



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 1991 1444
COR 1991 1445

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 60(1)

Section 67 of the Coroners Act 2008

Findings of:	CORONER JACQUI HAWKINS
Deceased:	MARGARET MUIR PENNY CLAIRE ELIZABETH ACOCKS
Delivered on:	30 JUNE 2017
Delivered at:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank
Hearing dates:	23 November 2016, 28 November to 2 December 2016, 15 December 2016 and 30 January to 3 February 2017
Counsel assisting the Coroner:	Mr Peter Matthews of counsel instructed by Ms Jessica Wilby, Principal In House Solicitor, Coroners Court of Victoria
Representation:	Mr Paul Lawrie of counsel for the Chief Commissioner of Police, instructed by Mr Tom McNamara, Victorian Government Solicitor Mr Andrew Imrie of counsel for the Acocks family, instructed by Mr Ben Lloyd, Russell Kennedy

CORONER HAWKINS:

Overview

1. In the early afternoon of Friday 3 May 1991, Mrs Margaret Penny and Mrs Claire Acocks were horrifically and brutally murdered at the Old London Coiffure hairdressing salon on the corner of Julia Street and Bentinck Street, in the main street of Portland. Their deaths devastated the lives of two families forever. Their murders also shocked and frightened the local community of Portland.

Background

2. Mrs Margaret Penny was 58 years old at the time of her death. She resided with Robert Penny, her husband of 36 years in Portland and had two adult children and one grandchild. Mrs Penny was retired and lived a quiet life in Portland. She delighted in looking after her granddaughter, Aphra Williams, who would spend lengthy periods of time staying with them.
3. Mrs Claire Acocks was 49 years old at the time of her death. She lived with Peter Acocks, her husband of 28 years and had three adult children. She was a loving wife, mother and grandmother and was looking forward to the imminent arrival of her daughter's new baby. She was a well-known and respected member of the Portland community. She worked part time as a hairdresser at the Old London Coiffure, in the Old London building.

The events of 3 May 1991

4. On the afternoon of 3 May 1991 at approximately 1pm, Mrs Acocks commenced work at the Old London Coiffure.
5. Mrs Penny had a regular Friday afternoon hair appointment with Mrs Acocks. According to Mr Penny, she left home for the salon in a hurry, after having a discussion about whether her young grand-daughter, Aphra, (whom was staying with them) would go to the salon with her as she usually did, or stay home with her grandfather who had promised to make a swing in the backyard. Aphra decided to stay with her grandfather.
6. Prior to her attendance at the salon, Mrs Penny went to the Ocean Pier Tea Rooms (tea rooms) and placed an order for some sandwiches and told them she would return at 3.15pm. Mrs Penny arrived at the salon just after 2pm. She was booked in to have her hair coloured, washed, set and styled.

7. At approximately 3.05pm, Mrs Acocks was seen standing at the intersection of Julia Street and Bentinck Street. She was carrying a bag, and appeared to be waiting for the traffic to clear, to cross Julia Street to return to the salon.
8. Julian Painter, a dentist who was working upstairs in the Old London building heard a scream or cry when he was treating a patient mid-afternoon on 3 May 1991. He turned his dental equipment off, but did not hear anything again. He was unsure when he heard the scream but thought it was between 2 and 4pm.
9. At approximately 3.30pm, Kevin Corbett, Insurance Agent, who was working at an office at the rear of the Old London building and across from the salon, heard screams for a couple of seconds which he assumed were children running around the courtyard at the rear of the complex. Christopher Leibhardt, a design draughtsman, was working in his office at the rear of the Old London building. He reported hearing two screams a second or two apart, seemingly from the same person and then a banging noise which sounded like the screen door at the back of the salon had been opened violently so that it banged against the wall. He walked from his desk to the glass-panelled door and looked towards the rear entrance of the salon. He saw the screen door swing open and hit the wall, just as the main wooden door was closing. Mr Leibhardt did not hear any more noises and presumed everything was alright and he went back to his work.
10. Mrs Penny had arranged to meet her close friend, Shirley Endersby for coffee at the tea rooms at 3.15 pm. Mrs Endersby arrived at approximately 3.20pm and found that Mrs Penny was not there. She knew that Mrs Penny was having her hair done at the Old London Coiffure before their catch up. She walked to the corner of Julia Street to see if Mrs Penny was on her way and saw her car parked on Bentinck Street. Mrs Endersby returned to the tea rooms where she met two of her friends. She sat with them while they had a coffee and then decided to go back to the salon. She arrived between 3.40-3.45pm and found the front door locked. She knocked loudly, however there was no answer. She walked around to the rear entrance, but found the door was also locked.
11. Mrs Endersby returned to the tea rooms at approximately 4pm. She looked for Mrs Penny on the streets, however did not see her. She decided to drive home and when she drove past the Old London Coiffure, she saw the lights in the salon were on. When she arrived home she telephoned Mr Penny to see if Mrs Penny had called, however he told her she had not. Mrs Endersby returned to Julia Street and checked some shops for Mrs Penny. She arrived back at the salon at approximately 4.15pm. She knocked and tried to open the front and rear doors and

again found them locked. She returned home and tried to call the salon, however there was no answer, so she called Kay Edwards, the proprietor of the Old London Coiffure at her home at approximately 4.30pm.

12. After speaking with Mrs Endersby, Mrs Edwards drove to the Old London Coiffure. She unlocked the front door and entered the salon, carrying her young son on her hip. She saw a stool behind the cash register turned on its side, an unusual 20 cent transaction on the register and other items out of place. She became fearful, left the salon and went to the dental surgery upstairs and spoke to dental nurse, Shona Posselt. She asked Ms Posselt to accompany her back to the salon.
13. Mrs Edwards entered the salon with Ms Posselt and walked through to the rear of the salon. Mrs Edwards saw a handbag with its contents strewn on the floor. When she neared the entrance of the shampoo room, she saw two pairs of legs on the floor. Ms Posselt saw a lady's leg and a hairdryer on the floor nearby. They quickly returned to the dental surgery and called police reporting they found two bodies, however they were unsure whether they were dead or alive.
14. Keith Rayfield, a draughtsman working in the Old London building, heard sobbing from the direction of the dental surgery and went to investigate. He found Mrs Edwards, her young son and Ms Posselt. Mrs Edwards told him she had found two ladies lying on the floor in the salon. Ms Posselt returned to the salon with Mr Rayfield and opened the front door for him. He entered the salon and followed Ms Posselt's instructions to the shampoo room at the rear of the salon. He found two female bodies lying on the floor. They were not moving and appeared deceased. He saw a lot of blood on the floor and a pool of blood near the bodies. He went back to Ms Posselt and told her that they were dead. They left the salon and closed the door behind them. They waited outside for a few minutes then Mr Rayfield asked Ms Posselt to call the police again to ensure they knew their attendance was urgently required.
15. Ambulance Officer, Kenneth Dean was called by Portland Police at approximately 4.47pm and arrived at the Old London Coiffure at 4.49pm. Mr Rayfield opened the door and directed him to the shampoo room. Mr Dean entered and found the bodies. He saw large pools of blood. He checked each woman for a pulse, but found none. He saw that each woman had a significant laceration to their neck. The size and depth of one of the wounds suggested to him that they had been caused by a knife. He realised that they had been murdered. He went outside to his ambulance and called his control centre.

16. Sergeant Phillip Hay and Constable Mark McLean arrived at the Old London building and spoke to Mr Dean. He told them there were two women inside deceased, with their throats cut. The three men entered the Old London building through the courtyard and then entered the salon through the main door. Sergeant Hay observed two bodies face down in the shampoo room. He reported they were very still and blood stained. Constable McLean also observed that the bodies were both covered in blood and that there was blood on the floor and walls. Neither officer observed any obvious weapon at this time. They exited the building and established a crime scene, spoke to other persons in the building and prevented any unauthorised persons from having access to the salon.
17. Detective Sergeant Robert Lowther of the Portland Criminal Investigation Branch arrived at approximately 5pm. He also entered the salon and viewed the bodies, and noticed large quantities of blood on the floor. He then took charge of the scene, ensured the scene was secured and arranged for the Homicide Squad to attend. At 6.36pm he re-entered the scene with Dr Michael Martin, who examined the bodies and at approximately 6.50pm, pronounced life extinct.
18. Senior Sergeant Geoffrey Wade attended the scene and entered the salon to observe the bodies. He saw large quantities of blood, deep wounds to the throats of both women and what appeared to be defensive injuries to their hands. He then exited the building and supervised the perimeter of the crime scene, as the incident had created much public and media interest in the immediate area.

Victoria Police Homicide investigation

19. On 4 May 1991, at approximately 12.50am, Detective Sergeant Lowther spoke to Detectives Martin Allison and Adrian White of the Homicide Squad, who then took charge of the investigation, with Detective Senior Sergeant John Morrish leading the investigation together with Detective Sergeant Rod Wilson.
20. On 4 May 1991, the crime scene was examined by staff of the Victoria Police State Forensic Science Laboratory and Professor Stephen Cordner, Senior Forensic Pathologist at the Victorian Institute of Forensic Pathology.¹ Forensic examinations including fingerprints, biology and pathology were carried out. All available evidence was noted, photographed and collected for analysis. No murder weapon or weapons were found.

¹ Now known as the Victorian Institute of Forensic Medicine

21. Preliminary examinations of the scene were conducted by Senior Constable Bernard Carrick of the State Forensic Science Laboratory which showed that both Mrs Penny and Mrs Acocks were bound loosely with a grey coloured electrical cord and their heads were covered with a black hairdressing cape. A black coloured towel was also found to be loosely binding their hands. A large quantity of blood covered the floor area with blood splash patterns on the walls.
22. A video was recorded of the crime scene. The video reveals a plastic hairdresser's tail comb and a small tissue on a chair in the shampoo room, located near where the bodies were found.
23. Blood samples were taken for forensic examination. Forensic Scientist, Michael Raymond from the State Forensic Science Laboratory assisted to interpret the bloodstain patterns. Forensic scientists also conducted tests on Mrs Penny and Mrs Acocks' clothing.
24. Analysis of the blood stains and damage to the clothing indicated to Mr Raymond that Mrs Penny was stabbed repeatedly whilst sitting in a chair and then subsequently dropped forward and lost considerable blood from an exposed wound which formed the pool of blood adjacent to the chair. Arterial blood was projected onto the eastern wall and the northern side of the central sink complex. He noted that it was possible that the blood was flicked off from the assailant's weapon or hand onto the sink and southern cupboard. Finally, Mrs Penny fell to the floor. Mrs Acocks appeared to have been stabbed whilst probably seated and fell forward to her final position where she lost copious amounts of blood.
25. A partial shoe impression was located inside the salon between the back door and the shampoo room.
26. The bodies of Mrs Penny and Mrs Acocks were removed from the salon and taken to the Victorian Institute of Forensic Pathology for forensic examination on the afternoon of Saturday 4 May 1991.
27. Detective Senior Constable Geoffrey Beanland was tasked with conducting enquiries into Mrs Penny and Mrs Acocks' deaths. Statements were obtained from the first people on the scene, first responders, Mr Penny and Mr Acocks, some family and friends, people who worked in and around the Old London building and people who witnessed unusual things in the vicinity of the Old London building on the day of the murders.
28. Due to the violent nature of the murders, investigators were inundated with information. According to Detective Senior Constable Beanland, by 1995 after extensive enquiries, police had accumulated over 1,137 separate Information Reports and investigators had interviewed

approximately 5,000 persons in relation to the deaths.² The Information Reports related to assorted aspects of the investigation but mainly related to persons nominated by virtue of their criminal history and behaviour.³

29. Fingerprint evidence was obtained but has never led to the identification of any potential suspects or persons of interest.
30. Initial police investigations revealed that a small amount of money had been taken from the cash register and some other sundry items. One of the original police theories was that Mrs Penny and Mrs Acocks were killed in a robbery gone wrong.

The horrible man

31. Other avenues of enquiry conducted by the homicide squad revealed an incident had occurred at the salon with Mrs Acocks, approximately two weeks prior to her death.
32. Evidence obtained in 1994 from a number of independent witnesses indicated that approximately two weeks prior to the murders, Mrs Acocks was working in the salon when a man came in for a haircut and caused her great concern.
33. So worried was Mrs Acocks about this man, that she mentioned it to her husband, her daughter-in-law, Linda Acocks, and friends Faye Heinze, Karen Corbett and Kevin Corbett. Mrs Acocks described the man as a “horrible man”, with “horrible eyes” or “creepy eyes”, a “horrible customer”, and a “horrible, rude, disgusting, dirty and abusive man”. She did not provide a specific description of him, but said she did not know who he was. Mrs Acocks told Mrs Corbett that he had said he would be back.
34. All avenues of enquiry had been explored in an attempt to identify the ‘horrible man’ however his identity was unable to be ascertained. Investigators were unable to say that the horrible man was involved in the murders, but they were equally unable to exclude him from the investigation.

The running man

35. As part of the homicide investigation, Robert Menzel came forward and provided information that he had seen a male running from the rear of the Old London building on 3 May 1991

² Exhibit 71 – Coronial brief, p761

³ Exhibit 71 – Coronial brief, p761

between 3.30 and 4.30pm, carrying a satchel. Mr Menzel assisted with the production of a photo fit identification.

36. Mr Menzel identified the male to be approximately 167-173cm in height (5'6"- 5'8"), approximately 25-30 years of age, Australian, fair complexion, medium build, round face, clean shaven, black/dark collar length straight hair, and wearing a round black or dark rimmed clear glasses.
37. Homicide detectives conducted lengthy investigations in an attempt to identify this male but were unsuccessful.

Other persons of interest

38. Initial homicide investigations led police to every state in Australia. Numerous persons of interest were nominated by people who were suspicious of certain behaviour or by virtue of their previous criminal history.

First coronial Inquest

39. On 21 February 1995, Coroner Hanrahan held an Inquest into the deaths of Mrs Penny and Mrs Acocks in Portland. Coroner Hanrahan called 22 witnesses, including witnesses at the scene, family members and police officers.
40. Much of the evidence presented to Coroner Hanrahan attempted to fix a time at which the deaths occurred. His Honour found that the deaths probably occurred at approximately 3.30pm. He believed the evidence indicated there was money stolen, but there was no evidence as to why the two women were murdered. He noted that Mrs Acocks had mentioned to a number of people about a 'horrible man', who had caused her considerable concern and told her he would return. He also mentioned the evidence about the man seen running from the Old London building but that evidence was not conclusive enough to confirm he was the person responsible.
41. At the time of the Inquest information was still being received and investigated by the homicide squad, with a number of avenues of enquiry which still required following up. No person had been arrested or charged with the murders.
42. Coroner Hanrahan found that both women died from multiple stab wounds inflicted on them by a person unknown on 3 May 1991. At the conclusion of the Inquest, the homicide investigation remained open and ongoing.

Publication of the Horrible Man by Leonie Wallace

43. In 2012, former Journalist Leonie Wallace published a book about the murders of Mrs Penny and Mrs Acocks titled “The Horrible Man”. Mrs Wallace obtained statements from the original coronial brief, interviewed many people and investigated other similar types of murders in Victoria, in an attempt to publically present the facts of this case that were known to her.

The 2013-2015 review by the Homicide Squad

44. During 2013-2015, Detective Senior Constable Tom Hogan from the Homicide Squad reviewed the case and re-commenced the investigation into the deaths of Mrs Penny and Mrs Acocks. He determined that Mr Penny’s account including his whereabouts, movements and behaviour around the time of the murders required further investigation. Consequently, a number of family members of both the Penny and Acocks’ families and some initial witnesses were interviewed and/or re-interviewed, including many of the police officers who attended the scene on 3 May 1991.
45. Due to the nature of the further investigations, in 2014, Mr Penny voluntarily attended three records of interview at the St Kilda Road Police Complex. Mr Penny participated and gave comprehensive answers to the questions asked of him.
46. In April 2015, Mr Penny was charged with the murders of Mrs Penny and Mrs Acocks. A committal hearing commenced on 16 November 2015, with 50 witnesses scheduled to give evidence. The case was adjourned on the second day of the committal hearing, for a period of six months to May 2016, due to new forensic evidence being served late on the defence team, as part of the criminal case against Mr Penny.
47. On 26 March 2016, prior to the re-commencement of the committal hearing, Mr Penny died of natural causes.

Application to set aside original coronial finding

48. On 30 April 2016, the Coroners Court of Victoria (Coroners Court) received an application from Detective Senior Constable Hogan of the Homicide Squad, to set aside the original coronial findings and re-open the investigation into the deaths of Mrs Penny and Mrs Acocks. It was specifically requested that the matter be expedited due to the advancing age of some of the family members and potential witnesses. The application was supported by members of the Penny and Acocks families.

49. The application to re-open the coronial investigation detailed new material collected since the first Inquest, including the criminal brief prepared in relation to the charges against Mr Penny and further material relevant to the investigation such as the records of interview, telephone intercepts and listening devices.
50. The new facts and circumstances presented included information that Mr Penny mentioned to his family members on the evening of the murders that Mrs Penny and Mrs Acocks had been killed with a hairdresser's comb, knife and/or scissors. Mr Penny is also alleged to have visited Mr Peter Acocks in the very early morning of the day after their murders and told him that Mrs Acocks had died quickly and was killed with a tail comb. The case against Mr Penny alleged that he had knowledge of a potential murder weapon before any forensic examinations had been conducted and therefore, he may have been involved in the murders.

Determination to set aside the original coronial finding

51. On 27 May 2016, Deputy State Coroner West determined to re-open the investigation due to the new facts and circumstances presented to him that were not available to Coroner Hanrahan and that the new evidence may be sufficient to alter the finding that Mrs Penny and Mrs Acocks were killed by an unknown person.⁴
52. The new information became the focus of this coronial Inquest.

CORONIAL INQUEST

53. This case was allocated to me in October 2016. I was provided with all the new material that had been submitted as part of the Application to set aside the finding which included the prosecution brief against Mr Penny. I was provided with the original coronial brief and investigative material including the original crime scene videos, photos, sketches, identification kits, police notes, news clips and other material as a result of the 2013-2015 review of the investigation including formal records of interview with Mr Penny. Statements were also provided by forensic experts who had analysed samples taken from the original crime scene using new scientific testing, not previously available such as DNA testing. This also included simulation testing using various hairdresser's combs on the clothing worn by Mrs Penny and Mrs Acocks. A supplementary report was provided by Professor Stephen Cordner in relation to whether a tail comb was a potential weapon involved in the murders, as well as a report by Dr Nathaniel Cary, a forensic pathologist in the United Kingdom. A National Injuries Database

⁴ Determination following application to set aside Finding dated 27 May 2016

Search Report was also prepared by Dr Yvette Connelly from the National Crime Agency in the United Kingdom.

54. On 27 October 2016, I held a directions hearing to set the scope of the Inquest and indicate potential witnesses.
55. Upon reviewing the material that was provided to me, I was concerned that a lot of information was missing including many of the original police information reports and the information reports prepared since the first coronial Inquest in 1995. I subsequently obtained approximately 1500 information reports. I requested all relevant police investigative notes. I obtained the transcript of Coroner Hanrahan's Inquest and the committal hearing against Mr Penny. I also requested further information on the persons of interest and suspects that had been identified as part of the investigation.
56. A coronial Inquest commenced on 23 November 2016 for ten days between November 2016 and February 2017. Twenty-eight witnesses were called to give viva voce evidence, namely:
 - Professor Stephen Cordner, Forensic Pathologist, Victorian Institute of Forensic Medicine
 - Mrs Kay Edwards
 - Superintendent Adrian White, Victoria Police
 - Mr John Morrish, Former Detective Senior Sergeant,
 - Mr Phillip Hay, Former Sergeant,
 - Ms Jacqueline Penny
 - Mr Tony Muir
 - Ms Aphra Williams
 - Leading Senior Constable Tim Acocks, Victoria Police
 - Mrs Megan Mallen (nee Allen)
 - Mr Robert Menzel
 - Detective Inspector Martin Allison, Victoria Police
 - Detective Superintendent Rodney Wilson, Victoria Police
 - Mr Peter Hook
 - Minister Alistair McRae

- Ms Elena Jomantis
- Mrs Kim Penny (nee Kimmorley)
- Mrs Alexis Rizio
- Mr Robert Lowther, Former Detective Sergeant,
- Mr Geoff Wade, Former Senior Sergeant,
- Senior Constable Mark McLean,
- Mr Keith Rayfield
- Mr Kenneth Dean
- Dr Nathaniel Cary, Forensic Pathologist, United Kingdom
- Mr Maxwell Jones, Forensic Officer, Victoria Police Forensic Science Centre
- Ms Louise Brown, Forensic Officer, Victoria Police Forensic Science Centre
- Mr William Reid
- Mrs Lorraine Reid

The purpose of a coronial investigation

57. The jurisdiction of the Coroners Court of Victoria is inquisitorial⁵. The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred. The Victorian Court of Appeal has determined that the term “*if possible*” makes it obligatory that a coroner must “*pursue all reasonable lines of inquiry*”.⁶ Further, the Coroners Court must act as an independent and active investigator and “*do anything possible to determine the cause and circumstances of death.*”⁷
58. It is not the role of the coroner to lay or apportion blame, but to establish the facts.⁸ It is not the coroner’s role to determine criminal or civil liability arising from the death under investigation. In fact, section 69(1) of the *Coroners Act* 2008 (Vic) (Coroners Act) prevents a coroner from making a statement in a finding or a comment that a person may be guilty of an offence. The Victorian Court of Appeal stated:

⁵ Section 89(4) Coroners Act 2008

⁶ *Priest v West & Anor* [2012] VSCA 327 at p2

⁷ *Priest v West & Anor* [2012] VSCA 327 at p6

⁸ *Keown v Khan* (1999) 1 VR 69

If, in the course of the investigation of a death it appears that a person may have caused the death, then the coroner must undertake such investigations as may lead to the identification of that person. Otherwise the required investigation into the cause of death and the circumstances in which it occurred will be incomplete; and the obligation to find, if possible, that cause and those circumstances will not have been discharged.⁹

59. For coronial purposes, the circumstances in which the deaths occurred, refers to the context or background and surrounding circumstances of the death. Rather than being a consideration of all circumstances which might form part of a narrative culminating in the death, it is confined to those circumstances which are sufficiently proximate and causally relevant to the death.
60. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the ‘prevention’ role.
61. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.¹⁰ The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

Scope of the Inquest

62. The following issues provided the scope of the Inquest:
- Identity of deceased
 - Medical cause of death
 - Circumstances in which death occurred, including:
 - Initial police investigation
 - ❖ The running man and the sighting of another male on 3 May 1991
 - ❖ The shoe impression
 - ❖ Persons of interest

⁹ *Priest v West & Anor* [2012] VSCA 327

¹⁰ (1938) 60 CLR 336

- ❖ Conduct of original police investigation
- The 2013-2015 review by the Homicide Squad
- ❖ DNA evidence
- ❖ Was Mr Penny involved in the murders?
- Analysis and conclusions of the evidence

Identity of the deceased

Margaret Penny

63. On 4 May 1991, Margaret Muir Penny was visually identified by Alan Endersby.¹¹ Identity was not in dispute in this matter and therefore required no further investigation.

Claire Acocks

64. On 4 May 1991, Claire Elizabeth Acocks was visually identified by Detective Sergeant Robert Lowther.¹² Identity was not in dispute in this matter and therefore required no further investigation.

Medical cause of death

65. On 5 May 1991, Professor Cordner conducted an autopsy on the bodies of Mrs Penny and Mrs Acocks.

Margaret Penny

66. Professor Cordner found a large incised wound to Mrs Penny's neck, multiple stab and puncture wounds to her back, a puncture wound to her chest, an incised type abrasion to her abdomen and a number of wounds and bruising to her arms and left hand.¹³
67. Professor Cordner provided an opinion that the medical cause of death was 1a) STAB WOUND TO CHEST AND INCISED WOUND TO NECK.¹⁴

¹¹ Exhibit 71 – Coronial brief, p250

¹² Exhibit 71 – Coronial brief, p285.

¹³ Exhibit 1a – Report of Professor Stephen Cordner dated 1 August 1991, coronial brief, p328-331

¹⁴ Exhibit 1a – Report of Professor Stephen Cordner dated 1 August 1991, coronial brief, p334

Claire Acocks

68. Professor Cordner found a large incised wound to Mrs Acocks' neck, stab wounds and bruising to her chest and abdomen, incised wounds to her right hand, bruising to her left arm and bruising to her right leg.¹⁵ It was noted Mrs Acocks had defensive type wounds to her hands.¹⁶
69. Professor Cordner provided an opinion that the medical cause of death was 1a) STAB WOUND TO CHEST AND ABDOMEN AND INCISED WOUND TO THE NECK.¹⁷

Circumstances in which the death occurred

70. The events of 3 May 1991 are broadly set out earlier this Finding. It was not the intention of this Inquest to cover old ground. The key issues that were the main focus of this Inquest was reviewing the conduct of the initial police investigation, and reviewing the new facts and circumstances that had occurred as a result of the 2013-2015 review namely, the relevance, if any, of the DNA evidence and assessing whether or not Mr Penny was implicated in the murders, including whether or not a tail comb was a potential weapon involved in the murders.

Initial police investigation

71. The police investigation in 1991 was very different to homicide investigations of today. At the time of the initial investigation, there were no computers, and mobile phones were in their early stages of use but not available to police officers. Every piece of information was recorded by hand on an Information Report and then that information had to be indexed and cross referenced.¹⁸ It was later manually entered into a computer system.
72. Mrs Penny and Mrs Acocks' deaths had a profound effect on the community of Portland and created a sense of heightened awareness about the safety of their community. Consequently, many people reported anything they thought may have been unusual and perhaps useful to the police investigation. Detective Superintendent Wilson stated information was flooding in at a huge rate and they had to prioritise the information as best they could.¹⁹ Likewise, the quantity

¹⁵ Exhibit 16 – Report of Professor Stephen Cordner dated 1 August 1991, coronial brief, p337-340

¹⁶ Exhibit 16 – Report of Professor Stephen Cordner dated 1 August 1991, coronial brief, p338

¹⁷ Exhibit 16 – Report of Professor Stephen Cordner dated 1 August 1991, coronial brief, p342

¹⁸ Transcript of evidence, p705

¹⁹ Transcript of evidence, pp 704 -705

of information that came in was enormous²⁰ and unprecedented.²¹ Former Detective Senior Sergeant Morrish said this investigation required thousands of man hours.²²

73. The volume of information received made focussing the investigation difficult. Former Detective Senior Sergeant Morrish explained that two or three years into the investigation, they re-started the investigation from scratch, when no firm suspect had been identified.
74. The 'horrible man' theory received extensive attention at the first Inquest, so I determined that I did not need to review that aspect of the investigation. It was clear from the evidence that Mrs Acocks did have an uncomfortable encounter with a man she described as 'horrible' approximately two weeks prior to the murders. However, despite extensive investigations, to date, police have been unable to identify who this man may have been.
75. There were however, some aspects of the initial investigation that were worth re-investigating, for example the eyewitness accounts of the man seen leaving the Old London building on the afternoon of 3 May 1991, also known as the 'running man' and another man seen in close proximity to the scene of the murders.

The running man and the sighting of another male on 3 May 1991

76. On 4 May 1991, Mr Menzel advised police that he saw a male running across the road outside the Old London building on 3 May 1991 at 4.41pm.²³ This was recorded by a local police officer Senior Constable Swiers who was working at a police information caravan. Over time, Mr Menzel has given differing times of when he saw the person running from the rear of the Corbett Insurance Office.²⁴
77. Despite the time recorded by Senior Constable Swiers, Mr Menzel's first statement reported the time of his sighting of the male was between 3.30pm and 4pm, which he confirmed in evidence at the first Inquest. In a further statement he provided for the more recent investigation, his timing differed again. His evidence at this Inquest, was that the timing of the sighting was consistent with that first noted by police on the day after the murders, as 4.41pm.²⁵
78. On the afternoon of 3 May 1991, Mrs Mallen observed a suspicious male walking north out of Richmond Street and then turn west into Henty Street, approximately 300 metres from the Old

²⁰ Transcript of evidence, p207

²¹ Transcript of evidence, p139

²² Transcript of evidence, p210

²³ Exhibit 36 - Note from Senior Constable Swiers dated 4 May 1991

²⁴ Exhibit 32 - Statement of Robert Menzel dated 17 February 1994, Coronial brief, p358

²⁵ Transcript of evidence, p442-443 and p454

London building. The unknown male patted her dog as he walked past her. She reported it appeared the male had wiped blood on his jeans and was not wearing any shoes.²⁶ She reported seeing emergency service vehicles at the Old London building shortly after seeing the male. Mrs Mallen telephoned police later that evening to report the sighting²⁷ but was not contacted by investigators. She later made a statement to police in 1996, after her mother advised her about the outcome of the first coronial Inquest and sent her a newspaper article with the photo fit identification.

79. Counsel Assisting submitted that the Court should not find that the male sighted by Mr Menzel or Mrs Mallen was involved in the killings. With respect to Mr Menzel's evidence, there have been variations over time in his descriptions of the male and the timing of the sighting. Mrs Mallen's sighting also occurred late in the sequence of events and at a time when police were already at the scene. Counsel for the Chief Commissioner of Police also submitted that it is unlikely that the male seen by Mr Menzel and Mrs Mallen had any connection to the murders.²⁸ Further, the fact that both reports were not followed up by police at the time was most likely due to human error, which led to the information being overlooked and as such should not attract criticism of the Court.²⁹ He conceded they were both leads that should have been investigated.

80. Based upon the evidence of Mrs Mallen and Mr Menzel and having considered all other available evidence, I am unable to determine whether the male seen by Mrs Mallen and Mr Menzel on the afternoon of 3 May 1991 was involved in the murders.

The shoe impression

81. An important piece of evidence that was obtained during the initial police investigation was a shoe impression located near the back door of the hairdressing salon. Due to the significance of this evidence, this information was originally restricted from release to the public, however the publication Ms Wallace's book in 2012 led to this information becoming publicly known. Police still believe that the shoe impression is one of the crucial aspects to solving this investigation.

²⁶ Exhibit 26 - Statement of Megan Allen (Mellan) dated 15 November 1996, Coronial brief, p378

²⁷ Transcript of evidence, p416, Exhibit 26 - Statement of Megan Allen (Mellan) dated 15 November 1996, Coronial brief, p377

²⁸ Submissions on behalf of the Chief Commissioner of Police dated 2 February 2017, para 19 and para 27

²⁹ Submissions on behalf of the Chief Commissioner of Police dated 2 February 2017, para 29

Persons of interest

82. As part of my investigation, I requested and received a vast amount of material which related to a number of persons of interest that police have identified through their extensive investigations over many years. A working theory of police is that there may have been more than one offender.³⁰ According to Detective Inspector Allison, many suspects were nominated by members of the public based on their own suspicions.³¹
83. Numerous potential suspects were identified and information regarding nine specific significant persons of interest was compiled for the coronial investigation. The evidence against each person of interest varies in strength, but most do not have firm alibis. Many of the persons identified unfortunately, are now deceased and most have never been properly eliminated.
84. It remains possible on the evidence before me, that the following persons of interest may have been involved in the killings, including but not limited to Gordon Smith, Russell Smith and Brian Petrie. These persons of interest have been actively investigated in the past, but never formerly eliminated and are now all deceased.
85. I have been informed that there are also other persons of interest who have been nominated and avenues of enquiry that remain ongoing.

Conduct of the original police investigations

86. Counsel for the Chief Commissioner of Police submitted that during the course of the original investigation, 1,402 Information Reports were generated from 1991 to 2007. Hundreds of people were spoken to and numerous potential suspects were identified.
87. Despite all the investigations that were conducted in relation to the deaths of Mrs Penny and Mrs Acocks, their son, Mr Tony Muir was scathing of the initial police investigation. He was particularly appalled and devastated when he attended the first Inquest and police questioned him about his whereabouts on the afternoon of 3 May 1991.³²
88. I acknowledge this investigation was complex. I accept the investigation was made more difficult with the sheer quantity of information that was received in the early weeks of the investigation that had to be recorded, prioritised and investigated. Counsel for the Chief

³⁰ Transcript of evidence, p718

³¹ Transcript of evidence, p677

³² Transcript of evidence, p361

Commissioner submitted that there should be no criticism of the investigations that were undertaken by members of Victoria Police.³³

89. I accept that times have changed and police investigations are conducted differently now, with more sophisticated resources and scientific examinations available. Consequently, I do not propose to make any adverse comment about Victoria Police in relation to their initial investigation of these murders.

The 2013-2015 review by the Homicide Squad

90. The 2013-2015 review conducted by Detective Senior Constable Hogan largely focussed on whether or not Mr Penny was involved in the murder of his wife and Mrs Acocks and whether a tail comb may have been a weapon involved in the murders. The new investigation also included scientific evidence in the form of DNA.

DNA evidence

91. With the advancement of new scientific and forensic evidence and as part of the more recent homicide investigation, DNA testing was conducted on many of the original exhibits collected from the crime scene, including the clothing of Mrs Penny and Mrs Acocks, various items found at the salon and numerous knives that were located in the vicinity of the scene and other items collected by investigators.
92. Maxwell Jones, Forensic Officer at the Victoria Police Forensic Science Centre conducted DNA testing on some of these exhibits. In evidence, Mr Jones commented that not a great deal of DNA profiling results were obtained from the samples examined.³⁴ The only sample of real interest was a very small piece of tissue paper found at the scene, on the same chair as a plastic hairdresser's tail comb, which had a small amount of blood staining.³⁵ This sample had the DNA profiles of Mrs Penny and Mrs Acocks and a partial male profile.³⁶
93. This partial male DNA profile has been tested against a number of potential suspects and persons of interest, and no match or partial match has been found. This includes Mr Penny. According to Mr Jones, the fact that no match has been identified does not determinatively

³³ Submissions on behalf of the Chief Commissioner of Police dated 2 February 2017, para 46

³⁴ Transcript of evidence, p533

³⁵ Transcript of evidence, p518

³⁶ Exhibit 40 – Statement of Maxwell Jones with appendices dated 16 November 2015, coronial brief, p345Z, Transcript of evidence, p520 and 530

eliminate those persons of interest from the investigation because investigators cannot be certain that the partial profile is the offender and it is only a partial profile.

Was Mr Penny involved in the murders?

94. A significant focus of this Inquest was whether or not Mr Penny was involved in the murders of Mrs Penny and Mrs Acocks. As noted above Mr Penny was charged with the murders in 2015, but died before there was any outcome to the criminal prosecution. Therefore, Mr Penny's evidence through his various records of interview have never been substantiated and must be treated with caution having not been adopted on oath or tested under cross-examination.

95. As part of my investigation into the deaths of Mrs Penny and Mrs Acocks, I have had cause to review the following issues concerning Mr Penny:

- Was Mr Penny considered a suspect in the initial police investigation?
- Did Mr Penny have a motive?
- Mr Penny's accounts of the events on 3 May 1991
- Mr Penny's comments about a tail comb
- The forensic evidence – was a tail comb involved in the murders?
- Mr Penny's comment that Mrs Acocks died quickly
- Mr Penny's comments about a hitman
- Mr Penny's demeanour after the murders

Was Mr Penny considered a suspect in the initial police investigation?

96. At Inquest, evidence was provided that during the early stages of any murder investigation the focus of police centres first on those close to the deceased and then slowly widens, as evidence becomes known. Detective Superintendent Rodney Wilson, who supervised the original homicide investigation, commented that if you look at the anecdotal evidence around homicides, they are usually committed by someone who is associated with the victim.³⁷

³⁷ Transcript of evidence, p715

97. The homicide investigation into the deaths of Mrs Penny and Mrs Acocks commenced with seeking details of the whereabouts of their husbands at the time of the murders. The evidence revealed that Mr Acocks was playing golf on the afternoon of 3 May 1991 and he was quickly eliminated as a suspect. On the night of 3 May 1991, Mr Penny provided an alibi that he was with his granddaughter during the afternoon, making a swing. Detective Superintendent Wilson stated *“we took a view early on that we didn’t believe that Mr Penny and Mr Acocks were involved, based on where they said they were at the time and based on the type of crime it was.”*³⁸ Former Detective Senior Sergeant Morrish gave evidence that both Mrs Penny and Mrs Acocks were well-respected people in the community.³⁹
98. A number of police officers involved in the initial police investigation gave evidence at Inquest and were asked whether Mr Penny was ever considered a suspect. Former Detective Senior Sergeant Morrish stated *“there was no evidence to point to him being a suspect”*⁴⁰ and further, *“he was never considered a suspect”*.⁴¹ Detective Superintendent Wilson commented that they did not think he was a suspect in the matter based on the information they had at the time.⁴² According to Detective Superintendent Wilson, the nature of the crime was particularly violent and it did not seem to have been committed by a 59-year-old retired man.⁴³ He continued:
- do we really think that Bob Penny would drive down to the middle of [Portland to] ... the London Hair Salon on a Friday afternoon, he’s known in the town, and be seen going into the salon, slaughter two women and then just casually go home again? It doesn’t fit for me as a crime that he would commit in that type of style.*⁴⁴
99. Superintendent White agreed and said in his experience, *“if you’re going to kill a member of your family you wouldn’t do it, ... [in] ... the middle of the afternoon ... you’d do it in the confines of your own home and concoct a story or accident or otherwise.”*⁴⁵

Police interview with Robert Penny in May 1993

100. In December 1992, Senior Constable Tim Acocks contacted the Homicide Squad and relayed a conversation he had with Bob Bryden, Robert and Margaret Penny’s nephew. The information gathered was recorded in an Information Report. Notably, Mr Bryden expressed

³⁸ Transcript of evidence, p731

³⁹ Transcript of evidence, p200

⁴⁰ Transcript of evidence, p200

⁴¹ Transcript of evidence, p199

⁴² Transcript of evidence, p711

⁴³ Transcript of evidence, p715

⁴⁴ Transcript of evidence, p735

⁴⁵ Transcript of evidence, p151

an opinion that *“Robert Penny should be looked at closely as a suspect for the murders”*.⁴⁶ Mr Bryden told police words to the effect that *“there were a lot of skeletons in the wardrobe concerning Robert Penny, his trips to Singapore, Kings Parking Business and his business partners”*.⁴⁷

101. Detective Inspector Allison stated there was *“nothing specific about the information that point[ed] to Bob Penny, other than a host of different circumstances and someone else’s suspicion”*.⁴⁸ However, on the basis of the information obtained from Mr Bryden, it was agreed that Mr Penny needed to be interviewed to clarify some information and to allow questions to be asked.⁴⁹
102. Consequently, Mr Penny willingly attended an interview with Detectives Allison and Beanland in May 1993. Detective Inspector Allison stated that Mr Penny *“certainly wasn’t under arrest”*⁵⁰ and he did not receive a formal caution,⁵¹ as there *“were no reasonable grounds to suspect that he was responsible”*.⁵² A note was recorded on the same Information Report after the interview with Mr Penny that there was *“not a piece of evidence to implicate him to the murders, nor is there any motive.”*⁵³
103. It appears there were a number of issues that required follow up after this interview to verify Mr Penny’s account. Unfortunately, there is no independent record, in the form of an Information Report or police notes to support that further enquiries were conducted, despite a rigorous search for the relevant documents conducted by the Coroner’s Investigator and the representatives of the Chief Commissioner of Police. Detective Inspector Allison believed that these aspects would have been followed up by Detective Senior Constable Beanland.⁵⁴ Regrettably, Detective Senior Constable Beanland was not available to give evidence at this Inquest. Former Detective Senior Sergeant Morrish could not recall but thought that the information was probably not followed up.⁵⁵ It does appear having reviewed the evidence that Mr Muir⁵⁶ and Kim Penny⁵⁷ were not spoken to by police after the 1993 interview.

⁴⁶ Exhibit 38 - Information Report of Homicide Squad dated 7 December 1993

⁴⁷ Exhibit 38 - Information Report of Homicide Squad dated 7 December 1993

⁴⁸ Transcript of evidence, p690

⁴⁹ Transcript of evidence, p684

⁵⁰ Transcript of evidence, p684

⁵¹ Transcript of evidence, p645

⁵² Transcript of evidence, p692

⁵³ Exhibit 38 - Information Report of Homicide Squad dated 7 December 1993

⁵⁴ Transcript of evidence, p648

⁵⁵ Transcript of evidence, p242

⁵⁶ Transcript of evidence, p360

⁵⁷ Transcript of evidence, p777

104. Mr Muir wrote to the Coroners Court on 19 March 2017, after the conclusion of the evidence. He stated he was unaware that Mr Penny was being questioned in 1993. He said that police were given his details in 1993, however they did not make contact with him, nor investigate his concerns. When he was eventually interviewed in 1995, the focus was on his whereabouts at the time of the murders, not anything else.⁵⁸
105. Counsel for the Acocks family consider that failure to investigate these outstanding issues was a missed opportunity and I agree.
106. It is clear on the evidence, that Victoria Police members who initially investigated the murders of Mrs Penny and Mrs Acocks did not consider Mr Penny a suspect. Counsel for the Chief Commissioner of Police submitted the fact that investigators did not characterise Mr Penny as a suspect in the early stages of the investigation was entirely appropriate.⁵⁹ Further, he submitted that at the time there was no secondary crime scene, there was no sighting of Mr Penny with blood on his clothes, and there was nothing to physically connect him with the crime scene.⁶⁰ Therefore, it was appropriate that he was not considered a suspect in the initial police investigation.

Did Mr Penny have a motive?

107. Mr Penny's apparent motive was considered as the result of the 2013-2015 review by the Homicide Squad.

Mr Penny's relationship with Margaret Penny

108. By May 1991, Mr and Mrs Penny had been married for over 36 years. The evidence demonstrated that over time, their relationship had had its ups and downs.
109. Mr Penny provided a statement to police after the murders and reported "*we were good friends and we had a lovely life.*"⁶¹ This was supported by the evidence of some family members who gave evidence at Inquest including his daughter, Jacqueline Penny, grand-daughter Aphra Williams, his second wife Kim Penny (née Kimmorley) and step-daughter Alexis Rizio,⁶² who all say Mr Penny always spoke fondly of Mrs Penny. Mrs Endersby reported that she was not

⁵⁸ Submissions of Tony Muir dated 19 March 2017, p3

⁵⁹ Supplementary submissions of the Chief Commissioner of Police dated 7 April 2017

⁶⁰ Transcript of evidence, p1013

⁶¹ Exhibit 71 - Coronial brief, p639

⁶² Transcript of evidence, p833

aware of any marital disharmony between Mr and Mrs Penny.⁶³ She said they seemed close and did everything together.⁶⁴

110. In his record of interview in 2014, Mr Penny denied having an affair but admitted infidelity in the years they lived overseas.⁶⁵ He said that in May 1991, "*there was no animosity between us*".⁶⁶ In numerous hours of records of interview in 2014, Mr Penny rhetorically asked 'what was his motive?' on a number of occasions. He also stated he loved his wife dearly.⁶⁷
111. During my investigation, I listened to listening device and telephone intercept evidence, the recording of Mr Penny's arrest and watched the 2014 records of interview. To me, Mr Penny appeared credible. His demeanour in the records of interview, did not change and his body language appeared to be consistent with his answers. Over the course of the latter record of interview, he seemed to become exasperated with the questions being asked of him and the accusation that he killed his wife.
112. Jacqueline Penny recalled at Inquest that approximately ten years before her mother was murdered, her mother had told her that her father had an affair whilst they were living in Singapore.⁶⁸ Jacqueline Penny gave evidence that on 6 May 1991, she was asked by police about her parent's relationship.⁶⁹ She believed she spoke to Detective Senior Constable Beanland and relayed her suspicions about her father's involvement within days of the murders.⁷⁰ Unfortunately, this was not documented in Detective Senior Constable Beanland's statement, nor his notes or any Information Report. According to Detective Senior Constable Beanland's notes, he did not arrive in Portland until 8 May 1991. Former Detective Senior Sergeant Morrish stated Jacqueline Penny "*never ... mentioned that to any of us that her father was a ... suspect.*"⁷¹ He further stated that "*there was no ill feeling towards their ...father ... in any way, shape or form*".⁷²
113. Mr Muir gave evidence about his memories of his parent's relationship, which were somewhat different to those noted above. Mr Muir said that he never saw violence but believed their relationship was very volatile. He stated that there was yelling and screaming, often followed

⁶³ Exhibit 71 - Coronial brief, p248

⁶⁴ Exhibit 71 - Coronial brief, p248

⁶⁵ Exhibit 71 - Coronial brief, p1394-9

⁶⁶ Exhibit 71 - Coronial brief, p1074

⁶⁷ Exhibit 71 - Coronial brief, p1192

⁶⁸ Transcript of evidence, p284, 297

⁶⁹ Transcript of evidence, p323

⁷⁰ Transcript of evidence, p335

⁷¹ Transcript of evidence, p217

⁷² Transcript of evidence, p217

by kissing and making up. As a child he found it very hard to cope with the emotional rollercoaster of the ups and downs of their relationship.⁷³

114. Mr Muir said that his mother told him about an affair his father had in Singapore.⁷⁴ He also recalled that his mother had once told him *“they’d had a fight and he’d held her up against the wall and beaten her black and blue.”*⁷⁵ He gave evidence that every time he spoke to his mother, after his parents had moved back to Portland, she would say she was lonely or isolated. He stated his mother *“didn’t specify issues with Robert but she just wasn’t happy down there”*.⁷⁶
115. Mr Muir was quite critical of the police investigation into his concerns about his parent’s relationship and that he had not made a statement until 2013. Detective Superintendent Wilson stated that *“if Tony had some information that he wanted to share, ... that he thought was relevant, my expectation is that Tony would have, ... been communicating”*⁷⁷ that to police. Detective Inspector Allison stated *“there’s no record of ... [Mr Muir] – contacting us with that information...”*⁷⁸
116. At Inquest, Former Detective Senior Sergeant Morrish indicated that at the time he was investigating the murders he knew Mr Penny had a girlfriend.⁷⁹ When questioned whether he knew Mr Penny was specifically involved with Kim Kimmorley in May 1991, Former Detective Senior Sergeant Morrish stated *“I think he would have been...he had...an affair at the time and he would have had some liaison with the lady prior to the murders and it’s just common sense isn’t it.”*⁸⁰ This aspect of Former Detective Senior Sergeant Morrish’s evidence was not formally recorded anywhere in police notes or information reports and was inconsistent with other evidence presented to me during my investigation and therefore I do not give much weight to it.
117. Counsel for the Acocks family submitted that, *“the nature of the relationship between Robert and Margaret Penny was capable of different interpretations.”*⁸¹ I agree with this submission.

⁷³ Transcript of evidence, p352

⁷⁴ Transcript of evidence, p352

⁷⁵ Transcript of evidence, p352

⁷⁶ Transcript of evidence, p351

⁷⁷ Transcript of evidence, p729

⁷⁸ Transcript of evidence, p699

⁷⁹ Transcript of evidence, p200

⁸⁰ Transcript of evidence, p201

⁸¹ Submissions on behalf of the Acocks family dated 2 February 2017, p12

Relationship with Kim Penny

118. Mr Penny and Kim Penny married in September 1992.⁸² The timing and commencement of their relationship was examined closely by Detective Senior Constable Hogan and was explored further at Inquest.
119. Mr Penny and Kim Penny first met in 1985.⁸³ Mr and Mrs Penny were friends with Kim Penny's brother, Peter Goh and they saw Kim Penny on a few occasions between 1985 and Mrs Penny's death. Kim Penny attended Mrs Penny's funeral after being advised of her death by her brother. She also attended the Penny family home after the funeral. Mr Penny told police that when he spoke to Kim Penny on the day of his wife's funeral, she invited him to visit her, if he were to visit Melbourne.⁸⁴
120. Mr Penny also told police that some weeks after the funeral, he sought the counsel of Alistair McRae, minister of the Uniting Church. He talked to Minister McRae about being lonely and sought advice about when he should move on with his life. In his record of interview, Mr Penny recalled Minister McRae quoted a little sermon and then told him to "*get on with your life and put yourself back together.*"⁸⁵
121. At Inquest, Minister McRae gave evidence that the suggestion he told Mr Penny to pull himself together and get on with his life was quite fanciful.⁸⁶ He confirmed that he would not have had that sort of conversation so soon after the death of a loved one. He admitted that if Mr Penny had asked whether he might contemplate another relationship in the future, he imagined he would have responded generally with words to the effect "*you've got many years of life ahead of you. That's always a possibility.*"⁸⁷
122. Mr Muir gave evidence that he arranged to visit his father in Portland in the July school holidays of 1991.⁸⁸ Mr Muir stated that he arrived a few days earlier than planned and he witnessed some intimacy or affection between his father and Kim Penny.⁸⁹ He also believed this was witnessed by Minister McRae.⁹⁰ In evidence, Minister McRae did not specifically remember

⁸² Exhibit 59 - Statement of Mrs Kim Penny dated 26 February 2014, Coronial brief, p407

⁸³ Exhibit 59 - Statement of Mrs Kim Penny dated 26 February 2014, Coronial brief, p404

⁸⁴ Exhibit 71, Coronial brief, p1107

⁸⁵ Exhibit 71, Coronial brief, p1361

⁸⁶ Transcript of evidence, p753

⁸⁷ Transcript of evidence, p754

⁸⁸ Transcript of evidence, p927, I was provided information that the July school holidays occurred between 5 and 21 July 1991

⁸⁹ Transcript of evidence, p347

⁹⁰ Transcript of evidence, p348

this event, however would not disagree with Mr Muir's recollection.⁹¹ Counsel for the Acocks family submitted that I should accept Mr Muir's evidence because the episode left a lasting impression on him and was corroborated by independent witnesses,⁹² presumably Minister McRae.

123. Kim Penny recalled her trip to Portland with her daughter when they stayed with Mr Penny, however she believed the trip occurred later in the year. Ms Rizio also believed it occurred later in the year, sometime between September and November 1991.⁹³
124. There is conflicting evidence as to the date of Mr Penny and Kim Penny's first meeting after Mrs Penny's funeral. During a record of interview, Mr Penny reported that he visited Kim Penny towards the end of 1991.⁹⁴ He then accepted that it may have been in August 1991.⁹⁵ Mr Penny later acknowledged their relationship may have started months before they opened a bank account together in August 1991, and could have commenced in June 1991.⁹⁶ Kim Penny believed she did not meet with Mr Penny until late August or early September 1991.⁹⁷ She also did not believe their relationship commenced in August 1991⁹⁸ however, conceded that Mr Penny may have moved in to her unit in Malvern East around this time.
125. Mr Peter Hook, Kim Penny's neighbour at the units in East Malvern gave evidence he witnessed a male move into Kim Penny's unit in early winter 1991. Ms Elena Jomantis, also a neighbour gave evidence that she saw Mr Penny around April 1991. I do not consider a great deal of weight can be afforded to this evidence, however I prefer the evidence of Kim Penny and Alexis Rizio as to when Mr Penny moved in.
126. Evidence obtained as part of the homicide investigation revealed that Mr Penny attended a body corporate meeting on 1 August 1991 on Kim Penny's behalf⁹⁹ and he opened a joint bank account with Kim Penny on 16 August 1991.¹⁰⁰ In a record of interview, Mr Penny did not deny this, he also agreed that he paid off the mortgage on the Malvern East unit when he moved in.¹⁰¹ Regarding the joint bank account, Kim Penny stated at Inquest "*maybe he moved in, and*

⁹¹ Transcript of evidence, p751

⁹² Submissions on behalf of the Acocks family dated 2 February 2017, p12

⁹³ Exhibit 64 - Statement of Alexis Rizio dated 24 January 2017, p3-

⁹⁴ Exhibit 71, Coronial brief, p1109

⁹⁵ Exhibit 71, Coronial brief, p1111-1118

⁹⁶ Exhibit 71, Coronial brief, p1381-1384

⁹⁷ Transcript of evidence, p787

⁹⁸ Transcript of evidence, p790-791

⁹⁹ Exhibit 71 - Coronial brief, p974

¹⁰⁰ Exhibit 71 - Coronial brief, p1020

¹⁰¹ Exhibit 71 - Coronial brief, p1142

*decided that he was going to look after us and that it was easier to have a joint account so that he was contributing – to the running of the house.”*¹⁰²

127. Kim Penny believed her relationship with Mr Penny became intimate around the time of Mr Penny’s birthday. She estimated October or November 1991.¹⁰³ She also gave evidence she sought the approval of her daughter, before the relationship became intimate.¹⁰⁴ This was supported by Ms Rizio, whom I found to be a credible witness. Ms Rizio gave evidence that the relationship between her mother and Mr Penny was slow to develop beyond friendship.¹⁰⁵ She also stated that when Mr Penny moved in, she shared a bedroom with her mother for two or three months to allow Mr Penny to have his own bedroom.
128. In 1993, Detectives Beanland and Allison interviewed Mr Penny and he denied being sexually active with Kim Penny prior to his wife’s death.¹⁰⁶ In 2014, Mr Penny said he “*wasn’t having an affair and it certainly wasn’t with Kim.*”¹⁰⁷ However, he admitted he had previously been unfaithful to his wife during their marriage. In evidence, Kim Penny adamantly denied they were having an affair prior to Mrs Penny’s death.¹⁰⁸ I found this aspect of her evidence to be truthful.
129. Counsel for the Acocks family submitted that Mr Penny and Kim Penny were uniformly incorrect about the timing of their relationship in their initial accounts to police. Counsel urged that it was open to me to conclude that they deliberately obfuscated about the timing of their relationship.¹⁰⁹ However, Counsel conceded that there was no real evidence that the relationship had occurred prior to the murders.¹¹⁰
130. Counsel Assisting submitted that the court could find that no motive has been demonstrated on the evidence.¹¹¹

Mr Penny’s account of the events of 3 May 1991

131. Mr Penny provided an alibi to police on the evening of 3 May 1991, as to his whereabouts at the time of Mrs Penny and Mrs Acocks’ deaths. He reported he was at home looking after Aphra

¹⁰² Transcript of evidence, p790

¹⁰³ Transcript of evidence, p773, Exhibit 50 - Information Reports dated December 1992 and 18 May 1993

¹⁰⁴ Transcript of evidence, p774, 829

¹⁰⁵ Transcript of evidence, p837

¹⁰⁶ Exhibit 50 – Information Reports dated December 1992 and 18 May 1993

¹⁰⁷ Exhibit 71 - Coronial brief, p1394

¹⁰⁸ Transcript of evidence, p800

¹⁰⁹ Transcript of evidence, p987

¹¹⁰ Transcript of evidence, p987

¹¹¹ Transcript of evidence, p940

and they made a swing together in the backyard. Aphra had been staying with her grandparents for a number of weeks. She often attended the hairdressers with her grandmother and had her hair braided. It was therefore unusual that she stayed home when Mrs Penny went to the hairdressers on 3 May 1991.

132. Ms Williams made a statement in 2013, about her recollection of the events of 3 May 1991. She recalled her grandparents fighting over her, like a tug of war at the front door, about whether she would go to the hairdressers or stay with her grandfather.¹¹² The suggestion is that there was a fight because Mr Penny did not want her to go to the salon because he knew Margaret Penny was going to be killed. At interview, Mr Penny denied fighting with his wife in this way and said “*there was no animosity between us anyway.*”¹¹³ Counsel assisting submitted that only a limited amount could be made of that evidence.¹¹⁴

133. Counsel for the Acocks family submitted:

*the court is clearly limited in the weight that can be attributed to the evidence of Aphra Williams. It is littered with inconsistencies and new evidence emerged for the first time during oral testimony. The problematic nature of recovered memory testimony is now well known.*¹¹⁵

134. Counsel for the Acocks family submitted that despite the difficulties with her memory Ms Williams’ impression of the day was that there was disharmony or disagreement with her grandmother.¹¹⁶ Ultimately, it was submitted by Counsel Assisting that little can be made of Ms Williams’ evidence in relation to what took place on the afternoon of 3 May 1991 between her grandparents. I agree, and find that this aspect of the evidence cannot be afforded much weight.

Access to Tony Muir’s car

135. At Inquest, the issue of whether Mr Penny had access to a car on the afternoon of 3 May 1991 was examined. Mr Muir confirmed that when he went overseas before his mother’s death, he left his car at his parent’s home, gave them the keys and told them they could drive his car.¹¹⁷ This point was in issue as Mr Penny had previously told investigating police in 1993, that he could not have killed his wife and Mrs Acocks because he did not have access to a car.¹¹⁸ When

¹¹² Exhibit 71 - Coronial brief, p135 and p1456, Transcript of evidence, p389

¹¹³ Exhibit 71 - Coronial brief, p1074

¹¹⁴ Transcript of evidence, p947

¹¹⁵ Counsel for the Acocks family submissions dated 2 February 2017, p10, See also *R v Tillott and Others* (1995) 38 NSWLR 1

¹¹⁶ Transcript of evidence, p978

¹¹⁷ Transcript of evidence, pp343-344

¹¹⁸ Exhibit 50 - Information Reports dated December 1992 and 18 May 1993

Mr Penny was questioned by Detective Senior Constable Hogan on this issue in 2014, he reported that he had been mistaken about not having access to a car¹¹⁹ and believed he had corrected the issue with investigating police many years ago.¹²⁰

136. At Inquest, Detective Inspector Allison had no recollection of Mr Penny correcting the error about his access to a car. He believed that investigative materials, notably an Information Report relevant to Mr Penny's interview in 1993, would have reflected this correction, had one been made.¹²¹

137. Counsel for the Acocks family submitted that "*Robert Penny knew the significance of the information he provided to police, he volunteered it in response to their allegations. He recalled the car decades later when he knew he was under investigation.*"¹²² They further submitted that these circumstances do not reconcile with a failure of memory and that "*it is open to find that Robert Penny deliberately lied to police about having access to a car at the time of the murders in order to defray suspicion in 1993.*"¹²³

Mr Penny's comments about a tail comb

138. One of the central themes of the prosecution case against Mr Penny, was that on the night of 3 May 1991 he told his two children that their mother had been killed with a knife and a tail comb and/or scissors.¹²⁴

139. Jacqueline Penny gave evidence that in the early evening of 3 May 1991, her father telephoned her and advised her mother had been killed with a "*knife and a hair comb*".¹²⁵ He later told his son over the phone in Scotland that there had been an incident with scissors and/or a sharp end of a comb.¹²⁶ Mr Muir said he questioned his father about whether it was a plastic tail comb and his father said "*no, the ones with the metal ends.*"¹²⁷

140. Mr Acocks told investigating police that on the morning of 4 May 1991, Mr Penny visited him at his home and told him his wife had been stabbed with a tail comb.¹²⁸ Mr Penny's visit was

¹¹⁹ Exhibit 71 - Coronial brief, p1080

¹²⁰ Exhibit 71 - Coronial brief, p1097

¹²¹ Transcript of evidence, p695

¹²² Submissions on behalf of the Acocks family dated 2 February 2017, p11

¹²³ Submissions on behalf of the Acocks family dated 2 February 2017, p11

¹²⁴ Transcript of evidence, p342

¹²⁵ Exhibit 18 - Statement of Jacqueline Penny in relation to the St Andrews murders dated 6 October 1990, Coronial brief, p107

¹²⁶ Exhibit 22 - Statement of Tony Muir with two pages of amendments dated 17 July 2013, Coronial brief, p120, Transcript of evidence, p342

¹²⁷ Transcript of evidence, p342

¹²⁸ Exhibit 71 - Coronial brief, p206

corroborated by Mr Acocks' sister, Jocelyn Backhouse, however she admitted she did not hear all of their conversation.¹²⁹ I have been presented with evidence that suggested this visit may have occurred at a later time¹³⁰ however, I accept that the conversation about the tail comb occurred shortly after the deaths.

141. At the time Mr Penny made these comments to his children and Mr Acocks, investigating police were aware that the women had been stabbed and had their throats cut, but were unaware of any other specific information about their injuries and the potential weapons involved. When Detective Senior Constable Hogan reinvestigated Mrs Penny and Mrs Acocks' deaths he considered the possibility that Mr Penny's comments meant that he may only have known that information because he was either directly involved in their deaths himself or someone had advised him of this information.
142. The Inquest evidence focussed on gaining an understanding of these comments made by Mr Penny and who, if anyone, may have given him this information.
143. In the evening of 3 May 1991, many people including witnesses, an ambulance officer, police officers, journalists and locals gathered at the Old London building, as word spread about the murders. Many of the first witnesses at the scene were unaware of what had occurred but were aware that two women were deceased and may have been stabbed. The evidence of the police officers was consistent that no weapon was found or identified and they did not speak to anyone including Mr Penny, about any details of the scene because they were largely unknown to them.
144. It is difficult to determine when any person first posited that a tail comb may have been used in the murders. On the morning of 4 May 1991, Detective Superintendent White made observations of the crime scene and noted there was a tail comb on a chair in the shampoo room.¹³¹ Later that day, detectives spoke to the crime scene experts. Detective Inspector Allison suggested that this may have been the first time a tail comb was mentioned.¹³² However, Detective Superintendent Wilson was certain that the only weapon that was considered likely, in the very early stages of the investigation, was a significant edged weapon.¹³³

¹²⁹ Exhibit 71 - Coronial brief, p210

¹³⁰ Transcript of evidence, p275-276

¹³¹ Exhibit 71 - Coronial Brief, p846 and Transcript of evidence, p159

¹³² Transcript of evidence, p651

¹³³ Transcript of evidence, p724

145. The exact nature of the injuries, including the peculiar puncture marks to Mrs Penny, were not known until the autopsies were conducted by Professor Cordner at 10am on 5 May 1991.

146. In his various records of interview, Mr Penny could not remember how he knew about a tail comb being a potential weapon involved in the murders and/or who would have told him about a tail comb. Mr Penny provided the following comments as to how he came to mention the tail comb:

- *“Conjecture - - because I can’t think of any other solution”.*¹³⁴
- *“it sounds like a supposition by someone that I – I picked up at about that time and I don’t know where in the hell it came from, unless it was – was from Alan [Endersby].”*¹³⁵
*“But it’s the only logical thing”*¹³⁶
- *“it would have been the last thing I would have thought you’d want to attack two people and... it just ... doesn’t make sense... But, so I believed it ... and ... possibly still do.”*¹³⁷
- His impression at the time was he *“thought they’d both been killed ... - with a comb.”*¹³⁸
He thought it seemed feasible, so he accepted it.¹³⁹
- Mr Penny also said that he may have drawn his own conclusion.¹⁴⁰

147. Mr Penny believed either Mr Endersby or Former Detective Sergeant Lowther may have told him that a tail comb had been used as a weapon.¹⁴¹ Former Detective Sergeant Lowther testified at this Inquest and denied discussing any details of the scene with Mr Penny and Mr Endersby. There is a video recording of Mr Endersby standing outside the Old London building talking to people at the scene in the afternoon. Mr Endersby attended the scene with Mr Penny in the early evening of 3 May 1991 and spoke to police. Mr Endersby as the local undertaker, was well known in the community of Portland and it is possible he may have made observations and drew his own conclusions.

¹³⁴ Exhibit 71 - Coronial Brief, p1125-1126

¹³⁵ Exhibit 71 - Coronial Brief, p1194

¹³⁶ Exhibit 71 - Coronial Brief, p1195

¹³⁷ Exhibit 71 - Coronial Brief, p1196

¹³⁸ Exhibit 71 - Coronial Brief, p1161

¹³⁹ Exhibit 71 - Coronial Brief, p1165

¹⁴⁰ Exhibit 71 - Coronial Brief, p1208

¹⁴¹ Exhibit 71 - Coronial Brief, p1157 & p1160

148. Mr Penny told Detective Senior Constable Hogan at interview that Mr Endersby spared him a lot of detail and kept him from seeing his wife's body.¹⁴² Mr Penny conceded that Mr Endersby would not have known the murder weapon/s because he had not been allowed into the scene on the night of the murders.¹⁴³ At the time of the Inquest, Mr Endersby was deceased, therefore we will never know whether he did mention a tail comb to Mr Penny in the early evening of 3 May 1991. Mrs Endersby is elderly and was excused from giving evidence. In a conversation with Mr Penny on a listening device, Mrs Endersby stated that her husband would not have known what the murder weapon was¹⁴⁴ and was unable to say what her husband may have said to Mr Penny.
149. Counsel for the Chief Commissioner of Police conceded that there was some evidence of discussion amongst police on the evening of 3 May 1991 that Mrs Penny and Mrs Acocks had been stabbed.¹⁴⁵ He said due to the nature of the scene anyone of the civilian witnesses who caught a glimpse of the scene would have concluded they had been stabbed. He submitted there was no evidence that any police member leaked details of the crime scene.¹⁴⁶ Counsel submitted that there was no evidence to suggest that any information concerning the nature of the injuries or the possible involvement of a tail comb, came from any police source.¹⁴⁷
150. During the Inquest, Mr William Reid and Mrs Lorraine Reid contacted the Coroners Court after reading a newspaper article¹⁴⁸ about the significance of Mr Penny's comments about the tail comb. Mr and Mrs Reid gave evidence that Mr Penny spoke to Mrs Reid's father, Ben Amor, on Sunday 5 May 1991 and said that Mr Endersby had told him he should not ask to view his wife's body because she had been attacked with a tail comb and the wounds were bad.¹⁴⁹ Counsel for the Acocks family submitted that the Reid's evidence was decades old and second-hand hearsay evidence and must be weighted accordingly.¹⁵⁰ Counsel for the Chief Commissioner of Police submitted that the Reid's evidence ought to be accepted.¹⁵¹ As a coroner, I am not bound by the rules of evidence. Despite the age of the evidence and the fact that it was hearsay, I found Mr and Mrs Reid to be credible witnesses. I accept they had not

¹⁴² Exhibit 71 - Coronial Brief, p1132-1133 & p1153

¹⁴³ Exhibit 71 - Coronial Brief, p1191

¹⁴⁴ Exhibit 71 - Coronial Brief, p1600

¹⁴⁵ Transcript of evidence, p1009

¹⁴⁶ Transcript of evidence, p1010

¹⁴⁷ Transcript of evidence, p1012

¹⁴⁸ Exhibit 70 - Article in *The Age* dated 30 January 2017

¹⁴⁹ Exhibit 69 - Letter to the Coroners Court of Victoria from William Reid and Lorraine Reid dated 31 January 2017.

¹⁵⁰ Submissions on behalf of the Acocks family dated 2 February 2017, p7

¹⁵¹ Transcript of evidence, p1011

previously spoken of this conversation because they had not realised its significance until seeing the specific media coverage. They were also unsure of its value, due to it being hearsay.

151. Information about the cause of death and the type of weapon or weapons used were unknown to police on the evening of 3 May 1991. The only real information known to police was that Mrs Penny and Mrs Acocks had been stabbed.
152. It would appear that the only possible person who may have told Mr Penny about the tail comb was Mr Endersby. Counsel for the Acocks family submitted that this should be rejected as the source of the information about the tail comb for two reasons:
- Mr Endersby could not have known about a tail comb prior to the afternoon of 4 May 1991, at the earliest, after Mr Penny had spoken with his children and Mr Acocks; and
 - Mr Endersby had just taken his friend to the scene of his wife's brutal murder and wanted to shield him from details.¹⁵²

Forensic evidence - was a tail comb involved in the murders?

153. The evidence is that Mrs Penny and Mrs Acocks received multiple stab wounds and incised wounds to their neck and Mrs Penny received multiple and distinctive puncture wounds to her back. Mrs Acocks did not receive any of these puncture wounds¹⁵³ but received abrasions to her lower right chest.¹⁵⁴ The forensic and police evidence¹⁵⁵ established that at least one sharp edged knife was used to cause the deaths. The implement that caused the unique puncture wounds to Mrs Penny's back has never been identified. This implement was the focus of considerable discussion at Inquest.
154. As previously noted a plastic hairdressers' tail comb was located on a chair in the shampoo room. The tail comb was never considered to be the murder weapon during the original police investigation. Investigations focussed on the sharp edged knife used to inflict multiple stab wounds and the incised wounds to the neck.
155. Professor Cordner reported that Mrs Penny had four puncture type wounds irregular in shape but basically circular in outline measuring approximately 0.3cm in diameter surrounded by abrasions of up to 1.2 x 0.4cm.¹⁵⁶ He noted that the puncture wounds did not penetrate the skin,

¹⁵² Submissions on behalf of the Acocks family dated 2 February 2017, p7

¹⁵³ Exhibit 2 – Supplementary report by Professor Stephen Cordner dated 25 November 2015, p344E

¹⁵⁴ Exhibit 2 – Supplementary report by Professor Stephen Cordner dated 25 November 2015, p344C

¹⁵⁵ Transcript of evidence, p203, p724

¹⁵⁶ Exhibit 1a – Report of Professor Stephen Cordner dated 1 August 1991, coronial brief, p329

beyond a depth of approximately 1.5cm and they did not enter the body cavity.¹⁵⁷ Further, Professor Cordner commented that the wounds were clearly caused by “*an unusual weapon*”.¹⁵⁸ He drew a distinction between stab wounds, which were caused by a sharp-edged implement and puncture wounds caused by an instrument that penetrated the skin.¹⁵⁹

156. Professor Cordner was asked to address in a supplementary report, the issue of whether either a plastic or a metal handled hairdresser’s tail comb, could have caused any of the puncture wounds to Mrs Penny, identified at autopsy.¹⁶⁰ Professor Cordner specifically noted that he could not say the puncture wounds sustained by Mrs Penny had characteristics which suggested that either of the combs described, or very similar to them, were likely to have caused the wounds. This was because the puncture wound did not penetrate the skin beyond a depth of 1.5cm, they did not enter the body cavity and there was an accompanying abrasion mark on the outer skin which he believed was caused by a hilt.

157. Dr Nathaniel Cary, Forensic Pathologist from the United Kingdom provided an opinion as to what may have caused the puncture type wounds to Mrs Penny. Dr Cary reported:

*No putative weapon has been identified as a cause for the puncture wound to Penny or the abrasions to Acocks. However, in my opinion it is both possible and plausible that injuries in both deceased could have been caused by a rat-tail comb of a kind used in hairdressing.*¹⁶¹

158. Professor Cordner gave extensive evidence at Inquest about the nature and type of puncture wounds found on Mrs Penny’s body and what implement may or may not have caused them. He was shown a series of photographs of different tail combs. Professor Cordner was asked specifically whether he considered they could have been caused by a metal handled tail comb and stated:

*I really don’t think that that type of tail comb could cause that. ... Am I going to say it’s impossible? I don’t use the word ‘impossible’ very much, but it really doesn’t strike me as a plausible possibility as a cause of these two injuries.*¹⁶²

159. When asked about Dr Cary’s assertion that the use of a tail comb was a possible and plausible explanation, Professor Cordner responded that he thought the use of the word ‘plausible’ implied a level of confidence that he was not prepared to claim.¹⁶³

¹⁵⁷ Exhibit 1a – Report of Professor Stephen Cordner dated 1 August 1991, coronial brief, p329

¹⁵⁸ Exhibit 2 – Supplementary report by Professor Stephen Cordner dated 25 November 2015, p344G

¹⁵⁹ Exhibit 2 – Supplementary report by Professor Stephen Cordner dated 25 November 2015, p344B

¹⁶⁰ Exhibit 2 – Supplementary report by Professor Stephen Cordner dated 25 November 2015, p344A

¹⁶¹ Exhibit 65 - Expert Opinion of Dr Nathaniel Cary dated 1 September 2016, p3 Additional material folder

¹⁶² Transcript of evidence, p32

¹⁶³ Transcript of evidence, p72

160. The meaning of ‘possible’ was explored during evidence at Inquest. Dr Cary explained that ‘possible’ was “*a reasonable explanation, but it’s only one of potentially a number of explanations.*”¹⁶⁴ Dr Cary was not prepared to place it as high as the standard of proof required in the coronial jurisdiction, which is on the balance of probabilities.¹⁶⁵ ‘Plausible’, in his opinion meant “*not a fanciful suggestion*”.¹⁶⁶
161. Professor Cordner considered that Dr Cary’s opinion was “*a significant opinion*” however he was “*struggling to agree with it*”.¹⁶⁷ At Inquest, Dr Cary suggested that the only debate between himself and Professor Cordner was how plausible or implausible the use of the tail comb was.¹⁶⁸
162. The difficulty of discovering the type of implement used was summarised in evidence by Professor Cordner when he stated “*this has obviously exercised a lot of peoples’ minds for a long time.*”¹⁶⁹ Further, “*we would have loved to have been able to come up with an answer*”.¹⁷⁰ He stated that if there had been a tail comb with a 1.5cm handle, which had a sort of rectangular type of shoulder or hilt, then that would be a good explanation.¹⁷¹ This evidence was simply not in existence.
163. Dr Cary noted in evidence that “*when you have very limited ... factual evidence, it’s very important not to ... try too hard to get more out of that evidence than is possible.*”¹⁷² Professor Cordner commented that trying to come up with an adequate explanation for the puncture wounds in this case became “*simply an exercise of imagination.*”¹⁷³

United Kingdom – National Injuries Database Search Report

164. Detective Senior Constable Hogan requested Ms Yvette Connolly, the National Injuries Database Manager at the National Crime Agency in the United Kingdom, to search their database for comparable cases involving penetrating injuries to assist with causation and to include or exclude possible weapons and mechanisms of injury.¹⁷⁴ The search identified 18 cases with a range of weapons involved including knives, scissors and a pin-tail comb, but there

¹⁶⁴ Transcript of evidence, p847

¹⁶⁵ Transcript of evidence, p847

¹⁶⁶ Transcript of evidence, p847

¹⁶⁷ Transcript of evidence, p38

¹⁶⁸ Transcript of evidence, p857

¹⁶⁹ Transcript of evidence, p30

¹⁷⁰ Transcript of evidence, p30

¹⁷¹ Transcript of evidence, p46

¹⁷² Transcript of evidence, p869

¹⁷³ Transcript of evidence, p26

¹⁷⁴ Exhibit 71 - Coronial brief, p1977

was nothing identified that matched the shape and size of the puncture wounds identified on Mrs Penny's body.

165. In evidence, Professor Cordner agreed that there was not a great deal of value in the report and commented that it was interesting that "*in a database from a country with a bigger population, there wasn't anything that clearly matched*".¹⁷⁵ Dr Cary commented that the database showed the range of what you may see in multiple, very narrow penetrations by a puncturing weapon, but agreed that none of the cases were comparable to this case, because it was something highly unusual.¹⁷⁶

Textile testing

166. To assist with establishing whether a tail comb may have made the unusual puncture marks found on Mrs Penny, Ms Louise Brown, Forensic Officer at the Victoria Police Forensic Science Centre examined the damage on Mrs Penny and Mrs Acocks' clothing. Ms Brown analysed the nature of the fabrics and whether or not certain types of implements could pass through them. She performed a simulation on pig flesh using stabbing motions with rat tail combs and knitting needles, to ascertain if they could have caused the damage identified to Mrs Penny and Mrs Acocks' clothing.
167. Ms Brown established that the damage to Mrs Penny's clothing extended through several layers of fabric. She found that a rat tail comb could not be excluded as the source of the punctures to the front and back of the clothing, but other similar thin, blunt implements could also have produced such damage.¹⁷⁷ In evidence, she agreed that other similar thin blunt implements such as a knitting needle and screw driver could also not be excluded.¹⁷⁸
168. In relation to Mrs Acocks' clothing, the marks identified were not as distinctive. There were cuts to the front and back of her clothing and one area of possible puncture damage. Nonetheless, Ms Brown noted that no conclusions could be made concerning what implement caused the marks identified.
169. In evidence, Ms Brown said it was clear that there were two distinctive types of damage to the clothing and therefore two possible types of implements which caused the damage.¹⁷⁹

¹⁷⁵ Transcript of evidence, p102

¹⁷⁶ Transcript of evidence, p865

¹⁷⁷ Exhibit 67 – Statement of Louise Brown dated 16 November 2015, coronial brief, p346A

¹⁷⁸ Transcript of evidence, p877

¹⁷⁹ Transcript of evidence, p874

170. Counsel for the Acocks family made the following final submissions in relation to the issue of the likely weapons involved in the murders:

- *Two weapons were clearly used: a knife and an unidentified instrument that was blunter, very narrow and pointed.*
- *One could not be specific about the injuries caused by the second weapon or implement. Anything with a point matching the dimensions of the injuries could have caused them. A tail comb was a plausible explanation amongst other possibilities.*
- *The puncture wounds apparently caused by the second weapon were highly unusual.*
- *They could not be usefully compared to any injuries in the United Kingdom National database.*
- *The clothing damage was consistent with a tail comb or other narrow pointed instruments. One could not prefer any such instrument over another as the cause of the damage.*¹⁸⁰

171. It was the Acocks family submission that analysing the abrasions was not an exercise in science. There were a huge number of variables that could explain the shape of the abrasions in this case that were consistent with a tail comb having been the instrument. Finally, *“a conclusion that a tail comb was any less likely than another narrow pointed instrument to cause any of the injuries on that basis [was] unsound.”*¹⁸¹

172. The puncture injuries sustained by Mrs Penny were unusual. Professor Cordner, in his 30 years of practice as a forensic pathologist, reported he had never seen such injuries before. His evidence was compelling and despite his extensive experience, he notably was unable to conclusively identify the implement that caused the puncture wounds.

173. Both Professor Cordner and Dr Cary agreed that the puncture wounds did not cause the deaths. Both forensic pathologists agreed that there was an element of intelligent theorising when it came to considering whether a tail comb was a potential weapon. In the end, their only point of difference was whether a tail comb was possible or plausible in the circumstances and both

¹⁸⁰ Submissions on behalf of the Acocks Family dated 2 February 2017, p8

¹⁸¹ Submissions on behalf of the Acocks Family dated 2 February 2017, p8

agreed that they could not conclude it was, to the requisite standard required in the coronial jurisdiction.

Mr Penny's comments that Mrs Acocks died quickly

174. Mr Penny visited Mr Acocks in the early hours of 4 May 1991 and told Mr Acocks “*at least Claire died very quickly. She was stabbed with a tail comb.*”¹⁸² Ms Backhouse confirmed she heard this aspect of the conversation.¹⁸³
175. In 1992, Detective Inspector Allison prepared a memorandum as part of the investigation in which he noted that Mrs Acocks had died first. The memo states: “*Although, we are not able to say when/or at what stage the deceased had their throats cut, we are able to say that it is most likely that [Mrs] Acocks was stabbed first and died almost immediately.*”¹⁸⁴ In evidence, Detective Inspector Allison stated this document would have been prepared on the basis of discussions the investigators had had with Professor Cordner at the time¹⁸⁵ but conceded there is no certainty as to who died first.¹⁸⁶
176. The memorandum was in contrast to what Detective Inspector Allison said in evidence that “*the crime scene indicated to the investigators that both deceased did not die quickly at all.*”¹⁸⁷
177. In evidence, Former Sergeant Hay acknowledged that Mr Penny may have made this comment to reassure Mr Acocks.¹⁸⁸
178. I accept that Mr Penny made this comment to Mr Acocks. This comment can be subject to different interpretations. It could be, as counsel for the Acocks family submitted, evidence that Mr Penny knew about what occurred on 3 May 1991, because someone involved told him, or it could be interpreted as a comment made to appease Mr Acocks.

Mr Penny's comments about a hitman

182. Part of the theory as to Mr Penny's involvement in the deaths of Mrs Penny and Mrs Acocks was that if he did not commit the murders himself, he may have arranged for someone to kill Mrs Penny. This suggestion came from Jacqueline Penny and Ms Williams.

¹⁸² Exhibit 71 - Coronial brief, p206

¹⁸³ Exhibit 71 - Coronial brief, p211

¹⁸⁴ Exhibit 51 - Computer Graphics Request by Detective Senior Constable Allison dated 6 July 1992

¹⁸⁵ Transcript of evidence, p654

¹⁸⁶ Transcript of evidence, p654

¹⁸⁷ Transcript of evidence, p682

¹⁸⁸ Transcript of evidence, p192

183. Approximately six months before her mother's death, Jacqueline Penny was a witness in another murder investigation. Consequently, she held concerns for her safety and her family's safety. It was in this context that Jacqueline Penny recalled a conversation with her father after her mother's death. At the time, they were in the car together discussing what Jacqueline had witnessed when her father said words to the following effect "*well, why don't we just get him hit?*" She gave evidence that she responded "*Well, I don't know how to just get people hit' or something along those lines, and he said 'well I do'.*"¹⁸⁹ She said this comment shocked and surprised her and as a result she had strong suspicions about her father's involvement in her mother's death.¹⁹⁰
184. According to Counsel for the Acocks family, the circumstances and timing of that comment are unclear and it was submitted that the evidence is unreliable and inconsistent. The only consistency arises from the general nature of the comment and the immediate context in which it occurred in the conversation.¹⁹¹ Their submissions queried the weight that ought to be placed on that evidence in isolation.¹⁹² However, Counsel for the Acocks family suggested that the comment should be considered in light of a listening device conversation. During this conversation, Jacqueline Penny raised the comment with her father. He did not deny it, rather queried whether he made the comment at all.¹⁹³ Later in the same conversation he denied it and claimed not to remember the conversation. Read in this context, Counsel for the Acocks family submitted it is a highly incriminating conversation. I have listened to this conversation and the follow up telephone intercept conversation between Mr Penny and Jacqueline Penny where he vehemently denied killing his wife or arranging for her to be killed.¹⁹⁴
185. At Inquest, Jacqueline Penny recalled another time the "hitman" issue came up. She attended a séance with friends and asked questions about who was responsible for the murder of her mother.¹⁹⁵ A series of answers came back, including that Mr Penny organised 'a hit man, Graham' to kill Mrs Penny, the hitman was paid \$20,000 and the reason she was killed was because of Kim Penny.¹⁹⁶ Jacqueline Penny gave evidence she told Detective Senior Constable Beanland about this séance in 1995, which is consistent with his notes.

¹⁸⁹ Transcript of evidence, p292

¹⁹⁰ Exhibit 20 – Second statement of Jacqueline Penny dated 16 May 2014, Coronial brief, p116

¹⁹¹ Submissions on behalf of the Acocks family dated 2 February 2017, p15

¹⁹² Submissions on behalf of the Acocks family dated 2 February 2017, p15

¹⁹³ Submissions on behalf of the Acocks family dated 2 February 2017, p15

¹⁹⁴ Exhibit 71 – Coronial brief, p1443

¹⁹⁵ Transcript of evidence, p305

¹⁹⁶ Transcript of evidence. P310

186. Ms Williams gave evidence that when she was a teenager, she had a thought that her grandfather had hired a hitman to kill her grandmother for \$20,000. She had no idea where the thought came from, as she had never heard anyone say that before, and that is when she told her mother.¹⁹⁷ I am unable to give much weight to this evidence, due to its unreliability.

187. Mr Penny made the following comments about the hitman comment in his records of interview and listening device evidence:

- *“certainly don’t know any – as my daughter described it to me - hit men.”*¹⁹⁸
- *“I didn’t know any bloody hit men. Never associated with that side of the law.”*¹⁹⁹
- *“how anyone could think that I would have a motive for killing my wife who I dearly loved. We – we had a wonderful 36, 7 years..... – Christ, ..its abhorrent to me so the answer is No. – There’s no way in the world – my conscience is completely clear.”*²⁰⁰
- *“Hire a hitman? You can take all me bloody bank statements and see who in the hell I paid to kill my wife for Christ’s sake.”*²⁰¹
- *“I did not have your mother killed or kill her myself ...that’s not my style”.*²⁰²

188. Former Detective Senior Sergeant Morrish gave evidence he would not agree that the murders were committed by a hitman.²⁰³ Detective Superintendent Wilson commented:

*Could he arrange someone else to do it? Does he have the connection? Again, um, that-that he could have arranged someone else. And then did someone else go there to make it look like a robbery and did they then overreact and do what they did. You know, these are the things that you’re speculating around, ah, in – every day about, you know – but it didn’t fit for me in that initial phase that Bob Penny could do that particular crime. It’s just my personal view.”*²⁰⁴

189. Whilst this theory was investigated as part of the more recent homicide investigation, no direct evidence was presented to me to indicate that Mr Penny had ever engaged a hitman or paid money for the services of a hitman to kill his wife, let alone Mrs Acocks.

¹⁹⁷ Transcript of evidence, p396

¹⁹⁸ Exhibit 71 – Coronial brief, p1255

¹⁹⁹ Exhibit 71 – Coronial brief, p1431

²⁰⁰ Exhibit 71 – Coronial brief, p1229

²⁰¹ Exhibit 71 – Coronial brief, p1704

²⁰² Exhibit 71 – Coronial brief, p1443

²⁰³ Transcript of evidence, p211

²⁰⁴ Transcript of evidence, p735

Mr Penny's demeanour after the murders

190. Various witnesses expressed an opinion that Mr Penny did not appear to grieve appropriately after the death of his wife, as he did not appear sufficiently distressed,²⁰⁵ his demeanour was inconsistent with a grieving widow,²⁰⁶ and because he commenced a relationship so soon after his wife's death. Counsel for the Acocks family provided numerous examples of his strange behaviour after the murders.²⁰⁷
191. Whilst there are a number of witnesses who describe Mr Penny's demeanour to be inconsistent with a grieving man, there is evidence that Mr Penny was traumatised by his wife's death, visibly upset, and grieved intensely for a significant period of time.²⁰⁸
192. Homicide investigators discretely investigated Mr Penny in the days following Mrs Penny and Mrs Acocks' deaths and assessed his demeanour to evaluate whether or not there were any suspicions of involvement. Nothing was detected. Former Detective Senior Sergeant Morrish stated that Mr Penny "*was a bit odd*"²⁰⁹ and that he displayed "*strange behaviour*" but that was just him.²¹⁰
193. Counsel Assisting submitted that little weight can be attached to the perceptions of others as to Mr Penny's grieving.

Analysis and conclusions of the evidence

194. As discussed previously in this finding, I am prohibited from making a finding of guilt.²¹¹ However, I am able to consider whether a person or persons caused or contributed to a death.²¹²
195. In considering the weight of evidence, a court should bear in mind that if the allegation involves conduct of a criminal nature, weight must be given to the presumption of innocence, and the court should not be satisfied by inexact proofs, indefinite testimony or indirect references.²¹³ Latham CJ said "*No court should act upon mere suspicion, surmise or guesswork in any case*

²⁰⁵ Transcript of evidence, p227

²⁰⁶ Exhibit 71 – Coronial brief, p187 and p469

²⁰⁷ Submissions on behalf of the Acocks family dated 2 February 2017, p16

²⁰⁸ Transcript of evidence, Minister McRae p746, Kim Penny, p775, Alexis Rizio, p782

²⁰⁹ Transcript of evidence, p200

²¹⁰ Transcript of evidence, p200

²¹¹ Section 69 of the Coroners Act.

²¹² *Priest v West & Anor* [2012] VSCA 327

²¹³ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at p362

*... The standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness or importance of the issue.”*²¹⁴

196. The gravity of the allegations against Mr Penny requires “*clear, cogent and exact*”²¹⁵ proof.
197. The criminal case against Mr Penny was based on circumstantial evidence. In determining whether Mr Penny was involved in the murders, I must have regard to the evidence as a whole. There is much authority to support this proposition.²¹⁶ In a circumstantial case the whole evidence must be considered and an inference can be drawn from assessing the combination of facts.²¹⁷ Dawson J said that “*evidence may have a cumulative effect*” and it is important “*to consider all the facts together at the conclusion of a case.*”²¹⁸
198. Justice Tadgell in *Longmuir* provided excellent instruction on how best to consider evidence of this type when he said:

*whether the evidence paints a picture to be derived from an accumulation of detail. The overall effect of the detailed picture can sometimes be best appreciated by standing back and viewing it from a distance, making an informed, considered, qualitative appreciation of the whole. The overall effect of the detail is not necessarily the same as the sum total of the individual details.*²¹⁹

199. Mr Muir submitted that there was not enough evidence to implicate Mr Penny in the murders of Mrs Penny and Mrs Acocks.²²⁰
200. In summary, Counsel for the Acocks family submitted:

*the explanations required to deal with the accumulation of all the incriminating and suspicious evidence pointing towards Robert Penny are extraordinary. Robert Penny was either involved in the murder of his wife and Claire Acocks or he was the victim of the most remarkable confluence of misfortune and his own strange behaviour that it strains credibility.*²²¹

201. Further, it was open to find he was involved in the murders or he ought remain the prime suspect in the murders.²²²
202. Counsel for the Chief Commissioner of Police, submitted that:

²¹⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at p343-344

²¹⁵ *Blashki v Anderson* [1993] 2 VR 89 at p96

²¹⁶ *R v Ng* (2002) 5 VR 257,

²¹⁷ *Chamberlain v The Queen* (No2) (1984) 153 CLR 521

²¹⁸ *Shepard v The Queen* (1990) 170 CLR 573 at 580.

²¹⁹ *Transport Industries Insurance Co Ltd v Longmuir* [1997] 1 VR 125 at 141

²²⁰ Submissions of Mr Muir dated 20 March 2017, p1

²²¹ Submissions on behalf of the Acocks family dated 2 February 2017, p17

²²² Submissions on behalf of the Acocks family dated 2 February 2017, p17

Apart from the tail comb conversation, the concerns about Robert Penny's possible involvement in the murders were largely based upon the timing of his relationship with Kim Penny ... and hence a possible motive to murder his wife. There was no evidence to place him at the crime scene."

203. Further, *"There was no evidence to suggest any connection or communication between Robert Penny and any other person who may have murdered Mrs Penny and Mrs Acocks."*²²³

204. Counsel Assisting submitted that *"the Court cannot find that Robert Penny was involved in the deaths of Margaret Penny and Claire Acocks, either through direct participation in the killings or through having arranged for one or more other persons to carry them out."*²²⁴

205. In relation to the forensic and circumstantial evidence presented to me as to whether or not Mr Penny was involved in the murders of Mrs Penny and Mrs Acocks, I have drawn the following conclusions:

- No forensic evidence in the form of fingerprint or DNA evidence has been presented to me that links Mr Penny to the crime scene at the Old London Coiffure in Portland at the time of Mrs Penny and Mrs Acocks' deaths.
- Despite conducting extensive investigations and looking at the people closest to Mrs Penny and Mrs Acocks, Mr Penny was not considered a suspect in the initial police investigation. The evidence from the original investigating police is that there was no evidence implicating him in the murders.
- There is conflicting evidence as to whether or not Mr and Mrs Penny were experiencing relationship difficulties. Some say they were a loving and happy couple while others say it was a volatile relationship. I am also satisfied that there is no direct evidence that Mr Penny and Kim Penny were in an intimate relationship prior to Mrs Penny's death. Therefore, I am not satisfied on the evidence before me that Mr Penny had a motive to kill his wife or Mrs Acocks.
- On the afternoon of 3 May 1991, Mr Penny had an alibi, as he was looking after his granddaughter. There is also evidence that he spoke to Mrs Endersby on the telephone at home in the afternoon, when she was looking for Mrs Penny. I accept on the evidence that he did have access to Mr Muir's car on 3 May 1991, but there is no evidence it was used.

²²³ Submissions on behalf of the Chief Commissioner of Police dated 2 February 2017, para 44

²²⁴ Counsel Assisting submissions dated 2 February 2017, p14

Therefore, I am satisfied that there is no evidence he attended the Old London Coiffure in the afternoon of the murders.

- I acknowledge that Mr Penny's comments about a tail comb, scissors and a knife to his children on the evening of the murders and early next morning to Mr Peter Acocks, was highly unusual. I am unable to conclude where this information came from whether it was told to him by Mr Endersby or whether he surmised it based on the scene of the murders. As with much of the circumstantial evidence, his tail comb comments are open to different interpretations.
- I am satisfied on the evidence before me that there were at least two weapons involved in the murders of Mrs Penny and Mrs Acocks. A sharp-edged knife was used to inflict the injuries that caused the deaths and another unidentified implement caused puncture wounds to Mrs Penny. Based on the evidence of Professor Cordner and Dr Cary, I am unable to determine whether a hairdresser's tail comb was the second weapon involved in the murders. Consequently, I am unable to determine the type of implement used to inflict the puncture type wounds, other than the implement was small, narrow and pointed.
- I accept that Mr Penny made a comment that Mrs Acocks died quickly, however based on the evidence, I am unable to ascertain whether this is in fact what occurred, and therefore this comment on its own cannot be given much evidentiary weight.
- Based upon all of the evidence, I am satisfied that the evidence surrounding the comments about a hitman were unreliable and cannot be afforded much weight. There has been no evidence presented to me that Mr Penny obtained or organised the services of a hitman.
- I am satisfied that Mr Penny displayed strange behaviour to some people in the days and weeks after his wife's murder. I am equally satisfied that some witnesses thought he grieved appropriately in the days and weeks after Mrs Penny's death. The initial police investigators who had the benefit of observing him during this time did not find anything untoward about his behaviour. I do not think that much evidential weight can be afforded to Mr Penny's demeanour after the murders.

206. The prosecution of Mr Penny gave great hope to the Acocks and Penny families about the prospect of closure or finality to a pain so immeasurably etched into their hearts. The threads of circumstantial evidence when woven together have given the perception that Mr Penny was a plausible suspect in the deaths of Mrs Penny and Mrs Acocks. However when those threads

begin to unravel, and they are analysed alone and as a whole, as has been done in this Inquest, the likelihood of Mr Penny's involvement fades and many of the questions remain painfully unanswered.

207. I find that when all the available evidence is considered as a whole, I am not satisfied on the balance of probabilities that Mr Penny was involved in or arranged for the murders of Mrs Penny and Mrs Acocks.
208. I acknowledge that this was a complex police investigation, made more difficult by the sheer volume of information received and the 26 years that have elapsed.
209. No fingerprint evidence has ever led to the identification of a potential killer. Despite extensive DNA testing of evidence found at the crime scene, only one partial male DNA profile was identified on a small piece of tissue. This partial male DNA profile was tested against numerous potential suspects, including Mr Penny but has not led to the identification of a potential suspect, as yet.
210. I am unable to determine whether the male witnessed by Mrs Mallen and Mr Menzel on the afternoon of 3 May 1991 was involved in the murders.
211. Homicide investigations today have more sophisticated resources and scientific examinations available, when compared to 1991. I acknowledge the huge amount of work that has transpired. Consequently, I make no adverse comments about Victoria Police in relation to their investigation of these murders.

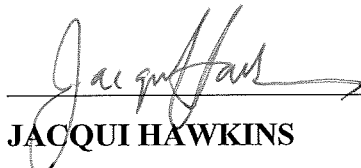
FINDINGS

212. This was a heinous and violent crime committed against two innocent women whose lives were tragically cut short. I acknowledge these crimes have immeasurably impacted the lives of the family and friends of Mrs Penny and Mrs Acocks and cast a dark shadow over the community of Portland.
213. Having investigated the deaths of Margaret Penny and Claire Acocks and having held an Inquest in relation to their deaths, I make the following findings, pursuant to section 67(1) of the Coroners Act 2008:
- a) I find that Margaret Muir Penny, born on 16 May 1932 died on 3 May 1991 from 1a) STAB WOUND TO CHEST AND INCISED WOUND TO NECK, in the circumstances described above.
 - b) I find that Claire Elizabeth Acocks, born on 17 December 1941 died on 3 May 1991 from 1a) STAB WOUND TO CHEST AND ABDOMEN AND INCISED WOUND TO THE NECK, in the circumstances described above.
214. Based upon all of the available evidence, I find that I am unable to identify the person or persons who murdered Mrs Penny and Mrs Acocks.
215. During an extensive 26 year investigation, police have identified a number of potential suspects; some of whom will never be eliminated. Therefore, the murders of Mrs Penny and Mrs Acocks remain unsolved. Consequently, this homicide investigation remains open.
216. I would like to thank the Victoria Police Homicide Squad, past and present for their dedication and commitment to investigating this longstanding and unsolved case.
217. Finally, I would like to convey my sincerest sympathies to the Penny and Acocks families. Unfortunately, there is nothing I can say that will relieve the heartache, pain and grief you have endured as a result of these horrific crimes committed against your precious loved ones.
- Pursuant to section 73(1) of the Coroners Act 2008, I order that this Finding be published on the internet.

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

- (a) The Acocks family
- (b) Mr Tony Muir
- (c) Ms Jacqueline Penny
- (d) Ms Aphra Williams
- (e) Chief Commissioner of Police, Victoria Police
- (f) Detective Sergeant Nick Densley, Homicide Squad, Victoria Police
- (g) Detective Senior Constable Tom Hogan, Victoria Police

Signature:


JACQUI HAWKINS
CORONER

Date: 30 June 2017

