

SOUTH



AUSTRALIA

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 1st, 2nd, 3rd, 4th and 25th days of September 2003, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Jason Peter Sammut-Smith.

I, the said Coroner, find that, Jason Peter Sammut-Smith, aged 16 years, late of 18 Giles Street, Victor Harbor, South Australia died at Victor Harbor, South Australia on the 1st day of December 2001 as a result of fresh water drowning.

1. Introduction

- 1.1. Jason Peter Sammut-Smith was born on 6 October 1985. At the time of his death, he was 16 years old. Since June 1987 he had been in the care of his paternal grandparents, Norman and Margaret Smith, at Mundingburra, Townsville, Queensland. He had little contact with his natural parents. In his statement, Exhibit C8a, his grandfather described Jason as a ‘bit rebellious’ (p2). This is probably an understatement.
- 1.2. On 23 August 2001 Jason came to Victor Harbor to stay with his father, Peter Smith.
- 1.3. His father described Jason as having had problems at school with other kids, that he had ‘started to do drugs’, that he had assaulted his grandmother, and that, in general his grandparents were no longer able to care for him (Exhibit C34b, p2).
- 1.4. At about 5:15pm on Saturday 1 December 2001, John Taarnby and Philip Anderson were driving along Giles Street at Victor Harbor when they were hailed by a man who

came running out of a house premises. The man was Peter Smith. Mr Smith asked the two young men to call an ambulance. As they made their way into the premises, Mr Smith told them that he had just found his son after returning from cray-fishing. According to Mr Taarnby and Mr Anderson, Mr Smith said that he found his son kneeling over a bath in the backyard of his house, with his head and upper torso fully submerged in the water (Taarnby T29, Anderson T16). Mr Smith told a different story later.

- 1.5. Mr Taarnby telephoned the SA Ambulance Service (SAAS), and followed Mr Smith and Mr Anderson into the backyard of the house. He saw the naked body of a young man lying on a grassed area in the backyard. This was Jason Sammut-Smith.
- 1.6. Mr Taarnby was speaking to the SAAS operator on his mobile telephone. At the operator's suggestion, he checked the young man's pulse, and did not find one. He put his fingers in his mouth to clear an airway, but did not think that there was any breathing. They put some clothes from the clothes line, and a bed-cover over him, and turned him on his side in the 'coma' position.
- 1.7. Paramedics McInerney and Vernis were called by the SAAS Communications Centre at 5:25pm, and attended at 18 Giles Street at 5:29pm. When they arrived, Jason was very pale (Mr Vernis described it as 'ashen grey' T50), cold to touch, there was no pulse or respiration, the pupils were fixed and dilated, and when the cardiac monitor was connected, the heart was in 'asystole' (ie. no output). Cardio-pulmonary resuscitation was ceased after 2½ minutes, and Jason's life was formally pronounced extinct by Intensive Care Paramedic Darren McInerney at 6:42pm.
- 1.8. Everybody (except Peter Smith) who saw Jason's body at the scene remarked upon the extensive bruising, cuts and abrasions to his body.
- 1.9. Cause of death
Dr J D Gilbert, Forensic Pathologist, was called to the scene at about 10:40pm. Dr Gilbert observed 'numerous injuries to all areas of the body with extensive bruising, many abrasions and other ulcerated skin lesions'. He made a number of temperature measurements in order to establish the time of death.

1.10. A post-mortem examination of the body of the deceased was performed by Dr Gilbert at 1:45am on 2 December 2001 at the Forensic Science Centre, Adelaide. Dr Gilbert determined that the cause of death was 'fresh water drowning'.

1.11. Dr Gilbert commented:

- '1. Death was due to fresh water drowning.
2. The toxicology report was not available at the time of this report. Analysis to date has shown only a low level of diazepam in the blood. A supplementary report will be issued if there are any further significant findings.
3. Many injuries were noted on the body. Most appeared to be at least a couple of days old. Most of the bruises had poorly defined margins and some showed some colour changes indicating an age of at least 2 days. Histological examination of most of the bruises showed evidence of conversion of haemoglobin pigment to haemosiderin consistent with an age of at least 2 days. Most of the abrasions on the body were scabbed and not oozing blood. Despite the multiplicity of injuries, no broken bones were found and the only internal injuries identified were bruising of the right hemicolon and of the small intestinal mesentery consistent with a blow (such as a punch) to the mid abdomen.

There were no fresh injuries clearly indicative of a violent assault, physical restraint or struggle immediately before the drowning.

The overall pattern of injury was not consistent with accidental injury and suggested repeated physical abuse. Microscopic examination of many of the visible bruises showed evidence of previous older bruising.

In the absence of a toxicological cause for the drowning and the absence of any history of a condition that might explain accidental drowning (eg. epilepsy) the death should be regarded as suspicious and deliberate drowning by another party should be considered. Accidental drowning due to fainting or falling and sustaining a head injury while in the bath cannot be entirely excluded and suicidal drowning is also a possibility.

The body temperature of the deceased also raised suspicion. The deceased was reportedly last seen alive by his father at about 3:30 pm on 1/12/2001. The body temperatures recorded by myself and a local doctor who attended the scene earlier suggested that death occurred significantly earlier than 3:30 pm. Using the local doctor's measurements which were taken closer to the time of discovery of the body (and thus less subject to the confounding effect of altered cooling after removal of the body from the bath) it appeared that death was more likely to have occurred in the late morning of 1/12/2001 rather than mid afternoon.

4. No pre-existing natural disease that could have caused or contributed to the death was identified at autopsy.'

(Exhibit C35, p16-17)

- 1.12. A toxicological analysis of Jason's blood revealed that it contained a low therapeutic level of diazepam, and a sub-therapeutic level of temazepam. There was no alcohol or any other of the common drugs or pesticides in either the blood or urine (Exhibit C2a).

2. **Background**

- 2.1. Jason's mother, Ms Ann Julie Sammut, described a violent relationship with Peter Smith, including an assault upon her while she was pregnant with Jason (Exhibit C5a, p1). She also described an incident where she alleged that Mr Smith 'deliberately pushed Jason in his pram in front of a truck', and that he was saved by a friend, Margaret Ingelson (ibid). She said that Jason went to live with his grandparents for his own safety.
- 2.2. As I have already mentioned, Jason lived with his paternal grandparents in Queensland until August 2001. His grandfather stated that he and his wife did not like the idea of Jason going to live with his father in South Australia. Although he described Jason as a 'good child', he said that he had a problem with his temper, that he was physically intimidating his grandmother (which he described as 'playfulness'), that he had been smoking cannabis, drinking alcohol, and stealing money to buy cigarettes and cannabis (Exhibit C8a, p2).
- 2.3. Jason's grandmother said that he was a 'bit of a bully' at school, he was seeing a psychologist about mood swings, was destructive when angry, and was smoking and drinking (Exhibit C7a, p2).
- 2.4. Jason lived with his uncle, David Smith, for three weeks in June-July 2001. Mr Smith described Jason as a 'fun and happy teenager' who put on a good deal of weight when living with him (Exhibit C6a, p2). This evidence is consistent with a photograph taken at Adelaide Airport on 23 August 2001 when Jason arrived from Queensland (see Exhibit C34).
- 2.5. David Smith also referred to Peter Smith's violent temper. He said:

'If you don't do it as he wants to do it, or give him the wrong answers he goes off and he can go off pretty bad.'

(Exhibit C6a, p3)

- 2.6. Mr Peter Smith painted a more disturbing picture of Jason's behaviour. He said that he was speaking to his mother on the telephone one night in July or August 2001 when he heard a violent argument involving Jason and his grandparents. He said that they told him that Jason had assaulted his grandmother, that he had been in juvenile care, that he was into drugs and alcohol, that he had stolen money, that he was mixing with a girl named Crystal who was taking amphetamines and marijuana and giving it to him, and that he was frequenting a local spot near the river where Aboriginal people gathered and drank alcohol to excess. He also said that Crystal was mixing with older men who were an undesirable influence on Jason (T222).
- 2.7. Mr Smith said it became clear that his parents were no longer able to cope with Jason, and so he paid for an airline ticket for him to fly to Adelaide. As I said, Jason arrived in Adelaide on 23 August 2001.
- 2.8. Jason went to live with his father at 18 Giles Street, Victor Harbor. Mr Smith said that they both enjoyed the initial period they had together, spending their time fishing and riding bicycles and doing mechanical repairs on cars and motorcycles in his backyard.
- 2.9. Mr Smith said things started going sour when Jason first met Brad Kandlebaur. Mr Kandlebaur is a young man who lived with his partner, Sally Burgess and their new baby at the house next door, which was behind a restaurant known as 'Pa's Place'. The restaurant was operated by Brad Kandlebaur's mother, Salie Burgess and stepfather, Ken Burgess.
- 2.10. Mr Smith alleged that after Jason met Brad Kandlebaur he was 'always' with him, and Brad began supplying him with drugs, particularly 'dexamphetamines'.
- 2.11. Mr Kandlebaur denied these allegations comprehensively, except that he did admit that when he first met Jason he invited him over into his backyard to share a 'bong' of marijuana that he was smoking at the time (T165).
- 2.12. Mr Smith alleged that on at least three occasions, Jason consumed so many drugs supplied to him by Brad Kandlebaur, that he was 'off his dial' (T238). He said that Jason was staggering, incoherent, unable to stand up, and would lose control of his bowels and become incontinent (T214, T325, T329).

3. Relevant events prior to Jason's death

3.1. It is very difficult to get a clear picture of the precise chronology of events leading up to Jason Sammut-Smith's death. The civilian witnesses who gave evidence about these events were all vague and unwilling to be specific about when particular events occurred, or whether some events occurred before others. Doing the best I can having regard to a number of inconsistencies and contradictions in the evidence, I will set out several of the significant events which occurred.

3.2. Saturday 6 October 2001

This was Jason's 16th birthday. Jason and Peter Smith attended at Pa's Place restaurant where Peter Smith was served by Brad Kandlebaur with two bourbon and coke drinks. There was an argument between Brad Kandlebaur and his stepfather, Ken Burgess, because one of the drinks was for Jason. Brad said that he did not see Jason when he gave the drinks to Peter Smith. When Mrs Salie Burgess, Ken's wife, spoke to Peter Smith about the issue, he said that Jason was his son, that he had just come to live with him, and that he had just turned 18 (T208). Both Brad Kandlebaur and Mrs Burgess commented that there was nothing remarkable about Jason's appearance. Mrs Burgess, for example, described him as 'quite a normal clean cut sort of boy' (T216).

3.3. Sunday 7 October 2001

Brad Kandlebaur said that the day after the birthday incident he was chatting with Jason over the fence and invited him into his yard where he was smoking a 'bong' of marijuana. He offered Jason one, which he accepted. He described Jason as 'polite, well mannered and well spoken, and he looked quite neatly dressed' (T166). Mr Kandlebaur said that this was the only occasion that he supplied Jason with drugs, and the only occasion on which he was ever alone with him (T170).

3.4. Mid October 2001

A conversation took place between Brad Kandlebaur and Peter Smith over the fence between their respective properties which was particularly noteworthy. The precise date on which this conversation occurred cannot be ascertained. Brad Kandlebaur said he thought it was only one or two weeks after he smoked marijuana with Jason Sammut-Smith (T167). Peter Smith said that he thought the conversation occurred

much later, shortly before Jason died. Brad Kandlebaur said that the conversation went as follows:

- 'A. Yes he asked Jason to come over and tell me what he'd done, 'Tell him what you've done, tell him what you've done.' And he wouldn't say anything you know, he sat there with his head bowed and he told me that he caught him sucking off the dog.
- Q. Peter said that about Jason?
- A. Yes and gave him a couple of taps on the face and told me some other stuff that he was doing whatever.
- ...
- A. I think he said he was sitting there watching TV and yes, he was at one end of the hallway standing up wanking himself and then he'd run down the other end of the hallway and he'd wank himself, and he's run up the other one and run into a door and do all sorts of bullshit.
- Q. Run into a door?
- A. Run into the door, you know, I don't actually know if he said the door or the corner of the wall or whatever, he'd run into things. I mean he was trying to tell me that he was delirious and doing stupid things which I've never seen any evidence of. I've only ever seen him being quiet, polite and normal.' (T167-168)

Both Mr Kandlebaur and Mr Smith told me that Jason was present during this conversation, which must have been humiliating for him.

- 3.5. Mr Smith was unable to give a satisfactory explanation as to why he told Mr Kandlebaur these things. He appeared to be confused about when the conversation occurred, saying that it was after he became aware that Mr Kandlebaur had stolen \$3,000 of his money (T289). But then his evidence is that he did not learn of this until 29 November 2001 which is the date that Senior Constable Lowry attended at his house and took a police report. Mr Smith explained that he was telling Mr Kandlebaur these things about his son in order to point out to him what a terrible effect drugs were having on Jason's behaviour (T290).
- 3.6. Mr Kandlebaur thought that Mr Smith was telling him these things in order to humiliate his son in front of him. He said that Jason had a 'black eye' which Mr Smith admitted he had given him (T169). Mr Smith denied that he assaulted Jason in front of Mr Kandlebaur, and denied that he had given his son a black eye at any point (T287). Unfortunately, there is no objective evidence to verify either version of these events.

3.7. On or about 15 November 2001

Sally Burgess said that on 17 November 2001 the entire property associated with the 'Pa's Place' restaurant was to be auctioned. She said that a few days before, she spoke to Peter Smith and agreed to sell an old caravan to him for \$200. There was a discussion on that occasion about Ms Burgess' dog which he said had been jumping the fence into their property. She said that Peter Smith and Jason moved an old bath tub, which he said the dog was using to get over the fence, away from the fence. One of Mr Smith's explanations for the lacerations on Jason's legs noted by Dr Gilbert was that Ms Burgess' dog had bitten Jason when he had tried to break up a fight between dogs on his property. Ms Burgess said that Peter Smith did not mention the fact that the dogs were fighting, or that Jason had been bitten, during that conversation (T111). Ms Burgess said that she noticed that Jason's eyes were 'red and glassy', that he was dirty and that his face was greasy (T114-115). She particularly noticed that Jason's appearance had deteriorated markedly (T114).

3.8. Mid November 2001

Mr John Reidy became acquainted with Peter Smith and Jason when he approached Mr Smith about doing up his motorcycle. Mr Reidy said that he visited Mr Smith's house without prior arrangement in mid November 2001. He said that he saw Jason sitting in the back of a Morris 1100 car which was parked under the carport in the backyard. He said:

'Jason was in the back of the car slumped down sort of like down like that and shaking and he did have that really big chunk taken out of his nose and I think he had a black eye too. He seemed very distraught, yes.

...

Just cowed down and looked like he was cold and you know he only had this thin shirt on that I can remember and to me just didn't look well. You know, I think at that stage I asked Peter because I did notice that chunk was taken out of his nose and the black eye. I think it was at that stage. But I did speak to Peter and say, 'Peter, did you do this?' Well, anybody in their right mind would wonder whether he did but - and he said, no, he didn't.' (T133-134)

3.9. Mr Smith, on the other hand, said that Jason was merely cleaning the interior of his car at the time, and denied that he was 'cowed down' or that he was 'distraught' (T359). I have no difficulty preferring the evidence of Mr Reidy on these issues. He impressed me as an honest and straightforward person who was clearly concerned about Jason's welfare. He told me that he suggested that Jason should get help from a

doctor and a social worker and that Peter Smith should speak with the police (Exhibit C30, p2). He said that Jason had become 'very, very thin', that he had very cold hands, that he had become very withdrawn, that he was no longer dressing nicely, and that generally he knew that there was something 'desperately wrong with Jason' (T137-138).

- 3.10. When Mr Reidy saw Jason in the back of the car he noted that Jason had a black eye and a swollen nose and a cut across the bridge of his nose and a cut on his hand. He said that it occurred to him that Peter Smith may have caused these injuries and so he asked him about it. Peter Smith denied doing so, saying that 'people out the back' were responsible (T140), presumably a reference to Brad Kandlebaur.

3.11. Saturday 24 November 2001

During this evening an extended drinking session took place at the home of Brad Kandlebaur and Sally Burgess behind Pa's Place Restaurant. Sally Burgess was away, staying with her mother. Mr Kandlebaur described Jason as 'filthy dirty'. He said Jason was wearing a blue jacket and appeared to have no pants on. He said that Peter Smith commented:

'Don't worry, he won't mess up your bloody lounge, the coat's clean.' (T171)

He described Jason's demeanour:

'Extremely reserved. He'd only speak when he was told to speak ... he wouldn't speak of his own free will, he was a broken spirit.' (T172-176)

- 3.12. Paul Kluske, who was working as an apprentice chef at the restaurant, was also there. He said that Jason sat there quietly throughout the evening, that it seemed like something was wrong with him, that he was shaking and that his appearance was generally very unusual. He said that he was wearing a jacket, and that it appeared as though he was not wearing anything underneath. If he was, they were very short shorts (T151). He described him as very thin, his appearance was 'messy', that it appeared as though he had not had a shower for some time, that he had bruising on his legs and cuts and abrasions on his hand (T153).

- 3.13. At one stage during the evening, Mr Kluske said that Mr Smith openly admitted that he had hit Jason. He said:

'There was a conversation during the night ... something about how Peter had hit him or something because he had stolen money, or something like that, or he'd been lying to him.' (T153)

- 3.14. Brad Kandlebaur said that Peter Smith was humiliating his son all evening. For example, when Brad Kandlebaur offered Jason a beer, Peter Smith said:

'Don't waste a bloody beer on him ... I said, "If you don't want him in here drinking with us why didn't you leave him at home?" He said he didn't trust him to be at home he'd trash the place.' (T173)

- 3.15. Brad Kandlebaur also alleged that Peter Smith accused Jason of stealing \$3,000 from him, which he used to buy marijuana. Instead of buying marijuana, however, he purchased dried parsley (T174). The implication was that not only was Jason dishonest in stealing the money, but also stupid in buying parsley instead of marijuana. Paul Kluske also mentioned that Peter Smith had accused Jason of stealing money to get drugs of some kind, although he was vague about the details (T151).

- 3.16. Peter Smith denied these allegations. He said that Jason was dressed in long trousers, he denied that he was dirty and covered in grease as Mr Kandlebaur alleged, he denied the allegations about the \$3,000 being spent on parsley. He admitted that Jason was quiet, because he had told him beforehand 'don't get too involved' and 'don't get led astray' (T303). He denied that he humiliated Jason during the evening and denied that there was anything untoward about Jason's appearance or his behaviour.

- 3.17. Jason and Peter Smith left Brad Kandlebaur's house in the early morning, around 5:30am. Brad Kandlebaur said that he had already gone to bed by then (T177). Paul Kluske said that he heard Jason and Peter Smith yelling at each other in the driveway, although he was unsure whether Jason was saying anything (T156). He said:

'I couldn't really hear exactly what they were yelling about, I just could hear Peter yelling and saying you know "Get your life together", and stuff like that ... like get your life together, you're hopeless, stuff like this, put downs really, yes.' (T155)

- 3.18. Peter Smith said that he had seen Paul Kluske give Jason something and Jason put it in his pocket. He said that Jason denied that this had occurred, so he searched Jason's

pockets and found marijuana (T305). He denied telling him that he was 'hopeless', and denied that anything else occurred.

- 3.19. Mr Ashley McCallum is the proprietor of the Yilki General Store which is also on Franklin Parade, near Pa's Place. Mr McCallum said that at about 5:45am he was preparing for the day's business and he heard raised voices outside his shop. He went out to investigate, and saw Peter Smith and Jason standing about a metre apart and Jason up against a window of the restaurant 'like a statue'. He said that Peter Smith was 'in his face' shouting at him (T101). He said that Jason's T-shirt was wet down the front. He said that he saw a small amount of blood in the vicinity of Jason's nose and mouth (T103). He said 'what's going on?', and that Peter Smith then came over to him and said 'he's been out all night'.
- 3.20. Mr McCallum is a disinterested witness, and I have no reason to disbelieve his evidence. He contradicts Peter Smith in a number of important respects, in particular about the blood on Jason's face, and the fact that he was yelling at Jason in an aggressive manner.
- 3.21. Thursday 29 November 2001
Peter Smith alleged that on this Thursday he discovered that \$3,000 was missing from his wardrobe. As I have already mentioned, this contradicts the evidence of Mr Kandlebaur, supported to some extent by Mr Kluske, that Peter Smith had been alleging that the money had been stolen the previous weekend, 24 November 2001. Peter Smith said that he confronted Jason about the loss of the money and that Jason had told him that Brad Kandlebaur had taken it, and that he had threatened his life if he reported the matter (T309).
- 3.22. Peter Smith and Jason then went to John Reidy's house to telephone the police. Mr Reidy confirmed that this occurred after 6pm on Thursday, 29 November 2001. He heard Peter Smith speak to the Sergeant. He commented:

'Peter seemed very concerned about Jason taking drugs. Jason was very, very withdrawn, very thin, his hands were very cold, he just wasn't well. Jason had the same injuries on his nose and eye that I had seen previously. Jason apologised to me about any problems he was causing. We spoke about the money that had been taken from Peter. I pointed out that Jason was just mixed up. I saw nothing to suggest that Jason was on drugs, he just looked ill.'

(Exhibit C30, p2)

- 3.23. Senior Constable Lowry attended at Mr Smith's house following the telephone call. He said that Peter Smith told him that his house had been entered, that \$3,000 had been stolen, and that these events had occurred the day before, and that his son had seen a person enter the house and then leave sometime later. He said that the son had alleged that Brad Kandlebaur had done this (T85). He said:

'Mr Smith had informed me that his son had stated to him that the previous afternoon his son had been working on the roof of a caravan and he had seen this Brad Kandlebaur jump over a fence into the rear yard then had proceeded to the house and had climbed in a window. The allegations were that this Brad Kandlebaur had been in the house for some time and during that time Mr Smith had come home for a short period of time. Then when he left it was then that this Brad Kandlebaur came from within the house then went back to his own house by jumping over the back or side fence.' (T85)

- 3.24. Senior Constable Lowry said that Jason confirmed the accuracy of these allegations (T86). He noted that Jason appeared 'gaunt and thin', 'he had abrasions and bruising about his body', and that 'he looked in poor condition as if he was undernourished'. He also noted that he had dilated pupils (T87). He said that he questioned Jason about his appearance, but that Mr Smith had replied for him, saying that he had found his son in such a drug induced state that he was semi-conscious, unable to stand, unable to control his bowels and in a stupefied state. He said that he accepted the father's explanation because:

'I drew the conclusion that the lad didn't have very high IQ. He was of low intelligence. After Peter told me about the condition of him, the bruises and the abrasions on his body, I then questioned the lad and he agreed that that's how it had happened.' (T88)

Senior Constable Lowry went to speak with Brad Kandlebaur, who denied the allegations. He returned to the Smith house at about 11pm and advised Mr Smith of the outcome of that interview. Senior Constable Lowry noted:

'Jason was sitting in a squatting position on the floor of the kitchen area with his arms wrapped around his legs. I drew the conclusion that he (Jason) was under disciplinary instructions from his father to remain in that position.'

(Exhibit C26, p2)

3.25. Friday 30 November 2001

The police returned to Mr Smith's house in the evening in answer to a message Mr Smith had left at the police station. After they arrived, Mr Smith told Senior Constable Lowry:

'That he'd had a long talk with his son during that day and that he, Jason, had admitted that he'd arranged with Brad Kandlebaur to steal the money from Peter's home and in return Jason would be supplied pills or drugs from Kandlebaur, and that Kandlebaur would also take his son, Jason, back to Queensland.' (T93)

3.26. Senior Constable Lowry said that he was unable to speak with Jason that evening because, according to Peter Smith, he was taking a bath at the time. This seems odd since it was 'getting on towards the latter part of the evening' (T93), and, according to Peter Smith, the hot water service had broken down, as a result of which there would have only been cold water available for a bath (Exhibit C34c, A295).

3.27. Peter Smith denied that he had assaulted Jason at any stage of his stay with him at Victor Harbor, and there is no specific evidence that he assaulted him during the course of this 'long talk' during which Jason allegedly confessed to assisting Brad Kandlebaur to steal the money.

3.28. If Mr Smith did assault Jason on 30 November 2001 because he allegedly stole \$3,000, or helped Brad Kandlebaur do so, then this is consistent with Dr Gilbert's evidence that the majority of Jason's injuries were two to three days old (T397). There is no alternative explanation for the injuries. There is no evidence that anything else occurred on that day which may have caused them. I do not believe Mr Smith's evidence that he was not aware of them.

3.29. There is some consistency between Jason's alleged confession that Brad Kandlebaur would take him to Queensland, and evidence of two telephone conversations between Jason and his grandmother, she said about three or four weeks earlier. Jason had telephoned her and asked when he was coming home, and that she replied 'not just yet'. She went on to say:

'Jason went on to tell me that he had a black eye, and that he was wearing glasses because of it. He didn't say how he got the black eye. He told me that Peter wouldn't let him go, and that if he left, he would have to sleep on the beach. He then said that he had to go as Peter was coming. I later spoke with Peter and told him that Jason wanted to come home. Peter asked him then if he wanted to come home, and Jason said no.'

(Exhibit C7a, p3)

In another telephone call, five days before his death, Jason also spoke to his grandmother and said:

'When am I coming home. You'll never see me again.'

She commented:

'I do not know what Jason meant by that. I think that Jason was frightened of Peter.'
(Exhibit C7a, p4)

It is clear from these conversations that Jason wanted to 'come home', and it is also clear that Mr Kandlebaur intended to travel to Queensland. He and Ms Burgess and their daughter moved there after Jason's death.

3.30. Saturday 1 December 2001

At about 12:30am Mr Henry Dalton, a neighbour of Mr Smith's, on the opposite side to Brad Kandlebaur, heard 'a male person yelling abuse'. He recognised the voice to be that of Peter Smith. He believed that Peter Smith was yelling at Jason. He heard him say 'what goes around comes around' and 'I will get you for this' (Exhibit C20, p1). Mr Dalton called from his bedroom window to be quiet and Peter Smith replied that 'these two had stolen my money', that they had stolen \$3,000, that they had broken into his home, and that he had reported the matter to the police. Mr Dalton said:

'I could see this figure in the backyard. I believe it was Jason walking in the shadows. I saw that he appeared to be naked. Our conversation seemed to quiet things down.' (p2)

3.31. Mr Dalton saw Peter Smith again the next morning and Mr Smith apologised to him. Mr Dalton said:

'I am aware of numerous arguments between Peter and Jason. They consist mainly of abuse by Peter, which is directed towards Jason.' (p2)

3.32. Mrs Helen Dalton also heard Mr Smith's voice in his backyard at 12:30am. She said that half an hour after Mr Smith apologised to her husband the next morning, he arrived again at their house and apologised to her, and gave her flowers (Exhibit C10a, p1).

3.33. Peter Smith said that Mr and Mrs Dalton must have overheard an argument with Brad Kandlebaur. He said that it was Brad Kandlebaur who said 'what goes around, comes around' (T323). He said the argument occurred because he had thrown various things

that Brad Kandlebaur had given him back over the fence after Jason had told him that Brad Kandlebaur had stolen the \$3,000 and because he had complained to the police. Mr Smith denied that Jason was naked (T325), and that he was abusing Jason.

- 3.34. Sally Burgess said that she heard Peter Smith talking to Jason in the backyard next door the next morning. She said he sounded ‘a little bit annoyed with ... the fact that Jason couldn’t do whatever he was being told to do’ (T119).
- 3.35. Peter Smith’s evidence is that he had woken at about 10:00am to find Jason already intoxicated, having taken drugs. He said he was ‘staggering in the backyard’ without a shirt on. He asked Jason where the drugs were. He said:

‘I said, can you show me where they are and I will throw them away. We will start again ...’ (T325)

He said that they looked under the rock where Jason said he had stashed them. There was Glad Wrap there, but no pills. He said that Jason told him he had taken up to 15 ‘little white pills’ that morning (T327). Mr Smith assumed they were dexamphetamine. This seems very unlikely. If he had taken a large quantity of dexamphetamine that morning it would have been detected by the toxicological screening process after Jason’s death.

- 3.36. That afternoon Peter Smith went out with his elderly friend Fergus Warren in his boat to lift craypots. Mr Warren is now deceased. His statement records that they left at 3:30pm (Exhibit C11a). Mr Smith said that Jason was painting the caravan when he left. This does not sit well with the following evidence:

‘Q. How did Jason seem before you went out with Ferg?’

A. He was incoherent and he was unstable, and I shouldn't have left him that day.

Q. That was because you believed him to be in that way because he'd told you he'd taken up to 15 pills that day.

A. Yes.’ (T329)

- 3.37. Once again, I have difficulty believing Mr Smith about this. If Jason had overdosed on dexamphetamines, he would not have been stupefied, because dexamphetamine is a stimulant, not a depressant (see Dr Gilbert’s evidence at T409).
- 3.38. If Jason had overdosed on sedatives then my subsequent inquiries reveal that he would have displayed a much higher concentration at post-mortem than the levels disclosed. Diazepam and Temazepam both take more than 24 hours to be

metabolised. It is inconceivable that Jason could have been painting the caravan only a couple of hours after being stupefied, as Mr Smith would have me believe.

- 3.39. Mr Smith then professed to have had a 'gut feeling' while he was out in the boat to the extent that they came back before picking up the craypots, and they did not hose out the boat after they returned as he usually did (T329). This is inconsistent with his statements to Detective Senior Constable Williams on 6 February 2002 that he helped Ferg wash the boat down when they arrived home, that he stopped to speak to two ladies about Jason on his way home, that he went back to Ferg's house again because he was struggling to push his boat back in, and it was only after all that did he return to his own house to find Jason in the bath (see Exhibit C34c, A307). He made the same statements to Senior Constable Philp on 3 December 2001 (Exhibit C34b, A70).
- 3.40. When he arrived home, Mr Smith said he yelled out for Jason, but he did not answer. As he walked around the side of the lean-to shed in the backyard, he saw Jason's shorts laying on the bonnet of his car, drying out. He said he saw water flowing out from the shed where the bathtub was situated, and, upon entering the shed, found Jason in the bathtub in a reclined sitting position with his head tilted to the right, and his eyes open. The water was above the level of his nose and mouth. He lifted Jason from the bathtub, screaming and crying and yelling as he did so, and carried him out onto the back lawn.
- 3.41. Sally Burgess said that she heard 'muffled' noise coming from next door at around 5pm (Exhibit C3a, p5). She went to the back door and opened it slightly and heard someone screaming out 'No'. She heard the words screamed out again, but she said:
- 'A: ... I did go to go out because you know, it concerned me but then I just - feeling came over me that no, I don't want to be involved in that so I'll just go back inside and try and ignore it.
- Q: Did you hear any other noises?
- A: When I went back inside to continue feeding my daughter again, I heard the 'No' probably another three times. Then there was nothing, then I heard ambulance siren.'
(T120)
- 3.42. Ms Burgess was sure that it was not Peter Smith's voice saying the word 'No' up to five times that afternoon. She said it was a younger voice than his (T126).

- 3.43. Having regard to the whole of the evidence, it is unlikely that Ms Burgess heard Jason call out 'No' that afternoon. In my opinion, it is much more likely that Jason was already dead by then. It is more likely that it was Peter Smith calling out 'No' when he discovered Jason's body (T341-342).
- 3.44. I have already mentioned, at paragraph 1.11 above, that Dr Gilbert, the Forensic Pathologist, offered the opinion that it was more likely that Jason had died some time during the late morning of 1 December 2001 (T369-370). Dr Gilbert acknowledged that there were inherent inaccuracies in judging the time of death having regard to body temperature because there are a large number of variables that cannot be calculated. On that basis, it is not possible to reject Peter Smith's version of the events out of hand, although Dr Gilbert described them as 'fairly unlikely' (T370). By the same token, it is even more unlikely that Jason was still alive after 5pm when Sally Burgess heard the voice from over the fence.

4. Conclusions

- 4.1. The evidence before me in this inquest is inconclusive. There is a body of evidence that suggests that Mr Smith was a violent and over-controlling disciplinarian in relation to his son, that he was almost paranoid about Jason using drugs.
- 4.2. Mr Smith, on the other hand, denied that he was ever violent or over-zealous in disciplining Jason. He said that Jason had been a behavioural problem to his grandparents in Queensland. When he came to Victor Harbor to live with him everything was good for several weeks until Jason began mixing with Brad Kandlebaur, and after that his behaviour deteriorated markedly. Mr Smith said that he was anxious to try and help Jason through these difficulties, but he never physically disciplined him in any way. He painted himself as a loving father who was desperate to help Jason with his problems, and keep him away from evil influences.
- 4.3. Mr Smith offered innocent explanations for Jason's physical injuries.
- 4.4. For example, he said that the lacerations to Jason's legs were the result of having been bitten by Brad Kandlebaur's dog. No other witness referred to any such fight between the dogs. Mr Smith was happy to report various matters to the police. He complained to Sergeant Hentschke that Brad Kandlebaur was growing cannabis, that he wanted him to cut down a firearm, that he was carrying a knife, and that he was supplying

dexamphetamines to his son. If Brad Kandlebaur's dog had attacked Jason in this way, it is surprising that Mr Smith did not mention that to Sergeant Hentschke.

- 4.5. As to the injury on the back of Jason's head, and the injury to the bridge of his nose, Mr Smith suggested that these were the result of Jason falling over whilst in a drug-induced stupor, while Mr Smith was trying to clean him in the shower after he was faecally incontinent.
- 4.6. Mr Smith said that there were scars on Jason's arm as a result of being burnt in Queensland by elderly men who were hanging around with Jason's girlfriend.
- 4.7. Mr Smith was unable to offer a satisfactory explanation for the enormous number of other injuries documented in Dr Gilbert's report (T357).
- 4.8. The evidence of Mr Dalton, Mr McCallum, Mr Reidy, Ms Burgess, and the police officers gives me the very strong suspicion that Mr Smith was indeed physically violent towards Jason. As Dr Gilbert observed:

'I think what's obvious here is that this young man has a large number of injuries over his body, which are due to blunt injury for the most part, substantial bruising involving many areas of the body, not readily accounted for in many cases by accidental injury. That clearly he's thin and I gather that there's perhaps some photographic evidence that prior to August that he was more heavily built than he is at the time of death. One can't help feeling that this young man may have been the victim of physical abuse. I've got no opinion as to at whose hands that might have been and there seems to be a very unusual absence of evidence from other people as to this young man's activities. I think, as I understand it, we were very reliant on the man's father to account for this young man's activities over the period between August and December and we don't have information from outsiders as to ways in which this young man could repeatedly find himself being traumatised and one is left with the impression that he's been subject to some form of physical abuse. And that physical abuse has continued up to within a few days of his death, I think, the evidence is there that he's been abused physically in the recent past before his death.' (T406-407)

- 4.9. The injuries to Jason's body were so extensive and so obvious that I cannot accept Mr Smith's evidence that he was not aware of the extent of them. I have formed a very unfavourable view of Mr Smith's veracity as a witness. I believe he has misled me about a number of issues.

4.10. Having reached those conclusions, however, the evidence is not strong enough for me to form a definite conclusion about the circumstances of Jason's death. It seems to me that there are three feasible alternatives:

- Jason drowned accidentally in the bathtub due to physical exhaustion, and/or the effect of the sedative drugs in his system - Dr Gilbert said that this was 'highly unlikely' having regard to the relatively low concentrations of the drugs in his system (T400);
- Jason deliberately drowned himself in the bath - Dr Gilbert described this as 'not impossible' although he had never seen such a case in his long experience as a Forensic Pathologist. He said:

'If somebody - one couldn't exclude the possibility just ignoring all the injuries that are present for the time being it would be possible for someone who is so utterly depressed and desperate to want to take their life to actually drown themselves and not leave any sort of injuries or any other markers of that. We do occasionally see people who have just wandered out into the ocean and drowned themselves. They show the signs of drowning but no evidence of injury. Suicide in a bath by drowning is unusual in my experience. I don't recall seeing one before but it's not inconceivable that someone could be that depressed and that desperate to actually submerge themselves and deliberately inhale water and drown themselves. It's not impossible.'
(T402)

- Jason was the victim of homicide - Dr Gilbert commented that his investigation found no objective evidence to support the suggestion that Jason had been forcibly drowned, in particular he said that he would have expected 'restraint injuries' or other evidence of a struggle if that had been the case (T407).

4.11. Dr Gilbert said:

'... but even with all his discomfort and ill-health resulting from all his injuries and so on, one would still reasonably expect him to put up a bit of a fight and one might reasonably expect to see forcible signs of restraint if he was involuntarily and violently held under water. That's really all I can say in terms of the sort of overview. I think he's been physically abused. He's drowned, I don't why he's drowned.'
(T407)

4.12. I agree with Dr Gilbert's assessment. It is clear that Jason was physically abused. On the balance of probabilities, the abuser was his father, Peter Smith. It would appear that he was not only beaten, but inadequately fed and clothed to the extent that he lost weight and became ill.

- 4.13. Those findings, however, do not assist me to determine precisely how or why Jason died. None of the three options mentioned above can be confirmed or excluded on the evidence. For that reason, I must return an open finding as to the precise circumstances of Jason Sammut-Smith's death.
- 4.14. Each of the three options, namely accident, suicide or homicide is unacceptable. It is a tragedy that a young man should have died in such lonely, miserable circumstances. It is also a tragedy that the danger to his life was not so clear as to prompt intervention by a third party at some stage before he died.

Key Words: Drowning; Suspicious Death; Physical Abuse; Child Abuse

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 25th day of September, 2003.

Coroner