



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2013 3731

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*

*Section 67 of the Coroners Act 2008*

Deceased:	<b>BABY ISABELLA ROSE</b> <b>(SURNAME SUPPRESSED)</b>
Delivered on:	<b>13 April 2017</b>
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street Southbank Victoria 3006
Hearing date:	4 and 5 May 2015
Findings of:	<b>CORONER PARESA ANTONIADIS SPANOS</b>
Counsel assisting the Coroner:	Leading Senior Constable King TAYLOR, from the Police Coronial Support Unit.
Representation:	Ms Melissa (surname suppressed), the deceased's mother, appeared on her own behalf. Mr Maxwell James (surname suppressed), the deceased's father, appeared on his own behalf.
Catchwords:	Infant death, co-sleeping, mechanical asphyxia, myocarditis, Sudden Infant Death Syndrome (Category 2), overlaying, unsafe sleeping environment.

I, PARESA ANTONIADIS SPANOS, Coroner,  
having investigated the death of ISABELLA ROSE (SURNAME SUPPRESSED),  
and having held an inquest in relation to this death  
on 4 and 5 May 2015 in the Coroners Court of Victoria at Southbank  
find that the identity of the deceased was ISABELLA ROSE (SURNAME SUPPRESSED)  
and that the death occurred on or about 23 August 2013  
at 17 Seacrest Avenue, Seaford, Victoria 3198

**from:**

I(a) SUDDEN INFANT DEATH SYNDROME (CATEGORY 2)

**in the following circumstances:**

#### INTRODUCTION

1. Ms Melissa (surname suppressed, hereinafter referred to as “Melissa” or “the mother”) and Mr Maxwell James (surname suppressed, hereinafter referred to as “Max” or “the father”) met through a dating site. After some time, Max moved in to Melissa’s rental accommodation in Railway Parade, Seaford where they lived for a couple of months before moving to the house in Seacrest Avenue, Seaford, where they had been for about six to seven months before Baby Isabella’s birth.<sup>1</sup>
2. According to her own account, Melissa had some gynaecological problems which made it difficult for her to have children. Nevertheless, she managed to conceive and bore a daughter to a previous partner who was about two and a half years of age when Baby Isabella was born, and whose care was shared between Melissa and the child’s father.<sup>2</sup>
3. Although the pregnancy was unplanned, both Melissa and Max were happy to be having a child together. Unfortunately, Melissa was unaware that she was pregnant during her first trimester and she used a number of substances during this time including alcohol, cannabis,

---

<sup>1</sup> According to Melissa it could have been as long as one year – transcript page 67.

<sup>2</sup> On the first day of the inquest I made a Proceeding Suppression Order pursuant to section 18(2) of the *Open Courts Act* 2013, suppressing any material contained in or part of the coronial investigation that may identify this child including but not limited to her surname and the full name of her father, the surname of Melissa, the surname of Max and the surname of Baby Isabella until 6 May 2015. On 7 May 2015 I signed an order in the same terms that is to remain in place until further order but no longer than 7 May 2029 at which time the necessity to continue the suppression order may be reassessed.

amphetamines and cocaine.<sup>3</sup> For reasons that were not clear, Melissa did not have regular antenatal care during her pregnancy, attending hospital at about 12 weeks gestation to have the pregnancy confirmed and then again at about 19-20 weeks for an ultrasound before presenting in labour at around 38 weeks gestation.<sup>4</sup>

4. Baby Isabella was born at Frankston Hospital on 22 July 2013 after a precipitous labour. She weighed 3.2 kilograms at birth and needed some respiratory support. Melissa was discharged the following day but Baby Isabella remained in the Special Care Nursery to establish feeding and for monitoring. Baby Isabella was treated with antibiotics empirically until blood cultures were negative after 24 hours and antibiotics were ceased after 48 hours. She was discharged home on 27 July 2013.<sup>5</sup> She was bottle fed and appears to have gained weight appropriately thereafter.
5. The circumstances in which Baby Isabella died will be discussed in some detail below. Suffice for present purposes to say that at about 7.30am on 23 August 2013, she was found deceased on a mattress on the lounge room floor having slept overnight between her mother and her father, separately swaddled and in a warm environment. Cardiopulmonary resuscitation was attempted by a third party who happened to be at the premises and emergency services were called. Tragically, Baby Isabella could not be revived and was pronounced deceased by responding ambulance paramedics.

#### PURPOSES OF A CORONIAL INVESTIGATION

6. The purpose of a coronial investigation of a *reportable death*<sup>6</sup> is to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.<sup>7</sup> The *cause* of death refers to the *medical* cause of death, incorporating where possible the *mode* or *mechanism* of death. For coronial purposes, the *circumstances* in which death occurred refers to the context or background and surrounding circumstances, but is confined to those circumstances sufficiently proximate and causally relevant to the

<sup>3</sup> Transcript page 57 for the evidence based on the records held by Child Protection/Department of Health and Human Services and page XX for the mother's evidence in this regard.

<sup>4</sup> Transcript pages 54 and following.

<sup>5</sup> Statement of Ms Kate Brown, Unit Manager, Women's Health Unit Peninsula Health, coronial brief pages 38-3.

<sup>6</sup> The term is exhaustively defined in section 4. Apart from a jurisdictional nexus with the State of Victoria (see section 4(1)), reportable death includes "*a death that appears to have been unexpected, unnatural of violent or to have resulted, directly or indirectly, from an accident or injury*" (see section 4(2)(a)). Note that a special status is afforded involuntary psychiatric patients, whose deaths are always reportable, irrespective of the cause of death (see section 4(2)(d)).

<sup>7</sup> Section 67(1).

death, and not all those circumstances which might form part of a narrative culminating in death.<sup>8</sup>

7. The broader purpose of any coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by coroners, generally referred to as the *prevention* role.<sup>9</sup> Coroners are empowered to report to the Attorney-General in relation to a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.<sup>10</sup> These are effectively the vehicles by which the coroner's prevention role can be advanced.<sup>11</sup>
8. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death, and are specifically prohibited from including in a finding or comment any statement that a person is, or may be, guilty of an offence.<sup>12</sup>

#### INVESTIGATION and SOURCES OF EVIDENCE

9. This finding is based on the totality of the material the product of the coronial investigation of Baby Isabella's death. That is the investigation and brief of evidence compiled by Detective Senior Constable Ryan Collins from the Frankston Crime Investigation Unit, the statements, reports and testimony of those witnesses who testified at inquest and any documents tendered through them. All of this material, together with the inquest transcript, will remain on the coronial file.<sup>13</sup> In writing this finding, I do not purport to summarise all the material and evidence, but will refer to it only in such detail as appears to me warranted by its forensic significance and the interests of narrative clarity.

---

<sup>8</sup> This is the effect of the authorities – see for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J.)

<sup>9</sup> The 'prevention' role is now explicitly articulated in the Preamble and purposes of the Act, compared with the *Coroners Act 1985* where this role was generally accepted as 'implicit'.

<sup>10</sup> See sections 72(1), 67(3) and 72(2) regarding reports, comments and recommendations respectively.

<sup>11</sup> See also sections 73(1) and 72(5) which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

<sup>12</sup> Section 69(1). However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if they believe an indictable offence may have been committed in connection with the death. See sections 69 (2) and 49(1).

<sup>13</sup> From the commencement of the Act, that is 1 November 2009, access to documents held by the Coroners Court of Victoria is governed by section 115 of the Act.

## FINDINGS AS TO UNCONTENTIOUS MATTERS

10. In relation to Baby Isabella's, most of the matters I am required to ascertain, if possible, were uncontentious from the outset. Her identity and the date and place of death were not at issue. I find, as a matter of formality, that Baby Isabella Rose (surname suppressed), the child of Melissa (surname suppressed) and Maxwell James (surname suppressed), born on 22 July 2013, aged four weeks, died at her home at 17 Seacrest Avenue, Seaford, on the morning of 23 August 2013.

## THE FOCUS OF THE CORONIAL INVESTIGATION AND INQUEST

11. The contentious matters that were the focus of the coronial investigation and inquest into Baby Isabella's death were discrete but interrelated. The first was the medical cause of death and the second the circumstances in which Baby Isabella died, specifically the position in which she was put to sleep on the 22-23 August 2013 and the possibility that mechanical asphyxia or "overlying" played a role in her death. While I have attempted to deal with the evidence relevant to each separately, they are inextricably linked as will become apparent.

### The medical cause of death

12. There was some complexity around the medical cause of death. Forensic Pathology Fellow Dr Kate Strachan from the Victorian Institute of Forensic Medicine [VIFM] reviewed the circumstances in which Baby Isabella died (as reported by police to the Coroner) and performed a full post-mortem examination (or autopsy) on the body of Baby Isabella, including a series of ancillary investigations.
13. Having done so, Dr Strachan provided a written report detailing her findings and explaining her formulation of the cause of death.<sup>14</sup> Dr Strachan found Baby Isabella to be an anatomically normal female infant with no dysmorphic features and no apparent underlying structural cardiac or other abnormalities.<sup>15</sup>
14. In terms of natural disease processes, Dr Strachan found patchy lymphohistiocytic myocarditis (inflammation of the myocardium or the heart wall) with associated myocyte necrosis but no viral inclusions. Given other findings discussed below, Dr Strachan advised that the myocarditis seen was also likely to be due to cytomegalovirus [CMV]. Examination of the lungs showed no evidence of acute pneumonia and no viral inclusions. Sections of the remaining internal organs showed no significant pathologies and, in

<sup>14</sup> An autopsy was performed on 24 August 2013, within 24 hours or so of Baby Isabella's death. Dr Strachan's 16 page autopsy report is at pages 46-61 of the coronial brief and includes her formal qualifications and experience.

<sup>15</sup> Page 14 of the autopsy report at page 59 of the coronial brief.

particular, there was no significant inflammation or viral inclusions in these organs. Dr Strachan advised that myocarditis can be associated with sudden unexpected death but that it is not possible to be certain whether this played a role in Baby Isabella's death.<sup>16</sup>

15. Relying on a neuropathology report from Dr Linda Iles,<sup>17</sup> also from VIFM, Dr Strachan found patchy CMV encephalitis and organising subdural haematoma most prominent on the tentorial and facine dura of at least several weeks' of age. As to the latter, Dr Strachan advised that this was most likely the result of birth trauma and would not have contributed to death.
16. As well as patchy CMV encephalitis, post-mortem virological studies showed the presence of CMV (and no other viruses) in the cerebrospinal fluid, nasopharyngeal aspirate, both lungs and bowel. Dr Strachan advised that CMV is a common infection that can be contracted in utero, estimated to affect about 1% of infants at birth, or in early infancy. While CMV is asymptomatic in most children, it can be associated with neurodevelopmental sequelae and deafness but is rarely fatal in non-immunocompromised children. In Baby Isabella, while there was evidence of CMV encephalitis, this was minor and was unlikely to have been of sufficient severity to account for death.
17. Dr Strachan found no evidence of any skeletal trauma on post-mortem CT scanning of the whole body and no evidence of significant trauma on external or internal examination of Baby Isabella's body. Routine toxicological analysis of post-mortem blood detected no alcohol or other commonly encountered drugs or poisons.<sup>18</sup>
18. Based on the circumstances of Baby Isabella's death, as reported by the police to the Coroner, Dr Strachan concluded by advising that it would be reasonable to express the medical cause of death as *circumstances consistent with mechanical asphyxia in an infant with myocarditis.*
19. Forensic Pathologist Dr Yelena Baber, also from VIFM, testified at inquest in place of Dr Strachan who was overseas and not available. Dr Baber is an experienced forensic pathologist with a specialist interest in paediatric cases. She reviewed the autopsy report of Dr Strachan and the neuropathology report of Dr Iles in order to assist at inquest.<sup>19</sup>

---

<sup>16</sup> Pages 14-15 of the autopsy report at pages 59-60 of the coronial brief.

<sup>17</sup> Dr Linda Iles is currently Head of Pathology at VIFM and is a practising pathologist with specialist neuropathology training. Her four page neuropathology report is at pages 42-45 of the coronial brief.

<sup>18</sup> Page 15 of the autopsy report at page 60 of the coronial brief. I note that Dr Strachan did identify two small punctate abrasions on the face (on the forehead and at the inner aspect of the right eye). These were of uncertain cause and may have been sustained during resuscitation. Dr Baber described these at inquest as "very superficial scratch marks, so just the top layer of the skin, maybe from a fingernail or similar", possibly related to resuscitation but not indicative of an assault and not significant injuries". See transcript pages 4-5.

<sup>19</sup> Transcript page 3.

20. Dr Baber agreed that the subdural haemorrhage was most likely the result of birth trauma and would not have contributed to Baby Isabella's death.
21. As regards the myocarditis found at autopsy, Dr Baber testified that this finding indicated that there is some chronic inflammation in the heart most likely due to the virus that Baby Isabella 'had on board' when she died. As regards CMV, she testified that this is a very common virus in children, generally those under school age and that it is not usually significant unless the children are immune-suppressed which Baby Isabella was not. In terms of how the virus may have manifested, Dr Baber testified that Baby Isabella may have been a bit grizzly, like she had a common cold, may not have been feeding well, or may have been difficult to settle but that she would not necessarily look overtly unwell or like she needed medical attention.<sup>20</sup>
22. Dr Baber was questioned about the possibility of mechanical asphyxia which arose from the suggestion that the father had slept with his head or part of his face on Baby Isabella's chest and/or abdomen. Dr Baber testified that mechanical asphyxia would not necessarily leave any physical signs in a baby (or small child) as it does not require much force and it is just not very difficult to stop them breathing.<sup>21</sup> She agreed with Dr Strachan that post-mortem findings in mechanical asphyxia in infants are non-specific and that there were no physical findings at autopsy that could refute the history of apparent mechanical asphyxia. Dr Baber testified that she did not think that mechanical asphyxia could be cited as *the* cause of death in isolation as it was impossible to negate the potential role of the viral infection. However, if the circumstances were as reported, then mechanical asphyxia was likely to have made a great contribution to Baby Isabella's death.<sup>22</sup>
23. Dr Baber was specifically asked if, absent the reported suggestion of mechanical asphyxia by overlaying, Baby Isabella's death could have been attributed to sudden infant death syndrome [SIDS]. This was, in part, to gauge the significance of the myocarditis. Dr Baber's evidence was that she didn't think the myocarditis was significant enough for her to have included it in the cause of death and so she would have attributed Baby Isabella's death to SIDS category two which includes cases where there is a finding of natural disease of unclear significance, that is not such as would have caused death, and also

---

<sup>20</sup> Transcript pages 5-6.

<sup>21</sup> In an adult mechanical asphyxia could leave petechial haemorrhages above the level of asphyxia and some cyanosis but such findings are not seen in children - see transcript pages 6-7.

<sup>22</sup> Transcript page 7.

accommodates those cases where the infant has been sleeping in an unsafe environment, as was the case here, with the possibility of overlaying.<sup>23</sup>

24. At the conclusion of the inquest, I indicated that I would provide Dr Baber with excerpts of the transcript relevant to the sleeping position of Baby Isabella in relation to her parents<sup>24</sup> and also to seek her advice about the likely time of Baby Isabella's death. Her subsequent advice (notice of which was given to both parents) was that Dr Strachan's comments as regards the possibility of mechanical asphyxia were entirely appropriate even in light of the evidence at inquest.
25. In relation to the timing of Baby Isabella's death, Dr Baber advised that the nomogram sometimes used to roughly estimate an adult's time of death is not applicable to children due to their different physiology. However, given that Baby Isabella was last seen alive at about 2.00am and was described by attending ambulance paramedics as being in *rigor mortis*<sup>25</sup> about five and a half hours later, it is entirely plausible that death occurred during this window but not possible to be more specific as to the time of death.

### **The sleeping environment**

26. As will be apparent from the evidence relevant to the medical cause of death outlined above, there was a need for the coronial investigation and inquest to focus on the position in which Baby Isabella she was put to sleep on the night of 22 August and early morning of 23 August. The witnesses required to attend the inquest were those who had been in the home of Melissa and Max that night and early morning, in the hopes that cross-examination would enable me to ascertain where she was sleeping and whether mechanical asphyxia or overlaying played a role in her death as had been suggested.
27. Scott Smith was the first witness called to give evidence of his observations of Baby Isabella at this time. Mr Smith had been residing with Melissa and Max for some three weeks, prior to leaving for interstate. This three week period corresponded almost exactly with the time Baby Isabella had been at home. A statement purporting to be signed by Mr Smith was in the coronial brief but Mr Smith (although he recalled speaking to a group of

---

<sup>23</sup> Transcript pages 9-10.

<sup>24</sup> Transcript pages 141-142.

<sup>25</sup> The Ambulance Victoria paramedics who attended the scene provided statements and their computerised patient care (VACIS) records. They were not required to attend the inquest but their statements and VACIS records were included in the coronial brief at pages 29-37 and 78-85 respectively. According to their statements, Baby Isabella in cardiac arrest with no palpable pulse, no breathing and no signs of life. The cardiac monitor showed asystole and no invasive procedures were performed due to the cardiac rhythm, post mortem lividity and likely extended time since the patient went into cardiac arrest. Her body also felt stiff and her arms were in a flexed position and unable to be straightened with gentle movement. Her body temperature was 27.7 degrees Celsius (in an ambient temperature of some 24 degrees according to attending police).



police officers on 23 August) said he could not read, denied that the statement as read to him at the inquest was indeed his statement, and claimed that the signature on the statement was forged.<sup>26</sup>

28. Nevertheless, Mr Smith gave evidence of his recollection of events, almost two years after the event. He testified that he had been at the Seaford Hotel drinking and walked home arriving sometime between 10.00pm and midnight on 22 August 2013. Max and his friend Maurice Eckles (known to Mr Smith as "Murray") were at the house. They engaged in conversation with him, he went outside for a cigarette and then went to bed in the spare room where he usually slept. Although the room had been set up like a nursery, Baby Isabella usually slept in a basinet close to her parents, wherever they were sleeping.<sup>27</sup> Mr Smith did not recall Melissa's brother, Mark, or his friend Brad Bryant being at the house that night, at least not while he was there.<sup>28</sup>

29. As regards the night of 22 August 2013, Mr Smith's evidence was that this was the first time the mattress had been placed on the floor of the lounge room<sup>29</sup> (between the L-shaped lounge room couch and the television) and that when he saw Baby Isabella, she was tucked in to her basinet<sup>30</sup> which was placed to the left of the mattress (looking at it from the television), either next to the head of the mattress or on top of the mattress.<sup>31</sup>

30. Mr Smith denied that any of the adults were drinking alcohol or using drugs of any description that night. He believed that they 'wouldn't do it around the baby' because it would be the wrong thing to do, by his standards or anyone else's.<sup>32</sup> Furthermore, he maintained that there had been no drinking or taking of drugs the whole time he was living at the house.<sup>33</sup>

31. Mr Maurice Eckles was a friend of Max's of long standing who was at the house on the night of 22 August 2013, provided a statement to the police and testified at inquest. Mr Eckles was living and working Western Australia at the time of Baby Isabella's death, but would return to Melbourne from time to time. He had returned to Melbourne on 27 July to await the birth of his own child.<sup>34</sup>

---

<sup>26</sup> Transcript pages 10-11 and 18.

<sup>27</sup> Transcript pages 17-18.

<sup>28</sup> Transcript page 24.

<sup>29</sup> Transcript page 19.

<sup>30</sup> The "basinet" referred to throughout is made of padded fabric with two long handles and a half canopy, is relatively light and designed to sit in a pram or on the floor or other flat surface. Shown on photo at page 88 of the coronial brief.

<sup>31</sup> Transcript pages 14-15.

<sup>32</sup> Transcript page 16.

<sup>33</sup> Transcript page 13.

<sup>34</sup> Exhibit A, statement of Maurice Eckles dated 26 August 2013, at page 25 of the coronial brief.

32. On 22 August 2013, Mr Eckles and Max had been exchanging text messages. As Mr Eckles was visiting his brother nearby, he told Max that he might call in. He arrived at the house at about 11.00pm when Mr Smith was already there and Melissa was bottle feeding Baby Isabella on the mattress on the lounge room floor.<sup>35</sup>
33. Contrary to what was said in his statement, Mr Eckles testified that he presumed (rather than knew) that there had been drinking going on before he arrived because he saw empty alcohol containers but did not see anyone drinking while he was there. He had a couple of drinks himself while he was there.<sup>36</sup>
34. Mr Eckles was familiar with how Max looked when he was drunk and did not believe that he was but could not exclude the possibility that he had had some alcohol earlier. He described Max as looking 'really tired with that stoned look going on, his eyelids were half closed and he was speaking slowly'. Mr Eckles brought Max half a gram of cannabis that he obtained from a relative, as he knew his friend smoked cannabis but he did not receive payment for it. He did not see anyone smoking cannabis at the house that night but agreed that it was possible that when Mr Smith and Max went outside to smoke, they smoked cannabis.<sup>37</sup>
35. According to Mr Eckles' evidence, no one else came to the house and Mr Smith was still up and about when he left at about 2.00am.<sup>38</sup> While he wasn't sure where Baby Isabella was the whole time while he was there, when he left she was not in the basinet but was on the mattress, swaddled, and to the right of her mother who was also on the mattress. He thought Melissa was also sleeping and did not recall seeing the basinet in the position depicted in scene photographs.<sup>39</sup>
36. Melissa's older brother Mark David (surname suppressed) also gave evidence at inquest. He said he was drinking at a friend's house when Max's sister called him at about 9.00pm saying there had been an argument between Max and Melissa and that Max may have hit Melissa. As Mark had been drinking, his friend Brad Bryant offered to drive him. They arrived at the house between 9.30-10.00pm and stayed no more than ten or 15 minutes,<sup>40</sup> Mr Bryant remaining at the front door and Mark speaking to Max near the kitchen.<sup>41</sup> Mark

<sup>35</sup> Transcript pages 28-29.

<sup>36</sup> Exhibit A and transcript page 29.

<sup>37</sup> Exhibit A and transcript pages 29-30. I note that I provided Mr Eckles with a certificate pursuant to section 57(5) of the Act – effectively an indemnity from prosecution on the basis of the evidence given.

<sup>38</sup> Transcript page 30.

<sup>39</sup> Transcript pages 32-35 and photo at page 88 of the coronial brief.

<sup>40</sup> Melissa testified that she thought her brother came in the afternoon, not that night (transcript page 80-81) while Max placed the visit as occurring on another day, during daytime and not that night at all (transcript page 110-111).

<sup>41</sup> Transcript pages 44-46

thought there were two other people in the house at the time. He recognised Mr Smith from a previous meeting and thought he was sitting in the lounge room.<sup>42</sup>

37. When he told them why he was there, Melissa denied that she had been assaulted. And as she had no visible bruises, he took that at face value. In the past, Melissa had asked for her brother's help in such circumstances but he did not think she would necessarily have told him the truth about any problems they had had that night. He sensed that there was some tension in the house that night.<sup>43</sup>

38. As regards Baby Isabella's sleeping position, Mark's evidence was that she was tucked in the basinet in her little blanket, next to the mattress, closer than depicted in the scene photographs. He believed that she was sleeping. Although he had been to the house before, he could not recall seeing the mattress in this position on the floor of the lounge room.<sup>44</sup>

#### **The mother's evidence**

39. Melissa was interviewed by the police on the morning of 26 August 2013 and that interview was recorded and included in the coronial brief in the form of a DVD. Melissa's distress about her baby's death was apparent during the interview, as it was at inquest almost two years later.

40. Melissa gave a history of her pregnancy and of Baby Isabella's routine since coming home. She described her as a good baby who did not cry a lot, would feed every three and a half to four hours and was a slow feeder. She was nevertheless putting on weight and growing well. If Baby Isabella did not wake every four hours, Melissa would wake her to ensure she was fed. In the two days or so before her death, Baby Isabella had nothing more untoward other than some nappy rash and crusty eyes.<sup>45</sup>

41. Melissa said she was very SIDS conscious and had read about SIDS to prepare for the birth of her first child. With Baby Isabella, she felt less worried and more experienced but remained obsessive about precautions like swaddling and about a safe sleeping environment. Baby Isabella never slept in her parents' bed when they were sleeping in it. She would often walk in and find Max falling asleep with Baby Isabella and while she felt it was beautiful that he wanted to be near her, she was alarmed that this was unsafe and would always put Isabella in her basinet to sleep. Melissa insisted that no one smoke in the

<sup>42</sup> Transcript pages 45-46. Apparently Mr Bryant (who was not called as a witness) told Mark that there was only one other person there whereas Mark thought there were two. One in the lounge and one out back.

<sup>43</sup> Transcript pages 48-49.

<sup>44</sup> Transcript pages 50-51.

<sup>45</sup> Exhibit D.

house and that they take off their outer garments before handling the baby. Neither she, nor Max nor Baby Isabella took any regular medications. Neither she nor Max were drinkers but Max had one "Bundy" that night. She was quite tired.

42. On Friday 22 August 2013, the mattress was dragged from their bedroom into the lounge room so that Melissa would not feel so isolated in their bedroom, in case Max played Xbox all night. Melissa did not change into nightwear as there were other men around. There were no blankets on the mattress and Melissa had a pillow beside her.
43. The basinet was next to the mattress and she recalled saying (to Max presumably) to put Baby Isabella in the basinet. She did not actually recall 100 per cent putting Baby Isabella in the basinet but thinks she would have as she always did. Sometimes they would put the basinet on the bed with them. At a later point in the interview, Melissa said that she didn't think she had put her in the basinet. She recalled waking to say goodbye to Mr Eckles and Baby Isabella being beside her in the corner of the mattress near the couch.
44. In the morning, Melissa was woken by knocking on the front door. She was on the mattress facing towards the couch and Baby Isabella was between her and the couch. She knew that she was dead. Max had fallen asleep on his stomach with his arm up and his head on Baby Isabella's chest. Melissa started to scream, got up and tried to pull Max off Baby Isabella by his hoodie. It took all her strength to pull him off as she was screaming for help. Chris Dart took Baby Isabella and put her on the floor and started doing cardiopulmonary resuscitation under instructions from 000.<sup>46</sup>
45. At inquest, Melissa said that the recording had helped her refresh her memory of events.<sup>47</sup> She gave an implausible account of why she did not have regular antenatal care during her pregnancy but maintained that both she and Max were happy about the pregnancy.<sup>48</sup> Baby Isabella was breast fed initially, then top up formula feeds were introduced, and from about two weeks of age, she was formula fed with both her parents sharing the feeding.<sup>49</sup>
46. Melissa testified that she was obsessive about SIDS to the extent that it was probably not healthy for her, to be so concerned about her baby's safety.<sup>50</sup> She testified that although a bedroom had been set up as a nursery for Baby Isabella, with a cot and other "baby stuff",

---

<sup>46</sup> This is a summary of the account of events she gave in her recorded interview, Exhibit D.

<sup>47</sup> Transcript page 66.

<sup>48</sup> Transcript pages 72-78 and 71-72.

<sup>49</sup> Transcript page 79.

<sup>50</sup> Transcript page 72.

she did not sleep in the room but was always with her parents. Mr Smith slept in this room for the short time that he stayed with the family.<sup>51</sup>

47. In terms of their normal sleeping arrangements, Baby Isabella would sleep in close proximity to her parents in one of two basinet, a larger one in their bedroom, or the lighter/smaller portable basinet elsewhere. While their mattress had been dragged into the lounge room before, to watch movies, it had not been for a very long time. The night before Baby Isabella died, the mattress had been dragged out to the lounge room as Melissa had not wanted to be isolated and wanted to hang out with Max who was still up socialising and playing Xbox.<sup>52</sup> The other difference from their usual sleeping arrangements, was that the house was warmer than usual when they woke as the heating was on in anticipation of a cold morning, or had been left on overnight.<sup>53</sup>

48. Melissa testified that she did not use any drugs the night before Baby Isabella's death. Also, she had not had any alcohol for a while and did not have any alcohol that night but may have had a sip earlier in the evening. As regards cannabis, Melissa did not hear Mr Eckles say he had brought some cannabis over, she did not see anyone smoking cannabis and, while she was familiar with the smell of it and did not like it, she did not smell cannabis in or around the house that night. While she could not exclude the possibility that Max was drinking alcohol and/or smoking cannabis without her knowledge that night, she did not see anything in his behaviour or appearance to suggest that he was intoxicated or stoned.<sup>54</sup>

49. Melissa recalled telling paramedics in the morning that Max had taken Xanax the night before that was not prescribed for him. However, as to the truth of that report, she testified that she did not recall Max taking Xanax or even seeing him holding a Xanax. Her recollection about Xanax was that Max suggested that she take Xanax the night before so she could have a good night's sleep and he offered to look after both girls to facilitate this. Melissa's evidence was that she did not take any Xanax, it had never been "her thing" and she did not know who it belonged to.<sup>55</sup>

50. In terms of Baby Isabella's sleeping position, Melissa recalled feeding her, re-swaddling her after checking her nappy, pulling the blankets and everything away from her and

---

<sup>51</sup> Transcript page 67-68.

<sup>52</sup> Transcript pages 71 ("I felt a little bit isolated and wanted to hang out with Max, I suppose, and so instead of just sitting in the bedroom with Bell we, you know, brought her out and could hold her, like, to his chest while he was playing Xbox and just like easy it was comfy and I got to sit with him and yeah."), 81-82, 85.

<sup>53</sup> Transcript pages 70-71.

<sup>54</sup> Transcript pages 79-80, 85-86, 102-104.

<sup>55</sup> Transcript pages 95-98.

settling down on the mattress with her to sleep sometime between 1.00am and 2.00am in the morning. In terms of their positions on waking at around 7.30am, Melissa was sleeping on her left side with Baby Isabella between her and Max, roughly in line with Melissa's head.<sup>56</sup>

51. According to Melissa, Max was sleeping on his right side, with his arms stretched out over his head, his right arm encircling baby Isabella and the right side of his face and nose close to or leaning on Baby Isabella's chest/abdominal area. She explicitly distanced herself from the suggestion that the full weight of Max's head was on Baby Isabella's chest/abdominal area and therefore constricting her breathing.<sup>57</sup> This account is consistent with the history documented by attending Ambulance Victoria [AV] paramedics that was obtained from Melissa on the morning.<sup>58</sup>

#### **The father's evidence**

52. Max's interview by police on 26 August was also recorded on DVD.<sup>59</sup> He was visibly distressed about Baby Isabella's death and somewhat confused about events on the night. He spoke about his mother's death from cancer at the age of 48 with great emotion and about the void that "Bella" filled with her arrival. He threatened to self-harm if Baby Isabella died as a result of something he had done and was offered counselling by the police several times throughout the interview.
53. According to his account, he had been playing Xbox with Mr Smith the night before. He had changed Baby Isabella's nappy, noticed she had nappy rash, gave her a big feed (220ml of formula), put her down on the mattress to sleep and laid down next to her. Later Melissa picked her up, said she was getting blankets and came back. Max then recalled Baby Isabella in the basinet when he laid down and fell asleep.
54. Max was not sure of the time (that he went to sleep) but thought it was late and he was pretty stoned. He had a couple of cones of cannabis, which was not unusual for him if it is available. He said he stopped drinking the year before, did not have any alcohol that night and attributed any signs of drinking at the house to Mr Smith or Mark who was also a drinker. Max was vague about who else was at the house that night and only remembered

<sup>56</sup> Transcript pages 88-93.

<sup>57</sup> Transcript page 92.

<sup>58</sup> AV VACIS patient care records at coronial brief page 78 and following. "Mother of patient states that she awoke this morning to find patient not breathing. Mother states that when she woke she saw the father of the patient still asleep next to the patient and states that his head was resting next to her chest. Mother states that patient was wrapped in blanket as she had left her last night when she put her to bed..." Note that I have interpreted abbreviations used - "pt" as patient, "am" as morning.

<sup>59</sup> Exhibit F.

Mr Eckles with prompting, saying that he had been there for a while but could not recall when he arrived and when he left.

55. Later in the interview, Max said that Baby Isabella was not on the bed when he fell asleep. When he woke the next morning to screaming, she was in the middle of the bed next to him and higher up on the bed/mattress. He had been sleeping on his side, as usual, with one arm pointed up and positioned under his pillow. Last time he saw Baby Isabella, she was in the basinet. He was 'having trouble putting it all together' but denied that he was impaired.
56. At inquest, Max repeated that he was happy about Melissa's pregnancy. While he agreed that Melissa had been using drugs during her first trimester before discovering she was pregnant, he did not agree that she stopped using after the pregnancy was confirmed. According to Max, they did not drink alcohol but used methamphetamine and cannabis during the pregnancy. Sometimes they both used together, at other times he suspected she was "sneaking off" and using.<sup>60</sup>
57. Max admitted using half a Xanax tablet the night before Baby Isabella's death. He testified that he had been given it by Megan, a friend of Melissa's, who told him he could use it if he ever had trouble sleeping.<sup>61</sup> He also testified that he did not drink alcohol, did not take any drugs apart from the "odd little bit" of cannabis that he would smoke in a bong, usually one or two a day, not every day. He admitted having cannabis via a bong the night before Baby Isabella's death.<sup>62</sup> In terms of the effects of cannabis on him, he stated that it did not affect his memory, made his eyes red and droopy but did not affect his motor skills or coordination and made him quieter, more relaxed.<sup>63</sup>
58. According to his evidence at inquest, the last thing he remembered as he lay down to sleep was Baby Isabella being in her basinet at the foot of the mattress, close to his feet, as depicted by him diagrammatically on a copy of the photograph at page 88 of the coronial brief.<sup>64</sup> Melissa was not on the mattress and he recalled being alone when he lay down. He described himself as a heavy or deep sleeper. Sometimes he would hear Baby Isabella wake up and sometimes he would not.<sup>65</sup>

---

<sup>60</sup> Transcript pages 106-108.

<sup>61</sup> Transcript 108.

<sup>62</sup> Transcript page 113.

<sup>63</sup> Transcript page 111-113, 116.

<sup>64</sup> Exhibit G and transcript pages 121-124.

<sup>65</sup> Transcript page 128.

59. Next morning, Max testified that he woke to the sound of banging that was coming from the back sliding door, which he was pretty sure was Melissa trying to get in.<sup>66</sup> On waking, Baby Isabella was straight in front of him, probably a few feet away and up a bit higher, to his right. He had no memory of Melissa trying to pull him off Baby Isabella. He denied that his recollection was affected by his cannabis use the night before but conceded that the differences in his recollection of events compared with other witnesses could be due to the shock of what he found that morning.<sup>67</sup>
60. Although not required to testify at inquest, the coronial investigator DSC Collins provided a statement for the coronial brief<sup>68</sup> in which he noted, among other things, that the ambient temperature in the house on his arrival was quite warm and he noted that the thermostat for the ducted heating was set to 24 degrees Celsius. He and other police and paramedics noted the smell of vomit and the brown sheet covering the mattress on the lounge room floor had a stain the upper right corner where Baby Isabella was said to have slept.
61. DSC Collins also noted conversations with the parents at the scene. The mother had told another police officer that when she woke she observed Max's head resting on the baby's head and drawn a diagram depicting what she had seen. When he spoke to the mother directly, she told him that when she woke 'his head was on her tummy'. She also told him that Baby Isabella usually slept in the room which had a cot with mattress and blankets.
62. When he spoke to the father, DSC Collins was told that he and Melissa and Baby Isabella fell asleep on the mattress watching a movie and that he did not put the baby in the basinet.
63. Mr Chris Dart was an arborist who came to the house at about 7.30am to collect his employee Mr Smith. Although he could not testify about Baby Isabella's sleeping position, he played an important role in that his knocking on the front door wakes Melissa and potentially Max. According to Mr Dart, Melissa answered his knock but had difficulty opening the front door which had a broken lock. She told Mr Dart that she would get Mr Smith and it was about one minute after this that he heard her scream first then a male yelling, walking around and crying, calling "Bella".
64. When he entered the house it was through the roller door opened by Mr Smith and he saw Max holding Baby Isabella and walking around, very distressed. Mr Dart called 000 and

<sup>66</sup> While I have not addressed this in the body of the finding, I note that Max was suspicious that Melissa had gone out the night before to get formula when she didn't need to as Mr Eckles was bringing some with him. The inference was that she had left the house for another reason. Similarly, he was suspicious that she had left the house early in the morning and was returning at about the time Mr Dart arrived. See for example transcript page 129-130.

<sup>67</sup> Transcript pages 129-134. At transcript page 130 he described his actions in the following terms – "*And I just sort of picked her up and like, that's when I freaked out...I lost it. Like, I went. I changed her nappy. 'Cause I didn't accept it for a good – I don't know how long...I was carrying her around the house just in disbelief...*"

<sup>68</sup> Statement of DSC Ryan Collins dated 1 September 2014 at pages 66-68 of the coronial brief.



followed their instructions to perform cardiopulmonary resuscitation on Baby Isabella. In doing so, she felt cold and rigid including her jaw and knew that she had passed away. He testified that both parents were very distressed and he did not recall any recriminations or accusations being made by anyone at the time.

65. Attending ambulance paramedics provided statements and their patient care records documenting, inter alia, the time they were dispatched (0730 hours), the time they arrived at the scene (0737 hours), the history they were given at the scene and their observations of Baby Isabella.<sup>69</sup> Of significance in terms of the time of death were their documented observations that Baby Isabella was in a warm room and had a tympanic temperature of 27.7 degrees Celsius. Apart from observing no signs of life (no breathing, no heart sounds, pupils fixed and dilated) they noted that her eyelids were difficult to open, trismus of the jaw and other elements of rigor mortis and lividity.<sup>70</sup>

## CONCLUSIONS

66. The standard of proof for coronial findings is the civil standard of proof on the balance of probabilities with the *Briginshaw*.<sup>71</sup> The authorities establish that adverse comments about or adverse findings against individuals should not be made unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

67. Having applied that standard to the available evidence, I find that:

- a. Baby Isabella was the much loved daughter of Melissa and Max both of whom were highly distressed and traumatised by her death.
- b. Max used cannabis overnight on 22 to 23 August 2013, which he used regularly but not daily, as well as some Xanax to which he was naïve. His recollection of events was likely impaired by these substances and shock.
- c. Baby Isabella was put to sleep by her mother round 2.00am on the morning of 23 August 2013 after a feed.
- d. Melissa re-swaddled Baby Isabella and placed her on her back towards the top of the mattress before she also lay down to go to sleep with the baby on her left.

<sup>69</sup> See paragraph 57 below and footnote 59.

<sup>70</sup> See VACIS patient care records at pages 78-85 of the coronial brief.

<sup>71</sup> *Briginshaw v Briginshaw* (1938) 60 C.L.R. 336 especially 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..."

- e. Max joined Melissa and Baby Isabella on the mattress to sleep with the baby on his right between him and Melissa.
- f. On waking, Melissa realised that Baby Isabella was not breathing and that Max's head/face was in close proximity to Baby Isabella.
- g. Baby Isabella's core body temperature in the setting of a warm environment and the early signs of rigor mortis seen by AV paramedics indicate that she had been deceased for some time before her parents woke.
- h. There is no evidence that Baby Isabella died as a result of intentional trauma or act by her parents or any other person.
- i. While the coronial investigation focused on the possibility that Max slept with his head or face on or partly on Baby Isabella, I am not prepared to make a finding that he caused or contributed to her death in this way, based solely on the evidence of Melissa about his position when she woke which, even if taken at its highest, may or may not represent his position at the time that Baby Isabella died.
- j. At autopsy Baby Isabella had evidence of natural disease in the form of myocarditis of unclear significance in relation to her death.
- k. Baby Isabella slept in an unsafe sleeping environment vulnerable to overlaying or other constriction of her breathing by either parent.
- l. The medical cause of Baby Isabella's death is most appropriately described as Sudden Infant Death Syndrome Category 2 encompassing the finding of some natural disease of unclear significance and the unsafe sleeping environment.

## COMMENTS

Pursuant to section 67(3) of the *Coroners Act 2008*, I make the following comments connected with the death:

1. Although on my appraisal of the available evidence it did not support a finding that overlaying by one of her parents caused or contributed to Baby Isabella's death, the circumstances in which she died once again highlight the vulnerability of infants sharing a sleeping surface with their adult caregivers or others.
2. A number of coronial findings contain comments and recommendations aimed at reducing the number of preventable deaths of infants, and essentially reiterating safe sleeping practices and SIDS awareness for infants and young babies.

3. An important finding in this area is that of my colleague Coroner John Olle in the matter of Baby J (2010 2580) which was a cluster investigation of four infant deaths. The known risk factors for SIDS noted in that finding, based on international research, relevantly include sleeping with an adult other than the mother, maternal exhaustion, alcohol or drug use (whether recreational or prescription) by the adult caregiver sharing the sleeping surface, thermal regulation and ventilatory control (such as a warm environment) and infection suffered by the infant.

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

The mother

The father

Damien Bassiner

Ms Jane Griffin, Department of Health and Human Services, Child Protection

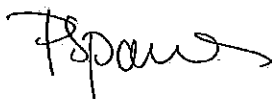
Detective Senior Constable Ryan Collins (#35937) c/o O.I.C. Frankston C.I.U.

Consultative Council on Obstetric and Paediatric Mortality and Morbidity

Child Safety Commission

SIDS for Kids

Signed:



---

PARESA ANTONIADIS SPANOS

Coroner

Date: 13 April 2017