

IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2006 000276

REDACTED FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

*Section 67 of the **Coroners Act 2008***

Inquest into the Death of: SF

Delivered On	19 June 2014
Delivered At	Coroners Court of Victoria Level 11, 222 Exhibition Street Melbourne, Victoria
Hearing Dates	24-28 February 2014
Findings of	Coroner Rosemary Carlin
Representation	Mr Kyle McDonald for Carmelo Mr Jim Shaw for LB Ms Melissa Mahady for Rosie
Police Coronial Support Unit Assisting the Coroner	Leading Senior Constable Kelly Ramsey

I, ROSEMARY CARLIN, Coroner having investigated the death of

SF

AND having held an inquest in relation to this death on 24 – 28 February 2014

AT MELBOURNE

Find that the identity of the deceased was SF

Born on 31 October 1967

And the death occurred on 22 January 2006

At Goulburn Valley Hospital, Graham Street, Shepparton, Victoria, 3630.

from:

1(a) SINGLE STAB WOUND TO THE CHEST

In the following circumstances:

BACKGROUND

1. SF was born on 31 October 1967 and was 38 years old at the time of his death. He lived in Mooroopna with his wife, Rosie.
2. SF was a member of the local Italian community and had a close group of friends. He was also close to his brothers, Carmelo and Robert and they would often attend events together with their group of friends.
3. On 1 January 2006, Carmelo and his friends attended the Fontana Bar on Wyndham Street in Shepparton to celebrate the new year. While upstairs at the Fontana Bar, Carmelo became involved in a physical altercation with brothers LB and Fation and a third person with blond hair. Carmelo knew the LB brothers as they had played soccer together at the Tatura Soccer Club.
4. As a result of the altercation, Carmelo and the LB brothers were ejected from the bar. Carmelo then attended at the Shepparton Police Station and reported the matter. The LB brothers were interviewed by the police and LB was later charged in relation to the incident.

5. On Saturday 21 January 2006, SF and Carmelo attended Robert's house in Shepparton, together with their friend, Zafer Coskun. Later that evening, the four men left the house and travelled to the Aussie Hotel on Fryers Street in Shepparton, arriving at approximately 11.30 pm. They were there joined by friends, Ugur Avci and Matthew Caiafa. The group stayed at the Aussie Hotel drinking alcohol and socialising until approximately 12.30 am. They then walked a short distance to the Fontana Bar. After entering the bar, they remained in an area downstairs near the front entrance of the bar.
6. On the same evening, LB and his friend, Urim Bujku met at the Grapevine Bar on Wyndham Street in Shepparton. They were joined by friends Donjet and Johel Mancka, who were also cousins of Mr Bujku. At approximately 1.00 am, the group left the Grapevine Bar and walked to the Yahoo Bar, located nearby on the same street. They stayed at this location for a short time, before proceeding to the Fontana Bar. They arrived at the Fontana Bar shortly after 1.00 am.
7. Whilst LB spoke to security staff at the front entrance to the Fontana Bar, Mr Bujku went into the foyer to pay the entry charge. The Mancka brothers waited in a queue at the front of the premises. Inside the foyer, Carmelo recognised Mr Bujku as the third person with the LB brothers on 1 January and immediately walked up to him and punched him to the face. Security footage shows Mr Bujku holding his face at 1.10.49 am. LB was then grabbed by a number of people inside the bar, but managed to escape and run south on Wyndham Street, with Carmelo and other males following. Mr Bujku exited by the northern side door and then also went south.
8. A large fight occurred outside the ANZ bank, which was adjacent to and south of the Fontana Bar and at the corner of Wyndham and Fryers Street. This fight involved members of the SF group and LB. According to several witnesses LB was outnumbered and was being assaulted by the others. After a short while, LB broke free from the group and ran north on Wyndham Street.

9. At around this time, SF chased Mr Bujku diagonally northwest across Wyndham Street in front of the Fontana Bar. Security footage showed that this occurred at 1.11.28 am¹. The security footage also showed a person resembling LB north on Wyndham Street roadway, being chased by an unknown person at 1.11.36 am.
10. Both Mr Bujku and LB left the area by running north on Wyndham Street and then going in opposite directions at the end of the block. Shortly after they ran north, it became obvious that SF had been stabbed. A number of witnesses saw him lift his T-shirt to reveal a stab wound and then collapse near a hotdog van parked north of the Fontana Bar. The security footage shows a security guard from the Fontana Bar running towards him at 1.12.18 am.
11. According to the security footage, less than 2 minutes elapsed between the incident inside the Fontana Bar and SF collapsing in the street.
12. Police and ambulance paramedics arrived shortly after SF collapsed and began treating him. He was conveyed to the Goulburn Valley Hospital, where he died.

CORONIAL INVESTIGATION AND INQUEST

History of investigation

13. The Homicide Squad investigated the death of SF and compiled a brief of evidence. Following advice from the Office of Public Prosecutions, no charges were laid in relation to the death. Accordingly, the holding of an inquest was mandatory pursuant to section 52 of the Coroners Act 2008 and the matter was listed for inquest to commence on 27 June 2011.
14. On 22 June 2011, Mr Thompson, solicitor for Carmelo, notified Counsel Assisting the Coroner² that Mr Caiafa had provided him with additional information. On 23 June 2011, Mr Thompson forwarded a draft new statement from Mr Caiafa to the Coroner's Assistant. On 27 June 2011, the Homicide Squad made an application to adjourn the Inquest for

¹ At the time of the Inquest this security footage, which was from the Fontana Bar, could not be located and was not available for viewing. However, evidence as to its contents was given without challenge by Detective Sergeant Owen. According to Detective sergeant Owen the footage showed SF chasing Mr Bujku across Wyndham Street in front of the Fontana Bar and then out of view.

² Who, at that stage, was Coroner Parkinson.

further investigation as a result of this draft statement, which implicated LB in the death of SF. Mr Caiafa signed a police statement (his third) on 11 October 2011 adopting this draft. The matter was again referred to the Office of Public Prosecutions, which again advised against charging.

The Inquest

15. The Inquest was ultimately held between 24 and 28 February 2014. The sole issue for determination at the Inquest was the identity of the person who stabbed SF.
16. Until Mr Caiafa made his third statement in 2011, not only had no-one seen the stabbing, no-one claimed to have seen anything even resembling a stabbing. If Mr Caiafa's third statement is accepted, there can be no doubt that LB was the person who stabbed SF. However, the reliability and veracity of Mr Caiafa's evidence was in issue during the Inquest. Further, other evidence indicates that the last person in close proximity to SF prior to the stabbing was Mr Bujku not LB.
17. The following eyewitnesses gave viva voce evidence:
 - Carmelo;
 - Ugur Avci;
 - Urim Bujku;
 - Zafer Coskun;
 - Donjet and Johel Mancka;
 - Matthew Caiafa;
 - Daniel Dowie (security officer from the Fontana Bar);
 - Richard Matthews (operator of hotdog van);
 - Kosmos ("Cozy") Kalafatis (owner of the Fontana Bar);
 - George Zurcas (manager of the Fontana Bar); and
 - Serafino Varapodio (passerby).
18. LB was called to give evidence, but was excused after objecting pursuant to section 57 of the Act and declining to give evidence willingly with the protection of a certificate under that section. Mr Avci, Mr Bujku, Mr Coskun and Carmelo all gave evidence willingly after objecting, but being offered a section 57 certificate.

19. Dr Malcolm Dodd, the Forensic Pathologist who conducted the autopsy, Detective Sergeant Owen³, the investigating police officer, Detective Senior Constable Schultz, the police officer who took Mr Caiafa's first statement and Mr Thompson, solicitor for Carmelo, also gave evidence.
20. Various exhibits were tendered during the inquest, including the balance of the Brief of Evidence.

The evidence

21. The Brief of Evidence comprises 93 witness statements. Whilst I have considered all the evidence, I will only refer to that which is elucidating of relevant facts or assists my determination.
22. Many witnesses describe people only by their clothing or their actions. For ease of comprehension, when I am satisfied to whom a witness is referring, I will refer to that person by name rather than using the witness's description. For example, many witnesses describe a person wearing a torn light coloured T-shirt. This description matches LB and there was no contention at the Inquest that those witnesses were referring to anyone other than LB. Similarly, Mr Bujku was identifiable by the fact he wore a black T-shirt with a large white number 6 on the back.

Medical evidence

23. Dr Dodd conducted an autopsy on SF at 2 pm on 22 January 2006 and determined the medical cause of death to be blood loss secondary to a single stab wound to the chest. The blade had penetrated the heart. There was also a laceration to the back of the head (consistent with a fall onto a hard surface⁴) and there were no defense type injuries.
24. Dr Dodd gave evidence that the blade causing the stab wound would have been a single edged blade 3cm wide and at least 16cm long and did not appear to be serrated. In a standing position, the wound was horizontal and sideways. Assuming SF and his assailant

³ At the time of compiling the Brief of Evidence, he was Detective Senior Constable.

⁴ There is evidence that when he collapsed he hit his head on concrete.

were both standing and of similar heights, there would have been a straight thrusting motion⁵. Dr Dodd indicated it was dangerous to speculate as to whether the assailant was a similar height to SF, because there were so many variables.

25. Dr Dodd said collapse and death was likely within a minute of being stabbed. He said it was possible that SF could have survived for up to 2 minutes, but that would be the extreme outer end of the time frame. He may not have realised that he had been stabbed and may have been able to function, including running a short distance. Dr Dodd could not say how long until there were observable symptoms of impairment, however he said it was possible that SF may have immediately appeared to be winded and staggering.

The SF witnesses

Mr Caiafa

26. Mr Caiafa was upstairs inside the Fontana Bar when the fighting started. There were significant differences between his first statement, made at 5.15 pm on 23 January 2006 and his third statement signed on 11 October 2011, as to the observations he made when he went outside.
27. In his first statement, Mr Caiafa claimed that he ran out through the front door and noticed that everyone was looking toward the hotdog van. He looked that way but did not see anyone. He saw a group on the other side of the road but did not recognise anyone. He then ran to the north end of the hotdog van because “everyone was looking past the hotdog van”. As he got there, he saw LB running towards him in the middle of the street with SF holding onto his shirt being pulled along behind him. LB and SF ran onto the footpath about 3 metres from Mr Caiafa by which time LB had broken free and continued to run north.
28. According to his first statement, Mr Caiafa moved further away from the Fontana Bar and then looked around to see SF “just standing there”. He then saw LB stop and face him about 20 metres away (north) and “put his arms out to his side which made him look bigger. I looked back at SF who was lifting his shirt, as he did this I could see blood on him.....SF

⁵ Transcript page 195. The Transcript may have left out the word “if” in line 27 after the word “that”. In any event the thrust of Dr Dodd’s evidence was as if the word “if” was present.

then said the fucking cunt stabbed me”. Mr Caiafa looked back to see LB running away and Carmelo, who was about a quarter of the way towards LB, come running back. In the statement Mr Caifa said, “From the first time I saw SF holding onto the guy, I noticed that he was not right, SF was not moving properly and his face was blank. I could tell that there was something wrong with him.”

29. In his 2011 statement and in evidence, Mr Caiafa claimed to be standing on the footpath at the southern end of the hotdog van, which he said was parked immediately in front of the Fontana Bar, when he saw SF and LB “emerge” from the group at the ANZ Bank. SF chased LB into the middle of the road where they fought. As his view was obscured by the hotdog van, Mr Caiafa moved to the footpath at the northern end of the van. He saw SF repeatedly punch LB to the head and upper body with heavy uppercut blows. LB was hunched over to protect himself but then thrust his right arm towards SF’s upper body. Mr Caiafa demonstrated the motion as a forward thrust with the right hand roughly parallel to the ground whilst bent over. LB then stood up and moved towards Mr Caiafa. SF had hold of the back of LB’s pants⁶. He had not grabbed hold of LB before then. LB stopped and SF collided into the back of him.

30. Mr Caiafa said he, (Mr Caiafa) started to “shape up” and lifted his arms into a fighting stance. He noticed that SF was not moving as quickly or freely as before. LB stopped a few shops north of Mr Caiafa, danced around and yelled out some sort of challenge. At that time, LB was holding some object in his right clenched fist in the same way as he would hold a stubby. Mr Caiafa then saw that SF who was beside and slightly behind him, had been stabbed. SF uttered the words “the fucking cunt stabbed me” and collapsed. Mr Caiafa saw Carmelo and Robbie and LB running north along Wyndham street.

31. The circumstances in which Mr Caiafa’s 2011 statement came into existence were unusual.

32. Mr Thompson gave evidence that on 18 June 2011, he made a telephone call to Mr Caiafa and asked him questions about the events of the night. He did not remember if Mr Caiafa was expecting his call and believed he had obtained his name from reading the Brief of

⁶ His 2011 statement did not specify what clothing, but in evidence he said it was LB’s pants.

Evidence⁷. Mr Thompson prepared a new draft statement for Mr Caiafa based on this conversation.

33. This first draft statement, which was prepared on 18 June 2011, made no mention of the thrusting motion, although Mr Thompson's file notes of the conversation do record "arm go back then move forward", which may have been a description of a thrusting motion. This draft statement was revised over the course of two to three telephone conversations and several emails between Mr Thompson and Mr Caiafa.
34. Correspondence produced by Mr Thompson revealed that as at August 2011 the statement was still in draft form⁸. Mr Caiafa ultimately signed a new police statement, which incorporated the draft prepared by Mr Thompson on 11 October 2011.
35. I have some unease as to the evolution of Mr Caiafa's 2011 police statement, but I am satisfied that Mr Caiafa did fully adopt the contents of that statement as his own. The question remains however, why his first statement omitted such significant details as SF being a part of the ANZ Bank fight, the stabbing motion and LB holding onto an object.
36. Mr Caiafa appeared to be a reasonably intelligent and articulate man. He was one of the most forthcoming and obliging witnesses at the Inquest. He presented as reasonably convincing.
37. Mr Caiafa claimed and I accept that he was not given a copy of his first police statement until Mr Thompson emailed it to him⁹. This may explain a failure to correct the first statement at an earlier time, but it does not explain the omissions.

⁷ Mr Caiafa's evidence was that Mr Thompson may have said that "Carmelo had possibly stated I might be someone to talk to", transcript page 282. This was denied by Carmelo.

⁸ Refer to Exhibit AI, being correspondence and notes produced by Mr Thompson.

⁹ Given that the homicide investigation was ongoing when he made his statement there was good reason not to provide him with a copy. Further two documents in Exhibit AI confirm that he did not have his original statement at the time he was first contacted by Mr Thompson. On 30 June 2011, Mr Thompson wrote to Mr Caiafa suggesting he obtain independent legal advice as he may be cross-examined about the differences between his statements. A file note dated 11 July 2011 indicates Mr Caiafa called Mr Thompson's office asking for copies of his two statements. It continues "He said you say that there is an anomaly in them so he would like to read them as he doesn't have a copy of any of the statements."

38. By way of explanation, Mr Caiafa said he did not think of the extra details at the time of his first statement. However, he also said he probably told his late wife the same night or “somewhere there along”. He also maintained that the police member who took the first statement “was only interested in the fight that I had observed outside the ANZ Bank”¹⁰. This assertion is manifestly incorrect. It is contradicted by the evidence of Detective Schultz and by the contents of the statement. The first statement makes no mention of the ANZ Bank fight at all. It does however, set out in considerable detail the interaction between SF and LB.
39. It is difficult to accept that Mr Caiafa, knowing that SF had been stabbed, would not have mentioned the thrusting motion and the object in LB’s hand, if he had seen those things. This is especially so given Mr Caiafa’s somewhat garrulous nature and close relationship with the SF’s family.
40. It is also difficult to reconcile other differences between the first and 2011 statements, such as where Mr Caiafa was standing at various times, where the hotdog van was located¹¹, the location of SF and LB when he first saw them and how and when SF grabbed at LB’s clothing.
41. I do not accept that the events occurring in Mr Caiafa’s life at the time of making his first statement account for the differences between his statements. No matter what was going on, I would have expected him to remember and inform the police of such significant observations so soon after they were made. His evidence was that the day after the stabbing he presented himself, unprompted, to the police station for the express purpose of making a statement¹². Further, although his wife had cancer and they had a newborn baby at the time of his first statement, Mr Caiafa still described things as “not too bad” and “going okay”¹³.
42. There are other difficulties with Mr Caiafa’s evidence. In his first statement, Mr Caiafa described Carmelo as one of his best friends and yet in his 2011 statement he claimed that

¹⁰ Statement dated 11 October 2011 and Transcript page 280 and 284 ff.

¹¹ Contrary to Mr Caiafa’s 2011 statement and evidence, I am satisfied that the hotdog van was in fact located to the north of the Fontana Bar just behind the “Hot Dogs” sign. I accept the evidence of Mr Zurcas and Mr Matthews in that regard.

¹² Transcript page 280, 283.

¹³ Transcript page 343.

he had only spoken briefly with Carmelo and the SF's brothers as to the events of the night and had not gone into the detail because "it is not what mate's [sic] do"¹⁴.

43. In the hours and days after SF's death, the question of who inflicted the fatal stab wound must have dominated conversations amongst those concerned. Mr Caiafa actually attended the hospital and saw SF's family immediately after the stabbing. It defies belief that Mr Caiafa would not have told one of his best friends all that he knew, either on the night, or soon afterwards and I do not accept it. It raises the question of why Mr Caiafa would deny it.

44. A final problem with Mr Caiafa's evidence is that at 1.42 am on the night, Mr Caiafa is recorded as giving a completely different version of events to a police officer. He is recorded as saying that he was inside the Fontana Bar at the time of the incident, but he saw the victim pushing someone and ripping their T-shirt before falling to the ground. In evidence, Mr Caiafa said he could not recall whether he said that¹⁵.

45. It was urged upon me by counsel for Rosie that if I entertained doubts about Mr Caiafa's 2011 statement, that I could ignore it and rely solely upon his first statement which also implicated LB. This is impossible to do. My misgivings as to his 2011 statement taint the whole of his evidence. For this reason, I am not prepared to rely upon Mr Caiafa's evidence unless it is supported by other independent evidence.

46. At this point it is worth noting that the medical evidence, whilst not necessarily inconsistent with Mr Caiafa's evidence, is not supportive of it. That is, the horizontal position of the knife wound is not obviously accounted for by Mr Caiafa's demonstration of LB's forward thrusting motion from a hunched over position. Further, Dr Dodd did not note any injuries to SF's hands such as might have occurred if he had been repeatedly punching LB to the head and upper body¹⁶.

Carmelo

¹⁴ Statement dated 11 October 2011.

¹⁵ Transcript page 287.

¹⁶ I recognise that it is difficult to draw any firm conclusions from the medical evidence, the point simply being that it does not amount to independent supporting evidence.

47. In the statement he made the following day, Carmelo claimed that whilst the ANZ Bank fight was proceeding he did not know where his brother was. As LB ran off, he saw Mr Bujku standing near the bicycle rack (shown by the photographs to be just north of the Fontana Bar and south of the “Hot Dogs” sign). He then saw SF start chasing Mr Bujku northwest across the street. Carmelo then started to chase LB but stopped near the hotdog van as LB was too far away. Carmelo turned around and looked south and saw SF walk around the front (that is, south) of the van with blood on his shirt. On this version, there was simply no opportunity for LB to stab SF.
48. By contrast, in his evidence, which immediately followed Mr Caiafa’s evidence¹⁷, Carmelo stated that SF was next to him during the ANZ Bank fight, that LB pushed past SF to get away and that SF swung LB around by the shirt which ripped in the process. He said LB broke free and ran north and SF chased Mr Bujku before returning to the north of the van with blood on his shirt.
49. These changes in Carmelo’s account make it more consistent with Mr Caiafa’s new version. In their evidence, both men had SF involved in the ANZ Bank fight, whereas their original versions did not. Further, the proposition that SF returned from chasing Mr Bujku north of the hotdog van, rather than south, whilst still different from Mr Caiafa’s evidence (who does not mention Mr Bujku at all), is more consistent with it. However, it is inconsistent with the evidence of Mr Matthews and others who see SF coming along the pavement from south of the hotdog van before he collapses.
50. Whilst the accounts of Carmelo and Mr Caiafa have become more similar over time, there are still significant differences between them, such as the involvement of Mr Bujku and the details of SF’s collapse. According to Carmelo, he was with SF when he collapsed and rather than SF saying “the fucking cunt stabbed me” or similar, it was Carmelo who pointed out to SF that he had been stabbed,. Far from supporting Mr Caiafa’s version, these differences detract from it.
51. The significant changes in Mr Caiafa’s and Carmelo’s versions of events so as to implicate LB, raise collusion as a possibility. I am not satisfied there was collusion, only that it exists

¹⁷ Carmelo was in court during Mr Caiafa’s evidence.

as a possibility. In any event, I entertain a strong suspicion that Carmelo deliberately changed his evidence to make it more consistent with Mr Caiafa's evidence and to provide a version of events whereby LB had an opportunity to stab his brother.

Mr Avci

52. In the statement that he made the next day, Mr Avci described himself fighting with LB outside the ANZ Bank. He stated "The guy that I was fighting with broke free from me and started running towards Queens Park but on the same side of the road as the Fontana Bar". He stated that he chased LB for about 20 metres and then saw him pass SF who was standing near Taco Bill (4 shops north of the Fontana Bar). They "shaped up" and gestured to each other, but he did not know if they made contact. LB kept running north and Mr Avci then saw that SF was moving slowly with blood on his top. SF then pulled his top up to reveal a stab wound.

53. In evidence, Mr Avci claimed that at one stage during their fight LB stopped punching him. Initially he said he did not know whether that was because he had really hurt him or whether LB was trying to get something out of his pocket¹⁸. Later he said "he looked like he was going into his pockets or something"¹⁹.

54. According to Mr Avci, LB then tried to pull away from him. Mr Avci had hold of his top whilst LB ran in a zigzag fashion eventually breaking free from Mr Avci's grip and running down the street towards SF. Although he did not see a connection, Mr Avci said it looked like LB punched SF during their altercation and that afterwards SF was not moving well, was staggering and appeared winded.

55. I do not find the changes to Mr Avci's original account convincing. Although he did describe LB leaning over in his statement, he said nothing about him stopping fighting and appearing to get something out of his pocket, nor did he mention the apparent punch of SF.

56. By way of explanation for the changes, Mr Avci said that he was in shock at the time he made his statement and that his recollection was best about 4 months after the event. I do

¹⁸ Transcript pages 133 and 148.

¹⁹ Transcript page 149.

not accept this. Mr Avci knew at the time of making his statement that SF had been stabbed. I would have expected him not to forget such important facts when making his statement. At the very least when he remembered those facts, I would have expected him to contact the police.

57. In my view, Mr Avci's additional evidence smacks of reconstruction, whether deliberate or unconscious I do not know. He maintained that he had last spoken to Mr Caiafa about 4 years ago in relation to some mechanical work. Accepting this to be true, it does not alter my perception of his evidence.

58. In any event, even if I were to accept Mr Avci's evidence, it seems somewhat unlikely that LB would have been retrieving a knife of the requisite size from his pocket. Further, it is totally inconsistent with Carmelo's evidence and also inconsistent with Mr Caiafa's description of events.

Mr Coskun

59. In his statement, Mr Coskun described kicking LB away from Mr Avci and that LB "just kept running until he got to the Mobil Service Station". His evidence was quite different. He said that the fight between Mr Avci and LB happened north of the Fontana Bar, not at the ANZ Bank. After he intervened, Mr Avci stayed with him and did not chase LB. They were standing about 20 metres north of the Fontana Bar, near the front of the hotdog van, when they saw SF walk towards them from the south and lift up his T-shirt to reveal that he had been stabbed. He collapsed one or two shops north of the Fontana Bar, about one car length south of the hotdog van. He said that whilst he did not watch LB continuously from the time that he ran off, he did keep his eye on him and would have seen it had he interacted with anyone else prior to the Mobil Service Station. He guessed it was about 5 to 10 minutes after LB ran off that he saw SF.

60. Mr Coskun initially asked to be excused from giving evidence on the ground that he was medically unfit to give evidence. Upon provision of a letter from a medical practitioner to the effect that the medication he was on "can" cause cognitive difficulties, I did not excuse him and his evidence proceeded without Mr Coskun displaying any obvious impairment. For whatever reason I am satisfied that Mr Coskun's evidence is wrong in a number of

respects. His evidence is at odds with the preponderance of evidence as to the location of the fight between LB and Mr Avci, as to the location of the hotdog van, and as to the time between LB running off and seeing SF stabbed. These significant errors cast doubt on the reliability of the rest of his evidence even if his veracity is accepted.

The LB witnesses

LB and Mr Bujku

61. According to LB's statement²⁰, as he was running north along Wyndham Street "a few blokes from Carmelo's group" were on the footpath trying to block him. He ran out on the road a little bit to get past them but then continued on the eastern footpath.
62. Mr Bujku's evidence was that after he went south from the Fontana Bar, the fight was already happening outside the ANZ Bank and he did not get involved. As he was watching the fight, two or three males started to chase him so he ran northwest across Wyndham Street towards Queens Gardens. They never caught him. He claimed not to remember many details, including whether, as Donjet Mancka said, he tried to stop the ANZ Bank fight by holding two guys out of the fight and in the process got punched in the face and head himself.

Others

63. The Mancka brothers both claimed to see LB escaping from the ANZ Bank fight and being chased north by some males, but not what happened after that. According to Donjet, LB ran in the middle of the road, but Johel described him running on the footpath.
64. In evidence, Johel Mancka said that Mr Bujku ran across the road, but he did not recall if anyone chased him. Donjet Mancka said he saw 4 to 5 males chase Mr Bujku across the road and then lost sight of them. This was a couple of seconds after LB started running north and about a minute or two before he saw that SF had been stabbed.

²⁰ Dated 22 January 2006.

65. In his statement, Johel Mancka said SF was outside Ray White Real Estate (about where the hotdog van was parked) when he lifted his shirt, but in evidence he said that he was walking north from the ANZ Bank ATM when he lifted his shirt and then joined the group outside Ray White. He said LB was long gone by then. On this version, SF could have been stabbed in the ANZ Bank altercation, although not by LB. My impression was that Johel Mancka deliberately changed his evidence on this point in order to distance LB from the stabbing.

Independent eyewitnesses

66. Some witnesses did not see anyone chase LB after he ran away from the ANZ Bank, for example Mr Kalafatis, Jan Thomassen, Rebecca Quinton and Frank Demaio. Other witnesses provide some support for the proposition that SF was involved in a fight with LB near the hotdog van prior to his collapse. In particular, Mr Zurcas, Mr Dowie, and Cindy Batey all described an altercation possibly between LB and the deceased near the hotdog van.

67. Another witness, Robert Maloney, described a number of people grabbing and ripping LB's shirt before he ran all the way to the end of the street, but the location of this altercation is not clear.

68. In his statement Mr Zurcas described a person breaking free from the ANZ Bank fight, running across the centre line of the road towards Rebel Sport then back to the east side. Two males chased him and they fought again on the footpath adjacent to the hotdog van. He did not know the person being chased, nor what he was wearing.

69. In evidence, he stated that "SF" was one of the men doing the chasing. He knew it was SF from viewing the security footage and being told by someone that that person was SF. According to Mr Zurcas, he was built a bit more heavily than the person, he was chasing. He could no longer recall if there were two men chasing one person or one person chasing two people. The footage only showed two people so he thought that one of the three people could have run in a different direction to the other two. He did not see SF catch up to the person he was chasing, but his view was obscured for a time. He could also no longer recall if there was actual fighting near the hotdog van or just people gathering around SF after he had been stabbed, however he accepted that his statement must be true.

70. Mr Zurcas' viewing of the security footage may have contaminated his evidence. He seemed to be describing LB and yet the security footage clearly showed SF chasing Mr Bujku.
71. Mr Dowie saw LB run from the ANZ Bank out onto the middle of Wyndham Street then back to the same side. He claimed the fighting with LB continued north along Wyndham street towards the hotdog van when LB escaped again. He was chased down and more fighting with the same people occurred near Spaghetti Hollow (3 shops north of the Fontana Bar). He saw LB and two others run away, but did not know if they were together or not. In his statement, he said the person who was stabbed was "one of the attackers" but in evidence, he could no longer recall what role he played other than being part of the attacking group.
72. The accounts of Mr Matthews, Mr Varapodio, Giovanni Trapani, Frank Demaio and Julie Moran all had SF chasing Mr Bujku immediately prior to his collapse, albeit no-one saw any actual physical interaction between them.
73. Mr Matthews saw a man with a white T-shirt running north on the eastern footpath past his hotdog van. This would appear to be LB. Moments later, he saw two people running diagonally across the road, who would appear to be Mr Bujku (black and white top) and SF (green or brown top). He saw them out of the south facing (front) window of his van. He then saw a person return from that direction, who he believed to be one of those two. That person then walked past the van on the footpath and as he did so, he lifted his shirt to expose a wound.
74. Denise Raftis who was helping Mr Matthews in the van, saw a person, who appears to be LB, running north along the pavement. She then saw two men running diagonally across the road and after that saw an obviously injured SF walking slowly north from a point south of the Fontana Bar. She did not identify SF as one of the two men running across the road, but nevertheless her version is inconsistent with SF having been stabbed in an altercation with LB near the hotdog van.
75. Mr Varapodio was standing outside the Fontana Bar when LB ran quickly past him in a northerly direction. According to Mr Varapodio, LB slowed near the hotdog van and looked

back. Mr Varapodio did not see anything in his hands. At the same time, Mr Varapodio saw SF and Mr Bujku in the middle of Wyndham Street between the ANZ Bank and the Fontana Bar. They were about three metres apart and SF was chasing Mr Bujku across the road. Mr Bujku ran to the west side of the street before running back to the east side near the hot dog van. SF looked slow and puffed out and he collapsed near the hotdog van. Mr Bujku and LB then both ran towards the Mobil Service Station.

76. Mr Maloney described a person, who appears to be Mr Bujku, being chased across the street by a person he could not describe, but who may have been SF.

Events after the stabbing

77. Witness Belinda Ross saw LB running north along Wyndham Street towards the Mobil Service Station and then head east. About one or two minutes later, she saw Mr Bujku running on the same side as LB, but then head west. Shortly after this sighting, witnesses Kate Sneyd and Jane O'Connor saw a person likely to be LB running north along Maude Street (north and east of the Fontana Bar)²¹. At this time he was carrying his torn shirt and when asked if he was all-right replied "you never saw me". Ms Sneyd thought he looked preoccupied.

78. According to LB²², whilst running he used his phone to call 000 but did not get through. There is some support for this in the phone records which show him calling 112 (emergency services) at 1.17 am in a call which lasted 7 seconds.

79. LB and Mr Bujku met up later at Kentucky Fried Chicken in Wyndham Street opposite the lake. LB had driven his father's car into town that night and parked on Wyndham Street. At LB's request Mr Bujku walked down Wyndham St to collect that car. According to LB's statement this was because he was still afraid that Carmelo's group would be in the area. The two of them then drove separately to Shepparton police station to report the incident,

²¹ Ms Sneyd said she knew him by sight and later identified him from a photoboard. LB confirmed in his records of interview and statement that after he left the scene he removed his shirt.

²² Statement and Record of Interview dated 22 January 2006.

arriving at approximately 2.15 am. They were formally interviewed and both claimed to be victims of an assault. They denied stabbing SF or knowing who did.

Police investigation

80. The knife was never located despite a thorough search. There was no DNA evidence linking LB and the deceased, nor Mr Bujku and the deceased.
81. During the Inquest Detective Sergeant Owen examined the pants LB was wearing on the night, to determine if it was possible to secrete a knife with a 16 cm blade in any of the pockets. Detective Sergeant Owen agreed the handle on such a knife would possibly be around 10 cm. His examination revealed there were no holes in any of the seams of the pants. In short, the various pocket measurements were such that it was unlikely such a large knife could have been accommodated, though not impossible.
82. Recognising that knives can be secreted in many ways, this evidence is ultimately of little significance, except in so far as it may detract from Mr Avci's account of LB reaching in his pocket.

Possible Propensity or Circumstantial evidence implicating LB

83. It was urged upon me by Counsel for Carmelo and Rosie that I could take into account other possible disreputable conduct relating to LB in order to find that he was the person who stabbed SF.
84. First, on 10 August 2007, LB was fined without conviction the sum of \$500 at the Melbourne Magistrate's Court for the unlawful assault of Carmelo on New Year's Eve. There is evidence that LB was extremely angry during that incident. According to Mr Kalafatis, he was too fired up for Mr Kalafatis to be able to calm him down.
85. Secondly, on 25 June 2009, LB was sentenced to 106 days imprisonment for the offence of Reckless Conduct Endanger Serious Injury. The circumstances of this were that at about 2.45 am on 8 March 2009, LB had an altercation with security guards at a nightclub in Prahran. He then returned to his car and retrieved a handgun. He returned to the nightclub and ended up firing his gun into the ground before running away.

86. Finally, LB's father's car (which was driven by LB on the night) was seized under warrant on 22 January 2006. A search by police located two folding knives in the glove box of the car.

CONCLUSIONS AS TO CAUSE AND CIRCUMSTANCES OF DEATH

87. Although the standard of proof applicable to Coronial Proceedings is balance of probabilities, it is subject to the Briginshaw qualification²³.

88. After analysing all the evidence, I am unable to be reasonably satisfied as to who inflicted the fatal stab wound. For reasons already expressed, I am not prepared to accept Mr Caiafa's evidence without independent supporting evidence. Whilst there is other evidence possibly supporting the proposition that LB was the person who stabbed SF, that evidence is either weak, flawed or inconsistent with Mr Caiafa's account. Further, that other evidence is not sufficient on its own to find that LB stabbed SF.

89. Moreover, there is evidence suggesting that the last person in close proximity to SF before it became obvious that he had been stabbed, was Mr Bujku, not LB. Based on the evidence of Dr Dodd, it might be possible that SF was stabbed by LB, prior to him chasing Mr Bujku, however this would be totally contrary to Mr Caiafa's account of how the stabbing occurred.

90. My state of uncertainty is not elevated into a state of reasonable satisfaction by reference to LB's criminal record, nor by the knives in the car. If it was LB who stabbed SF, it occurred in circumstances where he was first assaulted by a number of people. He was not the initial aggressor and was potentially acting in self-defence²⁴. In these circumstances, the fact that he was the aggressor on two other occasions is of limited relevance or probative value. The 2009 nightclub incident may tend to support an inference that he was the type of person who was prepared to carry and use weapons, however again this is of little weight when that was a gun and this was a knife.

²³ Briginshaw v Briginshaw (1938) 60 C.L.R. 336 esp at 362 – 363. "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences...."

²⁴ The issue of self-defence is not a matter to be determined by a coroner and it is only mentioned in the context of assessing the probative value of other evidence.

91. As far as the knives in the car are concerned, assuming they were present on the night of the incident, I am not able to infer that they belonged to LB, nor that he necessarily knew of their presence, let alone anything about his propensity to carry a much larger knife on his person.
92. I am not satisfied the New Year's Eve incident provided any motive for LB to stab SF, as opposed to Carmelo, and in any event given LB would have been responding to an attack, not initiating it, the question of motive assumes little importance. For the same reasons, I am not persuaded by the suggestions throughout the Inquest that LB was upset by the fact Carmelo had been involved in a relationship with his cousin.
93. I do not accept the argument put by Counsel for Carmelo, that I can use a suggested delay in LB attending the police station to infer that he stabbed SF. In the circumstances, I do not find there was any significant delay and further, the fact that he attempted to call emergency services militates against a finding that he was avoiding the authorities.
94. Assuming it was LB who was seen by Ms Sneyd and Ms O'Connor, in my view the comments he made to them are intractably neutral, as they are equally consistent with him not wanting to be found by the people who attacked him, as they are with him avoiding police. Again, assuming it was LB who was seen, his denial of this encounter when interviewed by the police on 7 February 2006²⁵ is puzzling, but in the end I am not satisfied it evinces a consciousness of guilt of the stabbing. In light of other admissions made during his police interviews, I consider this denial is capable of other explanations, such as innocent mistake or fear of being falsely accused.
95. I formally find that SF died on 22 January 2006 and that the cause of his death was a single stab wound to the chest by a person unknown.

²⁵ LB was interviewed by police and made a statement on 22 January 2006 and was interviewed again on 7 February 2006.

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

The family of S F;

The Interested Parties;

The Investigating Member.

Signature:



ROSEMARY CARLIN
CORONER
19 JUNE 2014

