

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 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> days of August 2004 and the 3<sup>rd</sup> day of September 2004, before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Dean Stanley Eustice.*

*I, the said Coroner, find that Dean Stanley Eustice aged 73 years, late of 127 Dunrobin Road, Warradale, South Australia died at Morphett Road, Warradale, South Australia on the 11<sup>th</sup> day of October 2003 as a result of ischaemic heart disease due to coronary atherosclerosis.*

### **1. Introduction**

- 1.1. On 11 October 2003 Mr Dean Stanley Eustice and his wife attended Westfield Shopping Centre, Marion. Mr Eustice was 73 years old and his wife was 70.
- 1.2. On the way into the shopping centre, Mrs Eustice found a pink-coloured purse on the ground. Mr Eustice picked it up as there was nobody else in the vicinity. Mrs Eustice suggested to her husband that he should tell the person at the Information Desk and leave his name and number for the owner to contact them. Mr Eustice went to the Information Desk and Mrs Eustice went to Woolworths. She last saw him walking away from the Information Desk towards Big W. She thought he was going to collect some photographs that had been developed, and then to go to Bunnings, and then to meet her back in Big W (Exhibit C18, pp1-2).
- 1.3. Mr Eustice did report finding the purse to the Information Desk and was told that he should leave it there. He declined to do so and walked away.

- 1.4. Mr Eustice was followed by a Security Officer employed by Westfield Limited, Mark Steven Smith. Mr Smith followed him into Big W to the photographic area, and then out of the Centre.
- 1.5. Outside the shopping centre Mr Smith confronted Mr Eustice. A physical altercation then took place during which it is alleged by several witnesses that Mr Eustice was 'manhandled'. Mr Eustice became agitated and eventually collapsed into unconsciousness.
- 1.6. An ambulance was called and Mr Eustice was conveyed to Flinders Medical Centre while cardio-pulmonary resuscitation proceeded.
- 1.7. Upon arrival at Flinders Medical Centre, Mr Eustice was in cardiac arrest. Aggressive attempts were made to resuscitate him but these were not successful and at 4:34pm Dr Judy Cornish pronounced his life extinct (Exhibit C1b, p1).

## **2. Cause of death**

- 2.1. Dr Justin Ardill was Mr Eustice's cardiologist. In his statement (Exhibit C4a), Dr Ardill advised that Mr Eustice had coronary bypass surgery about ten years ago, and that a subsequent angiogram had shown that 2 of the 3 bypass grafts had since become blocked (Exhibit C4a, p1).
- 2.2. A post-mortem examination of the body of the deceased was performed by Dr A D Cala, Forensic Pathologist, on 13 October 2003. Dr Cala concluded that the cause of death was ischaemic heart disease due to coronary atherosclerosis. He commented:

'Post mortem examination showed evidence of an enlarged heart with extensive scarring in the left ventricle consistent with previous infarcts. There was severe narrowing of the native coronary vessels as well as narrowing of the grafted coronary vessels. There were no injuries to the head and neck region and further dissection showed no abnormality. There were no petechial haemorrhages on the face to raise the possibility of asphyxiation.

I believe the deceased died as result of ischaemic heart disease. It is likely that the stress of the event described may have precipitated the deceased's death by provoking an episode of cardiac ischaemia. There was no evidence of any significant injury.'

(Exhibit C33, p2-3)

- 2.3. Dr Cala said that because all but one of Mr Eustice's coronary arteries were almost totally blocked through atherosclerosis, the heart had become enlarged through being

required to work harder to provide adequate blood supply. It weighed 660 grams, where a normal heart would be expected to weigh around 500 grams.

- 2.4. Dr Cala said that with such disease, sudden death can occur at any time from myocardial infarction. However there was no sign of fresh infarction here (T497).
- 2.5. Dr Cala also said that a combination of Mr Eustice's high emotional state (whether anger or fear or both), and physical exertion during his physical altercation with Mr Smith, would have produced adrenaline. He said that this would have caused his heart rate and blood pressure to increase. The resulting extra load on his heart meant that it required more oxygen to cope, but this was not available due to the blockage of his coronary arteries. The resultant stress, known as ischaemia would have led to a fatal arrhythmia (T499).
- 2.6. When Mr Eustice last saw Dr Ardill on 1 October 2003, his blood pressure ( $125/75$ ) was good, his heart rate (81) was normal, there were no cardiac bruits (abnormal heart sounds) nor any signs of cardiac failure. Dr Ardill's finding of first degree heart block was described by Dr Cala as 'an innocent type of heart block, many people have that' (T508). Dr Ardill said that Mr Eustice was 'progressing very well at that stage' (Exhibit C4a, p2).
- 2.7. At a previous consultation, on 13 March 2001, Dr Ardill found that Mr Eustice's exercise tolerance was 'very good'. He explained in court that, in his terms, very good meant above average, or more than 30 minutes of brisk walking per day (T535).
- 2.8. Dr Ardill explained that although the angiogram had demonstrated the blockage of both the native and grafted coronary arteries, it would not have been appropriate to perform further bypass surgery in the absence of symptoms of imminent heart failure. He said re-doing coronary artery surgery carried significant risks. It is not undertaken unless clearly indicated, because to do so may cause more problems than it solves (T536).
- 2.9. Dr Ardill agreed with Dr Cala that the stress caused by both fear and physical exertion or both (what he described in his statement as 'overwhelming stress' (p2)) was likely to have caused Mr Eustice's death. He said that in the absence of such an event, Mr Eustice had better than a 95% chance of seeing him again in 12 months (T539).

2.10. In a letter to Mr Eustice's General Practitioner dated 13 March 2001 Dr Ardill said:

'On exercise stress testing, Mr Eustice performed well. He managed 7½ minutes which was his predicted aerobic capacity. There was no chest pain, significant dyspnoea or ECG change – a negative study for myocardial ischaemia. Carotid Duplex ultrasound showed no significant stenosis.

Given these results, I have reassured Mr Eustice concerning his cardiac function today. He is certainly quite a stressed individual and has some symptoms consistent with panic attacks. He is to review this further with yourself. Further routine cardiac review is planned in 6 months time, but should you have any concerns, I would be happy to be contacted.'

(Exhibit C4b)

2.11. When questioned, Dr Ardill had a 'vague recollection' that Mr Eustice was under considerable strain at that time, due to his daughter and grandchild both being in hospital (T548).

2.12. There is no mention of any such concerns during the subsequent consultations in September 2001, October 2002 or October 2003, at all of which Dr Ardill made positive comments about Mr Eustice's progress.

2.13. I will discuss the issue of panic attacks again, later in these findings.

### **3. Events of 11 October 2003**

3.1. Mrs Dawn Eustice, wife of the deceased, told me that she and her husband had been married for 48 years. They had lived in Dunrobin Road, Warradale since 1961.

3.2. Mrs Eustice said that she and her husband went to the Westfield Marion Shopping Centre on 11 October 2003, arriving at sometime after 2:45pm.

3.3. As they were entering the shopping centre, Mrs Eustice saw a pink purse on the ground near the zebra crossing in the undercover car park. She suggested to her husband that he should pick it up. He did, and opened it to look for the name of the owner. She said that there was no identification in the purse, only a \$20 note and some coins (T17). In fact, the purse contained \$25.95 (see Exhibit C14a, p2) as well as a necklace, a digital camera, a credit card wallet and a notebook.

3.4. Mrs Eustice said she told her husband to go to the Information Desk and leave his name and telephone number so that the owner would get in touch with them. She

specifically told Mr Eustice not to leave the purse at the desk. She was unable to explain why she did that (T18).

- 3.5. As they entered the shopping centre, Mr Eustice turned left towards the Information Desk and Mrs Eustice turned right. She intended to do some shopping at a bakery and then at Woolworths. She expected her husband to find her there after he had been to Big W to pick up a developed film, and then to Bunnings.
- 3.6. Ms Isabel Lipka was one of the staff at the Information Desk. She said that a man approached the desk and the following conversation took place:

I said: 'Hello. How can I help you?'

He said: 'I've found a child's wallet. I will give you my phone number and if anyone comes looking for it they can ring me.'

I said: 'I can't do that. We take lost property here and find the ID and contact the owner if possible through the desk.'

He said: 'I don't want to do that.'

I said: 'Well that is not the way we do it here. We take the lost property. We don't get people to contact the person who finds it.'

He said: 'Okay, thank-you.'

(Exhibit C22, p2)

- 3.7. Detective Bee examined the surveillance videotape provided by Westfield. It shows that Mr Eustice was at the Information Desk for only 24 seconds (Exhibit C8e, p2).
- 3.8. Ms Lipka said that the man seemed a little frustrated that she had declined to take his name and number, but he was not unduly agitated or upset. She said that she exchanged a 'puzzled look' with Mark, a security guard standing near the desk. Mark, who was Mark Smith, walked off after Mr Eustice (T126). The surveillance videotape shows that Mr Smith followed Mr Eustice 18 seconds after he left the Information Desk (Exhibit C8e, p2).
- 3.9. In an interview with Detective Alison Bee at 5pm that evening (Exhibit C32a), Mr Smith's version of the conversation with Ms Lipka was slightly different, in that he alleged that Mr Eustice said that the purse had 'a lot of money in it' (Exhibit C32a, A12).

3.10. Mr Smith said he found Mr Eustice's attitude 'a little bit suspicious' (Exhibit C32a, A13) so he followed him to Big W, to the film developing area, and then back past the Information Desk, and out of the shopping centre.

3.11. Mr Smith said he followed Mr Eustice out into the undercover car park. He approached him and the following conversation took place:

'I approached the gentlemen and I said 'Excuse me Sir, are you in the possession of a young girl's purse', and he said 'Yes I am, and it's got a lot of money in it'. I said 'Can I be of any assistance' and he said that he 'wasn't very happy with the treatment that he got at the desk' and the gentleman, for some reason in my belief, was very agitated at this stage. I said 'My name's Mark', I've also got a name badge on my jacket and I said 'Can I be of any assistance to you Sir', and he said 'I would like to speak to someone from Centre Management', and I said 'Well I'm sorry for the inconvenience but there's nobody in Centre Management today. Can I be of assistance'.

He said 'I found a young girl's purse in the car park, it's got a lot of money in it and I'm not giving it to you either'. I said 'Are you aware that you are able to hand it in to the Level 1 desk and if the girl comes back she will obviously go to the desk and it will be there for her'. He said 'No, I'm not going to do that. I'm going to keep it' and he walked off. I said 'Excuse Mr Eustice Sir, but I would like you to stay here, because I've called the police' okay.'

(Exhibit C32a, A19)

3.12. Mr Smith said he had not in fact called the police, but had radioed his partner, Mark Davies and asked him to call them. Mr Davies confirmed that (Exhibit C31, p2).

3.13. Mr Smith explained:

'I didn't know who he was, or what he was, for all I know he may have been a preacher, or he may have been a paedophile. I don't know why, but I felt very uncomfortable with an elderly gentleman walking away with a young girl's purse.'

(Exhibit C32a, p4)

3.14. In a later interview with the police (Exhibit C32b), Mr Smith said that at one stage he accused Mr Eustice of stealing the 'wallet' (it was a purse in the first interview). He said:

'Q56 Yep. At that point in time, once he's left Westfield Mall proper, did, were you of the belief that he was committing, or had committed, a criminal offence?

A56 I believe he was about to. Well when I say 'about to', because I'm of the understanding that our boundaries go as far as the footpath right around the Marion Shopping Centre, okay. Now he had, in fact, left the mall area and to my knowledge he was in possession of this young girl's wallet with a lot of money in it. So, yes, I believe he was in fact committing an offence.

Q57 And what offence did you believe he was committing?

A57 Well he was stealing a wallet full of money, that wasn't his.

Q58 Yep.

A58 Okay, I actually mentioned that to him. We got over to the Bunnings Store and I was still trying to explain what I thought he was doing, from where I stood, from like my job, and I said 'Look sir, I believe that you're, you're stealing this wallet and this is not the right thing to do', and he got very angry about that. He said 'I'm not stealing it' and I said 'Well you are walking away from a place where you found it and you are not handing it in'. I said 'In essence it makes you the thief' and he went right off at me then.'

(Exhibit C32b, p7-8) (my underlining)

- 3.15. Mr Smith said he followed Mr Eustice outside and along the southern side of the Bunnings building. He said Mr Eustice tried to walk away from him so he grabbed his left arm whereupon Mr Eustice began screaming 'Help' repeatedly.
- 3.16. Mr Smith said he was standing in front of Mr Eustice to prevent him from walking away. He said Mr Eustice pushed him and then began to walk towards Morphett Road. He said Mr Eustice began to 'stagger a little bit' which he said concerned him (Exhibit C32a, A33).
- 3.17. Mr Smith said they walked to a grassed area which abuts the footpath on the eastern side of Morphett Road, He said Mr Eustice seemed 'delirious' and 'very upset'. He said he was trying to prevent Mr Eustice going on to Morphett Road, where he might be knocked over by a car, and also prevent him from leaving until the police arrived (Exhibit C32a, A33).
- 3.18. Mr Smith said that Mr Eustice began 'throwing his arms around', that he appeared to 'spin around and fall down', so 'I grabbed him and tried to sit him down which he eventually did sit down' and then 'he actually laid down on the grass' (Exhibit C32a, A35-A37).
- 3.19. In the later interview, Mr Smith admitted that when they were in the vicinity of Morphett Road, he put his arms around Mr Eustice, although said he did not squeeze him tightly in a 'bear hug', and then he 'lowered' Mr Eustice on to the grass (Exhibit C32b, A78).
- 3.20. Mr Smith also admitted that before he 'lowered' Mr Eustice to the ground, they had both fallen to the ground, and that it was 'possible' that he had 'fallen' on top of Mr

Eustice but 'with no intention of actually jumping on top of him' (Exhibit C32b, A108). He said:

'.. I believe I had him at one stage and he sort of you know struggling and whatever and I'm sort of trying to keep him in the area and I don't know whether he slipped or I slipped, or we both slipped and we both sort of fell down and then I got up, and he got up again, and then that may have been just before the bus got there actually.'

(Exhibit C32b, p16)

3.21. Mr Smith also admitted that at one stage he had Mr Eustice in a 'lock' whereby his arm was under Mr Eustice's arm then up behind his head. He said that it was not intentional, that it was a 'fluke', and that he released it straight away (Exhibit C32b, A190). He said he was trying not to use all his strength, but that it was 'very hard' not to (Exhibit C32b, A194).

3.22. Mr Smith said that by this stage his partner Mr Davies had arrived. Mr Eustice got up and spoke to Mr Davies, then they both walked over to the bus stop shelter and sat down talking to each other. A short time later Mr Eustice was lying down and he 'wasn't looking that flash' (Exhibit C32a, A49). In fact, he looked 'unconscious' (Exhibit C32a, A50).

3.23. Mr Smith said Mr Eustice dropped his mobile telephone at one stage so, after he was on the grass, Mr Smith picked it up. He then used his own telephone to call 'Wayne', whose name and number Mr Eustice had given him earlier (Exhibit C32b, A82).

3.24. 'Wayne' was Wayne Marshall, Mr Eustice's son-in-law. Mr Smith actually rang Mr Marshall's wife, Lyn. Mrs Marshall said that the call came in on the landline, that far from Mr Smith attempting to explain what had happened, he was yelling, angry and aggressive (T36). She heard her father in the background and he sounded 'distraught'. He was saying:

'they have had me on the ground. Knocked off my glasses, taken my phone, taken my wallet, I'm out the front of Bunnings, come quick.'

(Exhibit C19, p2)

She said he sounded frightened and upset (T39).

3.25. Mrs Marshall said that Mr Smith refused to let her speak to her father on the grounds that he was 'detained'. He gave her a brief summary of what was happening, which

was not that her father was stealing the purse, but that he was refusing to hand it over. He said her father was ‘creating a ridiculous situation’ (T45).

- 3.26. As a result of this call, Mrs Marshall telephoned her husband who immediately began driving to the scene. On the way, Mr Marshall telephoned the number his wife had retrieved from the ‘caller ID’ facility on her telephone. Mr Smith answered, and Mr Marshall admits that he was abrupt and aggressive to him, saying that ‘nothing had better happen to him’ (T69). Mr Smith then terminated the call.
- 3.27. Mr Smith said that while Mr Eustice was sitting in the bus shelter with Mr Davies, he was unresponsive, so they laid him down on the seat. He removed Mr Eustice’s wallet from his back pocket and placed it on his chest (Exhibit C34b, A144). However, the evidence suggests that Mr Smith took Mr Eustice’s wallet at an earlier stage than that. Mr Eustice called out to his daughter on the telephone that he had already done so.
- 3.28. Mr Davies said that while he was speaking to Mr Eustice in the bus shelter, he slouched back and was ‘trying to catch his breath’. He became unresponsive. Mr Davies called for an ambulance. He could feel a weak pulse (T444).

#### **4. Evidence of other witnesses**

- 4.1. There were a number of eye-witnesses to this incident, none of whom were associated with either Mr Smith or Mr Eustice. It is to their very great credit that they were prepared to cooperate with the investigation and give oral evidence at the inquest. I will briefly outline their evidence.
- 4.2. Melissa Pitt was leaving the shopping centre when she stopped to get a ‘Coke’ from the machine near the mall entrance. She saw Mr Eustice and Mr Smith in front of her, speaking in raised voices. She lost sight of them for a while and next saw them on the south side of the Bunnings building. She heard Mr Eustice repeatedly calling for help. She saw Mr Smith holding Mr Eustice by the arms. They moved through the car park to the lawn area near the Morphett Road footpath. She said she saw Mr Smith ‘forcefully’ put Mr Eustice to the ground, Mr Eustice got up and he put him down again (T364).

- 4.3. Ms Pitt saw a bus pull up, Mr Eustice attracted the driver's attention, the door opened and both men appeared to speak to the driver.
- 4.4. Ms Pitt did not see a bear hug, a headlock, or other type of wrestling hold. She simply described Mr Smith putting Mr Eustice to the ground by forcefully twisting him to the side (T365).
- 4.5. Ms Pitt's brother Darren also saw these events, although he honestly admitted that there were probably gaps in his observations and that he may not have seen everything (T339). His sister may not have seen everything, either.
- 4.6. Mr Pitt said he saw Mr Smith holding Mr Eustice in a 'bear hug' at the south west corner of the Bunnings building. He said he heard Mr Eustice calling for help. This was mentioned to the police in his statement (Exhibit C28, p2) although he could no longer independently remember the bear hug at the inquest (T344).
- 4.7. Mr Pitt said he next saw the pair over on the lawn area. He said at one stage he saw Mr Eustice on the ground, and later saw him standing up, with Mr Smith behind him, his arms under Mr Eustice's arms and his hands behind his head in what wrestlers call a 'full Nelson' hold (T345). He said Mr Eustice was continually calling for help (Exhibit C28, p2).
- 4.8. Mr Stephen Mills was driving his Kia 4WD south on Morphett Road in the right-hand lane. Also in the car were his wife, Angela, his son Douglas, and Douglas' fiancée Christine Quinn. Mr Mills said he saw a man who was obviously Mr Eustice walk through the trees towards the lawn area and the bus stop with Mr Smith pursuing him. He saw the two men pushing each other, on the grassed area, with Mr Eustice obviously trying to get past him and Mr Smith trying to prevent that.
- 4.9. Mr Mills said he saw Mr Smith slam his right shoulder into Mr Eustice's chest so that he fell backwards to the ground (T143). He then saw both men on the ground, with Mr Smith on top, struggling. He then saw Mr Eustice back on his feet, with a mobile phone in his hand and Mr Smith was trying to grab it. He said Mr Eustice turned towards Morphett Road then Mr Smith put his arm around his neck from behind, with the 'V' of his elbow in front of his throat. He then saw both men fall again (T146).

- 4.10. All this time Mr Mills had been driving south on Morphett Road. He decided to return to the scene. By the time he arrived, Mr Davies was there. Mr Eustice was lying on the ground at the bus stop. He said the security officers were 'pulling' at his chest as if they were searching him (T175). He said Mr Eustice was struggling for breath and appeared 'very ill'. He then saw him convulse and it appeared to him that Mr Eustice had died (T192).
- 4.11. Mr Mills said that neither security officer was performing cardio-pulmonary resuscitation. He said that Mr Eustice should be on his side, and that Mr Davies said:
- 'Yes, he should be in the recovery position.' (T151)
- The three men then carried Mr Eustice onto the lawn area, and put him into the recovery position.
- 4.12. Mr Mills said he checked Mr Eustice's airway, and listened to his chest. He could detect no breathing. He said Mr Eustice's eyes were fixed and dilated, there was no pulse, and he had changed to a bluish colour (T152).
- 4.13. Mrs Angela Mills was in the front passenger seat of the car as it was driving along the right-hand lane of Morphett Road. She described the traffic as 'pretty busy' and moving slowly (T199).
- 4.14. Mrs Mills said she saw Mr Eustice coming through the 'bushes', and Mr Smith behind him trying to get hold of his arm. She paid particular attention because of Mr Eustice's age. She said when the two men were on the grassed area, Mr Smith grabbed his arm from behind and Mr Eustice turned around, appeared to lose balance and fall over. Mr Eustice got to his feet and appeared 'wonky'. He appeared to be using or trying to use his mobile telephone when Mr Smith grabbed him around the neck from behind as a result of which Mr Eustice fell down again.
- 4.15. Mrs Mills said that all of the occupants of the vehicle exclaimed that they noticed what happened, so they decided to go to the scene and ascertain what was going on (T215).
- 4.16. Mr Douglas Mills told me that he also saw Mr Eustice walking across the grassed area towards the bus stop from the rear left passenger seat of the car. Mr Smith was a yard or so behind him, he caught up to Mr Eustice and grabbed his arm, that he put him in

a 'headlock' with his right arm and then 'dropped' him on the ground (T242). He said he saw Mr Smith grab Mr Eustice again in a headlock and lift his head 20 centimetres off the ground while hunching over him (T242).

- 4.17. Ms Christina Quinn, Mr Douglas Mills' fiancée, was in the rear right passenger seat of the vehicle when she saw Mr Smith grab Mr Eustice in a headlock from behind and throw him to the ground (T305). She said Mr Smith fell with Mr Eustice to the ground. She said that while they were on the ground, Mr Eustice was trying to use a mobile phone and Mr Smith was trying to get it out of his hand, while lying on top of him (T307).
- 4.18. Mr Benjamin Volkmann was an employee of Bunnings. He said that at about 4pm he heard someone screaming 'Help' several times. He said he ran to the saw section because he thought a customer might have injured themselves. He then ran to the entrance where he saw Mr Smith and Mr Eustice in the car park near the south-western corner of the building.
- 4.19. Mr Volkmann said he saw Mr Smith grabbing the top part of Mr Eustice's right arm several times. He said he saw Mr Smith then put Mr Eustice in a 'bear hug' from behind, pinning his arms. He said that Mr Smith was in the middle of the car park (T273), so it would not have been easily visible along Morphett Road.
- 4.20. Mr Volkmann said Mr Eustice 'went nuts' and was thrashing around until he fell out of Mr Smith's grip to the ground. Mr Smith was then bending over him with a hand on his right shoulder, pushing down (T274).
- 4.21. Mr Volkmann said Mr Eustice then got up by himself and walked in the direction of the bus stop on Morphett Road. He and Mr Eustice walked across lawn to the footpath and then out on to the roadway. He saw Mr Smith 'ushering' him back onto the footpath and walking in front of him. He said Mr Eustice went onto the roadway up to three times (T277).
- 4.22. Mr Volkmann also saw both men lean into the doorway of the bus after it pulled up at the bus stop, and then walk around and under the bus shelter (T278). He said he went back into Bunnings and served a customer, then returned and saw Mr Eustice sitting down and then lying down on his back on the seat. By this time four people were in the vicinity (presumably the Mills family), and a few others as well.

- 4.23. The bus driver, Mr Gary Allsopp, gave evidence that, as he was pulling up at the stop outside Bunnings, he saw Mr Smith and Mr Eustice about 40 metres away on the lawn area adjacent to the footpath. He said Mr Eustice was walking towards Morphett Road and Mr Smith had his hands on his shoulders trying to turn him around.
- 4.24. Mr Allsopp said at one point after Mr Smith had turned Mr Eustice around and had him back on the lawn area, there was a 'bit of a struggle' and Mr Eustice 'lost balance' and fell to the ground. He said Mr Smith fell over Mr Eustice, but not on top of him (T394).
- 4.25. Mr Allsopp said Mr Smith assisted Mr Eustice to his feet (he was unable to describe how he did this) and both men turned towards the bus. When they were on the footpath Mr Eustice 'lost balance' again and fell, harder this time, onto the footpath. He said that Mr Smith did not throw him to the ground, that it was 'more of a collapse' (T395).
- 4.26. Mr Allsopp said that after Mr Eustice fell to the ground he screamed for help. Mr Allsopp thought that he sounded particularly desperate (T400). He thought Mr Eustice was going to have a heart attack (T408).
- 4.27. Mr Allsopp said Mr Smith assisted Mr Eustice to his feet again and both men approached the bus. He opened the doors and the following conversation took place:
- 'Mr Eustice: Can you contact the police?
- Mr Smith: (Mr Allsopp could not remember precisely what he said except that Mr Eustice had a wallet with a lot of money in it belonging to a young girl)
- Mr Allsopp: You've got the Westfield Security Guard there; you'd best let him handle it.
- Mr Smith: (Mr Allsopp said that he was trying to calm Mr Eustice down, that there were other security officers on the way).
- Mr Eustice: Sorry, driver.'
- (Exhibit C30, pp2-3)
- 4.28. Quite why Mr Eustice felt the need to apologise to Mr Allsopp is not clear.
- 4.29. Mr Allsopp said that Mr Smith was 'professional at all times', that he 'did nothing wrong', that he 'did his best to assist an obviously distressed person', that 'he did not

use excessive force' and that he was 'handling the situation the best way he could' (Exhibit C30, p3).

- 4.30. Mr Allsopp said Mr Eustice did not go onto the surface of Morphett Road, he did not see Mr Smith put him in a 'bear hug', a 'headlock' or a 'half-Nelson' (T417).
- 4.31. Mr Mark Davies was another Westfield security officer on duty that day. He said that he received a call on his radio from Mr Smith. He said the reception was intermittent, but he heard Mr Smith say something about a purse, he was not sure if it was lost or stolen, and that he was at Big W (T430).
- 4.32. Mr Davies said that about five minutes later he received another call from Mr Smith saying that he was in Bunnings' car park and querying whether he should detain the man he was with. In evidence he said Mr Smith did not say why he might be detaining the man (T432), although in his statement he said Mr Smith 'gave Mr Eustice a further story about the purse and the man would not hand it over' (Exhibit C31, p2).
- 4.33. Mr Davies said he told Mr Smith that he should detain the man 'if you think it's warranted' and that it was 'up to you' (T433, T461). Mr Davies was quite evasive about Mr Smith's request for advice, and I had the distinct impression that he was trying to distance himself from Mr Smith's decision to detain Mr Eustice in light of the subsequent tragedy.
- 4.34. At Mr Smith's request, Mr Davies made several attempts to contact the police stationed at Westfield Shopping Centre (so-called Westfield Response), and eventually called the general police number 131444.
- 4.35. While telephoning the police, Mr Davies made his way to Morphett Road, calling the third security officer, John Gebert, as he went. He said that when he arrived he saw Mr Smith and Mr Eustice standing just south of the bus stop. Mr Smith was using a telephone (presumably he was talking to Wayne Marshall) and Mr Eustice was yelling at him. Curiously, he was unable to recall what Mr Eustice was saying (T439).
- 4.36. Mr Davies described what happened then as follows:

'I approached the gentleman and I said to him, 'are you involved in this incident?'. He was huffing and puffing and I said, 'let's just sit down'. So we sat down and I said to him, 'take a deep breath, calm down and tell me what happened'. I called the other

Security Officer (John Gebert) and told him not to worry about coming as it was all under control. Mark was still on the phone somewhere nearby. The gentleman just started to say something and then slouched back and to his right, I grabbed his arm and I asked his name. He said, 'Dean'.

Then he just starting trying to catch his breath. I kept trying to get a response from him by just talking to him. I had him by the right hand looking for a pulse, I could feel a faint pulse. I tried his neck, I couldn't feel anything, he was not responding.'

(Exhibit C31, pp2-3)

- 4.37. At this stage Mr Eustice was lying flat on his back on the seat in the bus shelter. As I have already mentioned, Mr Mills had arrived by then, and at his suggestion they moved Mr Eustice to the lawn area and placed him on his side in the recovery position. Even though Mr Davies had a current Senior First Aid Certificate (it was a condition of his employment at Westfield that he should), he was unable to explain why Mr Eustice was left on his back for several minutes until he was moved, and why cardio-pulmonary resuscitation was not undertaken (T456).
- 4.38. The South Australian Ambulance Service report (Exhibit C3b) records that Mr Davies' call was received at 3:53pm, that they were despatched at that time, and that they arrived at the scene at 3:57pm.
- 4.39. When the ambulance crew arrived, they noted that Mr Eustice was in 'fine VF' (ventricular fibrillation - where the heart quivers ineffectually rather than pumping blood) and then 'asystole' (where the heart stops altogether). Cardio-pulmonary resuscitation was undertaken, and Mr Eustice was defibrillated and VF was restored, but the heart went to VT (ventricular tachycardia - where the heart is beating very quickly) and then to asystole again. The officers administered adrenaline, lignocaine and atropine in order to restart the heart, but to no avail. Mr Eustice was defibrillated a total of eight times, and his heart output alternated between VF, VT and asystole.
- 4.40. By the time Mr Eustice reached the Flinders Medical Centre, Dr Judy Cornish noted that he was in cardiac arrest and unresponsive. Cardio-pulmonary resuscitation was continued, but heart output could not be restored despite extensive resuscitative efforts. Dr Cornish pronounced his life extinct at 4:34pm.

## 5. Issues arising at inquest

### 5.1. Justification for Mr Smith's intervention

Ms Lipka said that she knew that Mr Eustice could not be required to hand the purse (or wallet) to Westfield (T127), and she did not suggest to Mr Eustice that he was obliged to do so. She merely declined to get involved if he was not prepared to hand it in.

### 5.2. Mr Michael Miller, the Security manager at Westfield Shopping Centre Marion, said in his statement that:

'Security guards have the power to detain a person who they suspect of having committed a criminal offence. They are aware through the Summary Offences Act and company policy that they should only detain if a serious offence has been committed. The Summary Offences Act specifically gives this power to security guards for 3 offences, larceny, serious assault and robbery.'

(Exhibit C5a, p2)

### 5.3. In fact, the legal power vested in a non-police officer to detain a person is much more limited than that:

- Section 76 of the Summary Offences Act only vests such a power where the owner of property, or the servant or agent of such a person, finds a person committing an offence. Thus, a mere suspicion is not enough (see Khammash v Police [2001] SASC52, Gray J, 9 March 2001);
- Section 271 of the Criminal Law Consolidation Act only vests such a power if the arrestee is in the act of committing, or has just committed an indictable offence, theft, an offence against the person (eg. assault), or interference with, damage to, or destruction of property. Again, mere suspicion that such an offence has been committed is not enough.

### 5.4. Westfield's 'Manual of Standard Operating Procedures' (Exhibit C5b) gives strict instructions to security officers in such situations:

- Security Officers generally have no special 'Powers of Arrest' in most Australian jurisdictions.
- Powers of Arrest where conferred on citizens (including Security Officers) are strictly prescribed in criminal legislation in each state.

- Where the Powers of Arrest permit Security Officers to arrest an offender the onus is on the Security Officer(s) concerned to ensure they act in strict accordance with those powers when effecting an arrest.
- In most offences with which Security Officers will become involved there will be several elements necessary to be present to establish the proofs of an offence, first to the satisfaction of the police and then to the satisfaction of a court, to secure a conviction.
- Security Officers are to have detailed knowledge of the proofs of offences relating to stealing (Larceny), obtaining by false pretences or deception, trespass, common assault, injury to property, indecent acts and indecent assault.
- A Security Officer is only to affect an arrest where all of the elements of the offence concerned clearly exist.
- An offender is under no obligation to provide any information to a Security Officer once arrested and cannot be compelled to do so by a Security Officer.
- Where an offender refuses to provide information or otherwise co-operate with Security Officers the arrival of police is to be awaited.
- Security Officers are to treat all offenders with respect and dignity.
- Security Officers are only to question offenders on matters pertinent to the offence for which they have been arrested.
- Security Officers are to record in note form in a notebook the questions put to offenders and to record their answers verbatim.
- Security Officers are to prepare fact sheets, incidents reports and where appropriate statements for presentation to police in relation to the respective offence.'

(Exhibit C5b, pp118-119) (my underlining)

5.5. Mr Davies told me that he was aware of these requirements (T426), although he was also under the misapprehension that a suspicion is enough to vest a power to detain (T425).

5.6. Mr Smith gave a variety of explanations for detaining Mr Eustice:

- He told Detective Bee that he was 'a little bit suspicious' (Exhibit C32a, A13);
- '.. for all I know he may have been a preacher, or he may have been a paedophile. I don't know why, but I felt very uncomfortable with an elderly gentleman walking away with a young girl's purse' (Exhibit C32a, p4);
- 'I just thought it was very strange that he had a young girl's purse with a lot of money in it and all I could think of was 'Why isn't he handing it over' and 'Why would he give his number to the information girls, so that this young girl would have to ring him'. I just found that very strange and, to be honest, one of the

things that went through my mind was that the gentleman may have been a paedophile. I don't know.' (Exhibit C32a, A69);

- 'I believe I've got the power to restrain if I think I need to ... I mean okay hindsight is a wonderful thing, but I just wasn't comfortable in myself what I had seen knowing that an elderly gentleman had a purse that he seemed to be hiding and wasn't prepared to give it up and give his number' (Exhibit C32a, A104);
- By the time of the second interview, Mr Smith was more certain – he asserted that because Mr Eustice had left the Mall area in possession of a young girl's wallet 'with a lot of money in it', he believed Mr Eustice was committing an offence, namely 'stealing a wallet full of money, that wasn't his' (Exhibit C32b, A57).

5.7. This idea that the 'wallet' contained a 'large amount of money' is a concoction of Mr Smith's. Mr Eustice had counted the money in his wife's presence, and it contained a \$20 note and some coins (Exhibit C18a, p1). This was verified later by the police (Exhibit C14a, p2).

5.8. Mr Smith alleged that Mr Eustice told Ms Lipka that the 'wallet' had a 'lot of money in it' (Exhibit C32a, A12) but she made no mention of that either in her statement to police (Exhibit C22, p2), or in oral evidence.

5.9. Mr Smith alleged that Mr Eustice told him that he was going to 'keep it' (Exhibit C32a, A19). The clear inference drawn by Mr Smith from this was that Mr Eustice intended to steal it.

5.10. Quite frankly, it beggars belief that Mr Eustice said that to Mr Smith, and I reject his evidence to that effect. Mr Eustice had just offered to leave his name and address at the Information Desk. If he intended to keep the money, why did he not simply pocket the money and throw the purse in a bin? He continued to walk around the shopping centre with the purse in his hand, on Mr Smith's statement (Exhibit C32b, pp4-5. Further, Mr Eustice's preoccupation with calling the police, and his statement that he was not happy with the treatment he received at the Information Desk, are also inconsistent with that.

#### 5.11. Conclusion

I conclude on the evidence that Mr Smith jumped to the conclusion that Mr Eustice

was a thief because he refused to comply with the usual practice at Westfield Shopping Centre Marion, something he was perfectly entitled to do (see Parker v British Airways Board [1982] 1 A11 ER 834 per Donaldson L J). As Detective Bee pointed out in her report:

1. The finder of a chattel acquires no rights over it unless (a) it has been abandoned or lost and (b) he takes it into his care and control.
2. He acquires very limited rights over it if he takes it into his care and control with dishonest intent or in the course of trespassing (eg. he may be cited as 'owner' if the chattel is subsequently stolen from his possession).
3. Subject to points 1, 2 and 4, a finder of a chattel, while not acquiring any absolute property or ownership in the chattel, acquires a right to keep it against all but the true owner (or those in a position to claim through the true owner) or one who can assert a prior right to keep the chattel, which was subsisting at the time when the finder took the chattel into his care and control.
4. Unless otherwise agreed, any servant or agent who finds a chattel in the course of his employment or agency (and not wholly incidentally or collaterally thereto) and who takes it into his care and control, does so on behalf of his employer or principal who acquires a finder's rights to the exclusion of those of the actual finder.
5. A person having a finder's rights has an obligation to take such measures as in all the circumstances are reasonable, to acquaint the true owner of the finding and present whereabouts of the chattel, and to care for it meanwhile.'

(Exhibit C83, pp3-4)

5.12. In my opinion, there was no basis for the conclusion that Mr Eustice was a thief, any more than there was a basis to conclude that he was a paedophile.

5.13. Resolution of conflicting accounts

Mr Smith, through his counsel Mr Boucaut, sought to be relieved of the obligation to answer questions about the incident on the grounds that the answers would tend to incriminate him (Coroners Act, 1975, Section 16(2)). I was informed and I accept that no criminal charges arising from the incident have been laid against Mr Smith. I upheld Mr Smith's objections on the basis that I was satisfied that his answers would have the tendency to incriminate him.

5.14. Mr Smith's lengthy interviews with the police, on 11 October 2003 (Exhibit C32a) and 20 October 2003 (Exhibit C32b) were tendered by affidavit sworn by Detective Senior Constable Alison Bee. The affidavits represent a version of the events preferred by Mr Smith, but those statements are not supported by his oath or

affirmation, and so they do not carry the same weight as the sworn evidence of independent eye-witnesses.

5.15. I agree with the observations of Ms David, counsel assisting Mr Eustice, that the incident can usefully be divided into three separate stages:

- The events in the vicinity of Bunnings;
- The events on the grassed area next to the footpath on Morphett Road;
- The events after the bus driven by Mr Allsopp departed.

5.16. The events in the vicinity of Bunnings

I have already described how Mr Smith confronted Mr Eustice after he left the shopping centre and as the two men progressed down the footpath on the southern side of Bunnings.

5.17. What is apparent from the passage quoted in paragraph 3.14 hereof, is that Mr Eustice became particularly upset after Mr Smith accused him of stealing the purse. In Mr Smith's words 'he went right off at me then'.

5.18. To compound Mr Eustice's distress, Mr Smith then grabbed him by the arm. Mr Eustice began screaming for help. Mr Volkmann also saw Mr Smith grab Mr Eustice by the arm.

5.19. Ms Melissa Pitt confirmed that Mr Smith was holding Mr Eustice at that stage, although she thought he was holding him by both arms. I do not consider that this is a significant discrepancy.

5.20. I do not find Mr Eustice's reaction surprising or disproportionate to the circumstances. He had found the purse, attempted to give his name and address to Ms Lipka, she had refused to take it, and he was then going about his business when he was confronted by Mr Smith, accused of being a thief and then physically manhandled. At the age of 73 years, Mr Eustice had never been convicted of an offence (Exhibit C8a, p12).

5.21. I see nothing 'irrational', as Mr Schapel, counsel for Westfield Limited, described it, in Mr Eustice's behaviour. All his actions seem to me to have been motivated by a desire to separate himself from Mr Smith and report the matter to the police. The first

thing he said to Mr Allsopp when he opened the door of his bus was ‘can you contact the police?’ (Exhibit C30, p2).

5.22. The events on the grassed area

By this stage of the incident, there were many more eye-witnesses, and their perceptions of what occurred varied markedly. I am sure that many of the discrepancies are due to the fact that people saw the action from different angles, or saw different sections of the entire incident.

5.23. Mr Smith said that because Mr Eustice was ‘delirious’ and ‘very upset’ and ‘throwing his arms around’ he ‘grabbed’ Mr Eustice, put his arms around his chest area, but did not squeeze him in a bear hug, and then ‘lowered’ him to the grass. Mr Smith observed that it was hard to control his strength.

5.24. Mr Smith conceded that ‘possibly’ they both fell over and he fell on top of Mr Eustice. He said that this happened just before the bus arrived.

5.25. Mr Stephen Mills saw both men on the ground, with Mr Smith on top. Ms Quinn said the same thing, adding that Mr Smith was trying to get the telephone from Mr Eustice.

5.26. The bus driver, Mr Allsopp confirmed that he saw both men fall after a ‘bit of a struggle’, and that Mr Smith fell over Mr Eustice but not on top of him. I found this difficult to visualise. I had the distinct impression that Mr Allsopp was doing his best to assist Mr Smith, whom he thought acted in a ‘professional’ manner.

5.27. Mr Allsopp said that Mr Eustice fell a second time, but this was a ‘collapse, was a heavier fall than the first, and was not the result of contact with Mr Smith’. He said Mr Smith helped Mr Eustice to get up both times.

5.28. Ms Pitt said that Mr Smith ‘forcefully’ put Mr Eustice on the ground, twice. Mr Darren Pitt only saw him go down once.

5.29. Mr Volkmann said he saw Mr Smith put Mr Eustice in a ‘bear hug’ from behind, but this was in the middle of the car park and not on the grassed area. He said Mr Eustice ‘went nuts’ thrashed around, and fell out of the ‘bear hug’ to the ground. All he saw near Morphett Road was Mr Eustice walking on the road and Mr Smith ‘ushering him back’. He said this happened up to three times.

- 5.30. Mr Darren Pitt said he saw the ‘bear hug’, but said this occurred near the south-west corner of the Bunnings building. At the grassed area, he saw Mr Smith hold Mr Eustice, with his arms under the armpits and then clasped behind his head (Mr Pitt did not know this as a classic wrestling hold called a ‘full Nelson’).
- 5.31. None of the other witnesses saw the ‘full Nelson’, but Mr Smith admitted that he had Mr Eustice in such a ‘lock’, but described it as a ‘fluke’, and said he released the hold immediately. I find this most unconvincing. It is much more likely that such a complex hold would be applied intentionally. I do accept, on the evidence, that the hold was not maintained for a long time.
- 5.32. The evidence from the occupants of Mr Mills’ car was the most dramatic. Mr Mills said he saw Mr Smith drive his shoulder into Mr Eustice’s chest, causing him to fall over the first time. He saw Mr Eustice on the ground twice. Mrs Mills said Mr Eustice fell over because Mr Smith grabbed his arm. Mr Douglas Mills said that Mr Smith took a ‘headlock’ on Mr Eustice from behind, and this caused Mr Eustice to fall the first time. Ms Quinn agreed. Mrs Angela Mills said that she also saw the headlock, but this caused Mr Eustice to fall the second time.
- 5.33. By the time Mr Smith called Mrs Lyn Marshall on Mr Eustice’s mobile telephone, after the struggle on the grassed area, Mr Eustice was highly distressed. He told his daughter:
- ‘they have had me on the ground. Knocked off my glasses, taken my phone, taken my wallet, I’m out the front of Bunnings, come quick.’
- (Exhibit C19, p2)
- 5.34. Mr Eustice’s distress was also apparent to Mr Allsopp, the bus driver, who said Mr Eustice fell to the ground and screamed for help. He said Mr Eustice sounded particularly desperate. He said he thought Mr Eustice was going to have a heart attack.
- 5.35. Conclusions
- I have no doubt that the following events took place:
- Mr Eustice became distressed at being called a thief;
  - Mr Smith grabbed Mr Eustice’s arm and Mr Eustice then became even more distressed;

- At some stage while they were moving towards Morphett Road, and were probably on the grassed area than in the car park, Mr Smith had Mr Eustice in a bear hug after which Mr Eustice fell to the ground;
- At another stage on the grassed area Mr Smith had Mr Eustice in a ‘hold’ or ‘lock’ in which at least one of his arms went under the armpit and behind Mr Eustice’s head. I reject Mr Smith’s assertion that this hold was fortuitous and unintentional;
- During the course of the struggle on the grassed area, Mr Eustice fell over twice, and on one occasion Mr Smith fell on top of him;
- I am not satisfied, on the evidence, that Mr Smith applied a ‘headlock’ as described the occupants of Mr Mills’ car. It is noteworthy that they, as a group, were the only witnesses who made that allegation. They were clearly outraged by what they saw, quite justifiably in my view, and this may have coloured their recollections. Their car was still moving, and they may have mistaken the ‘bear hug’ or the ‘full’ or ‘half Nelson’ as a headlock;
- As a result of his distress at the false accusation, compounded by his physical exertions in attempting to avoid Mr Smith, and compounded even further by the various scuffles and falls caused by Mr Smith’s attempts to detain Mr Eustice, Mr Eustice became highly agitated and physically distressed.

5.36. Events after the bus left

By the time Mr Davies arrived at the scene, Mr Smith was no longer grappling with Mr Eustice, and the bus was no longer there. He said that both men were standing at that stage, near the southern side of the bus shelter. He said that Mr Smith was on the telephone, presumably to Mrs Lyn Marshall, and Mr Eustice was standing behind, yelling at him.

- 5.37. Mr Davies said that at his suggestion, he and Mr Eustice sat on the seat in the bus shelter. He said that he was in the process of ascertaining Mr Eustice’s name when he collapsed and slouched against the side of the shelter. Mr Davies then called an ambulance.

- 5.38. A transcript of the call to the South Australia Ambulance Service is Exhibit C8d. I have already mentioned that the ambulance was dispatched at 1553 hours, so the call must have been shortly before that.
- 5.39. During the call, Mr Davies described Mr Eustice as a 'heart patient', 'not very good at the moment', had a 'very weak pulse', 'grey', 'unconscious', breathing 'slightly', his lips were 'bluish', with a 'very slight' pulse on his wrist.
- 5.40. The ambulance operator told Mr Davies:
- 'Alright, if his breathing isn't very regular, you might need to do some mouth to mouth.'
- Mr Davies replied:
- 'Yeah, yeah, okay. Is someone on their way or not?'
- (Exhibit C31)
- The ambulance operator said that the ambulance was on its way, and offered to stay on the telephone to assist, but Mr Davies said:
- 'No, it's alright'
- 5.41. In fact, neither Mr Davies or Mr Smith performed any form of resuscitation on Mr Eustice. He laid Mr Eustice on his back on the bus shelter seat, which was not in accord with sound First Aid practice. Mr Eustice should at least have been put in the 'recovery position' on his side, since Mr Davies had told the ambulance operator that Mr Eustice was unconscious.
- 5.42. Mr Davies was unable to provide a satisfactory explanation for not having performed cardio-pulmonary resuscitation (T456).
- 5.43. The ambulance took four minutes to arrive. Mr Eustice was still lying on his back when Mr Mills arrived at the scene. He said Mr Eustice was 'struggling for breath' and appeared 'very ill' (T192). He then saw Mr Eustice convulse, and thought he had died.
- 5.44. At Mr Mills' suggestion Mr Eustice was carried across the footpath to the grassed area and placed on his side in the recovery position, where he remained until the ambulance arrived.

- 5.45. The ambulance crew found Mr Eustice in ventricular fibrillation at that time, as I have already outlined.
- 5.46. Dr Cala told me that the symptoms outlined by Mr Davies during his telephone call to the ambulance operator were consistent with Mr Eustice suffering imminent heart failure at that time (T514). The fact that Mr Eustice was in ventricular fibrillation when the paramedics arrived suggests that Mr Eustice was also suffering ventricular fibrillation when he collapsed, or at least cardiac arrhythmia (T531).
- 5.47. Dr Cala said that it was possible that cardio-pulmonary resuscitation may have improved Mr Eustice's chances of survival by re-oxygenating his blood and keeping the heart beating, but the chances of survival in a man with such extensive coronary disease were significantly less than 50% (T528). However, he said that cardio-pulmonary resuscitation is 'worth a try' (T528).
- 5.48. I note that both Mr Davies and Mr Smith held current Senior First Aid Certificates. Mr Miller said that this was a condition of their employment at Westfield (Exhibit C5a, p1). I find it surprising that cardio-pulmonary resuscitation, or at least mouth-to-mouth resuscitation, as suggested by the ambulance operator, was not attempted.
- 5.49. The paramedics, and later the staff at Flinders Medical Centre, made extensive and aggressive attempts to resuscitate Mr Eustice once they became involved, and it is clear that everything possible was done to save him but without success.
- 5.50. Conclusions  
Mr Eustice collapsed in the bus shelter within a very short time after the series of physical altercations with Mr Smith concluded. He was still upset and agitated when he sat down with Mr Davies, and he collapsed before he could state his name.
- 5.51. Having regard to the recency of his check-up with Dr Ardill (only ten days earlier), at which he displayed no signs of imminent heart failure, and the proximity of his collapse to the stress caused during this distressing and violent confrontation, I have no difficulty in concluding that the events which transpired between Mr Eustice and Mr Smith that afternoon were the critical causative factor in precipitating heart failure in a man predisposed to such failure by his pre-existing illness.

- 5.52. It is unnecessary to attempt to dissect whether individual events, taken alone, might have produced the same result. Mr Schapel argued for example that Mr Smith was within his rights to approach Mr Eustice outside the shopping centre, and to seek to persuade him to hand in the 'wallet', and that this alone may have been sufficient to produce the result. The implication of this submission was that Mr Eustice's reaction was irrational and unpredictable, and that Mr Smith was not responsible for what then ensued.
- 5.53. I reject that submission. If Mr Eustice had collapsed after having been falsely accused of stealing, even if a physical altercation had not then ensued, the issues at the inquest would have been different. But the facts must be taken as a totality and the inescapable fact here is that there was a physical altercation. In my view, the sum of all the stressors placed on Mr Eustice that afternoon were what caused his collapse and subsequent death. I think that this is evident from the fact that the first time there was physical contact between the two men corresponded with the time Mr Eustice began showing particular signs of distress, and crying for 'help'.
- 5.54. Mr Schapel submitted that it is conceivable that Mr Eustice suffered a panic attack after having been confronted by Mr Smith. I acknowledge that this is a possibility, although it could never be proved one way or the other. For the reasons outlined above, however, any such panic attack is unlikely to have started until after the physical altercation started, and Mr Eustice began showing particular signs of distress. In that event, I conclude that this issue is irrelevant to the overall issue of causation.
- 5.55. Mr Caldicott, counsel for Mrs Eustice, submitted that I should find that Mr Smith's behaviour towards Mr Eustice was 'unlawful and dangerous', and resulted in Mr Eustice's death.
- 5.56. I am unable to make such a finding because I am prevented from doing so by Section 26(3) of the Coroners Act, 1975, which provides:

'A coroner holding an inquest must not in the inquest make any finding, or suggestion, of criminal or civil liability.'

In my opinion, to make the finding Mr Caldicott suggested would be to suggest that Mr Smith was guilty of a criminal offence, which I am prohibited from doing.

## 6. Recommendations

- 6.1. Section 25(2) of the Coroner's Act 1975 empowers me to make recommendations which might, in my opinion, 'prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the inquest.'
- 6.2. It could not be argued that any inadequacies in Westfield's 'found property' procedures led to Mr Eustice's death, except in the most indirect way. In the same way, I do not suggest that anything Ms Lipka did, or did not do, had that effect either.
- 6.3. For those reasons, I do not make a formal recommendation pursuant to Section 25(2) that the procedures should be changed. However, I do observe that the procedures refer only to the situation where a found item is 'handed in' (see Exhibit C8f).
- 6.4. Ms Lipka correctly understood that Mr Eustice was under no obligation to do so. She was unable to recall whether she suggested that Mr Eustice should report the matter to the police (T123). If she had, I think that would have been useful.
- 6.5. I therefore draw this matter to the attention of Westfield, and suggest that they might consider adding an instruction to cover the eventuality that a person reports a found item, but declines to hand it in. Such an instruction might cover offering to contact the on-site police officers, or directing the person to the nearest police station.
- 6.6. I do not understand Mr Schapel's argument that Ms Lipka taking down Mr Eustice's details would have been 'meaningless'. I see no reason why Westfield could not provide that information to a person who may have lost property, so that they can be directed to a police station or make other arrangements to recover it.
- 6.7. Role of Security Officers

It is not my role to reach conclusions about whether Mr Smith's actions towards Mr Eustice were lawful. However, I would observe that the area of powers of arrest and detention can be described as a legal minefield. Police officers receive intensive training on the subject, and carry written information with them when they are on duty, to which they may refer if difficulties arise.
- 6.8. I have already outlined the Standard Operating Procedures issues by Westfield on the subject, and I have no criticism of those procedures.

- 6.9. However, I question whether Mr Smith has received adequate training to deal with this situation. I have already observed that both Mr Miller and Mr Davies were both under the misapprehension that a reasonable suspicion was sufficient to justify an arrest.
- 6.10. I did not hear evidence from Mr Smith, so I have been unable to explore his level of understanding of these issues, except to the extent that he discussed them in his interviews with Detective Bee. They give me little confidence that he had an adequate understanding of the law of larceny, for example.
- 6.11. This was an unusual case in that Mr Eustice did not follow the expected pattern of behaviour and hand over the purse. I think that it is fair to infer from the evidence that Mr Smith's training did not adequately equip him to deal with that situation.
- 6.12. I therefore recommend that the level of training given to licensed security officers be reviewed by:
- Westfield Limited;
  - The Minister for Business and Consumer Affairs
- to ensure that the likelihood of a repetition of such a tragic event is reduced.

*Key Words: Security Officer; Retail Premises; Arrest and Detention;  
Ischaemic Heart Disease*

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

*Seal the 3<sup>rd</sup> day of September, 2004.*

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*Coroner*