise.

### **Recommendation 3**

*In the rare event that 'contamination' is considered as a possibility for a DNA match with another sample, then the Victoria Police Forensic Services Centre may need to consider developing an audit or investigatory process that is open and brings in both local and, if necessary, international expertise to consider the issue and to develop any countermeasures.*

### **PROVISION OF LEGAL AID IN CORONIAL INQUIRIES**

From the outset of the inquest the writer was of the clear view that legal aid should have been provided for Mr. Domaszewicz. It was unsatisfactory that reliance for the providing of assistance remained with the generosity of two legal practitioners who were well aware of Mr. Domaszewicz's legal issues. They both acted (and continued to act) without fee (*pro-bono*). This issue was raised at early stages of the inquest and the concerns of the Coroner prompted a review by Victoria Legal Aid. Legal Aid was then offered on the basis that Mr. Domaszewicz have access to the services of Victoria Legal Aid's in-house practice. This offer was refused by Mr. Domaszewicz. Accordingly, the practical effect was that the situation did not change.

For the more difficult and contentious of coroner's cases it is essential that there is an adequate system that provides legal aid to those parties who are in need of assistance and who qualify on financial and other relevant grounds. It is noted that the document setting out how a party can qualify for legal aid states:

*"Coroner's Inquests*

*VLA may grant assistance for coroner's inquests if:*

- (i) there is a reasonable likelihood that the applicant will be charged with a serious offence, for example murder, manslaughter or culpable driving; or*
- (ii) it is in the public interest for the applicant to be represented."*

Whilst Victoria Legal Aid's guidelines appropriately provide for the "*public interest*" to be considered this case has illustrated some of the difficulties for an individual who, because of circumstances, needs to rely on the goodwill of legal practitioners for his continuing representation. In this case, the specific practitioners understood the detail of the case as they had represented Mr. Domaszewicz in the past, and thus were in the best position to represent him at the inquest.

#### **FINDING DISTRIBUTION LIST**

The findings, recommendations and comments will be forwarded to:

- The Attorney-General;
- The Minister for Health;
- President, Children's Court of Victoria;
- Chief Commissioner of Police;
- Secretary, Department of Human Services;
- Secretary, Department of Justice;
- Child Safety Commissioner, Office of the Child Safety Commissioner;
- Director, Victoria Legal Aid; and
- Director, Victoria Police Forensic Services Centre.

Graeme Johnstone  
State Coroner  
31<sup>st</sup> July 2006

Mr. Colin Lovitt Q.C. and Michael Rafter (Solicitor) for Mr. Domaszewicz,  
Mr. Paul Holdenson, Q.C. for the Director of Public Prosecutions,  
Mr. Michael Tovey, Q.C. with Mr. Michael Croucher for the Victoria Police Forensic Services Centre, and  
Mr. Jim Kennan S.C. and Ms. Rowena Orr with Mr. David Ryan (Solicitor, Victorian Government Solicitor's Office), Assisting the Coroner.

## ACKNOWLEDGEMENTS

A number of individuals and their agencies contributed to the investigation and provided helpful information, evidence and submissions for the Coroner.

In the forensic specialist area of DNA some experts gave of their time without charge. These experts who came from overseas are Dr. Harbison from New Zealand, along with Professors Thompson and Weir and Dr. Krane who were all from the United States. Their ongoing assistance and commitment is appreciated.

Final written submissions were received from the legal representatives of Mr. Domaszewicz, Victoria Police Forensic Science Centre and the Director of Public Prosecutions. Each of these submissions provided considerable help in assessing and balancing the various aspects of evidence. I am also grateful for the extensive assistance and submission work undertaken by both Counsel Assisting. The work throughout the investigation by Mr. David Ryan and the team from the Victorian Government Solicitor's Office is also appreciated.

Senior Constable Gibson and the other police investigators who assisted in the coronial investigation must be complemented for their dedication and work.

Obviously, from the observations under the sub-heading "*Provision of Legal Aid in Coronial Inquiries*" the barrister (Mr. Lovitt) and the solicitor (Mr. Rafter) acting for Mr. Domaszewicz gave both of their time and resources to assist. This *pro-bono* (without fee) work must be acknowledged by the Justice System in this State and, hopefully, along with that acknowledgement, there will be some improvement in the way parties are legally aided in high profile and difficult inquests.