



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 1980 1820

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

Amended pursuant to section 76 of the Coroners Act 2008 on 4 April 2022¹

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|--------------------------------|-----------------------------------------------------------------------------------|
| Findings of: | Caitlin English, Deputy State Coroner |
| Deceased: | Maria Theresa James |
| Delivered on: | 31 March 2022 |
| Delivered at: | Coroners Court of Victoria, 65 Kavanagh Street, Southbank |
| Hearing dates: | 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 27, 28 & 29 September 2021 |
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¹ This document is an amended version of the Inquest Finding into Maria Theresa James' death dated 31 March 2022. An amendment to insert footnote 257 at paragraph 275 has been made pursuant to section 76 of the *Coroners Act 2008* (Vic).

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INTRODUCTION

1. On Tuesday 17 June 1980, Maria Theresa James was murdered in her home in Thornbury.
2. Her assailant has never been identified or charged by Victoria Police.
3. A coronial inquest was held into her death on 25 November 1982 which found she died from the effects of multiple stab wounds committed by a person unknown.
4. On 6 July 2017 Mrs James' son, Mark James, applied to have the coronial finding set aside on the basis of new facts and circumstances, namely new evidence suggesting that Mrs James had been murdered by Father Anthony Bongiorno alone or with Father Thomas O'Keefe, who were the local parish priests at St Mary's Catholic Church Thornbury.
5. On 30 November 2018, Acting State Coroner Iain West ordered the 1982 findings of Coroner Mason be set aside and the investigation into the death of Mrs James be re-opened.
6. This finding is the result of the subsequent re-opened investigation and inquest.

CORONIAL JURISDICTION

7. The *Coroners Act 1958* was the applicable legalisation at the time of Mrs James' death and the original coronial inquest. The *Coroners Act 2008* (**the 2008 Act**) is now in operation and provides for a system whereby reportable deaths are independently investigated by the coroner to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.² The jurisdiction of the Coroners Court of Victoria is inquisitorial.³
8. Mrs James' death was reportable to the coroner because it was unexpected, unnatural, violent and as a result of injury. The criminal process usually takes precedence over the coronial process, however in this case, no person has been charged in relation to her death. The re-opened coronial process, as part of examining the *circumstances in which death occurred*,⁴ has included consideration of who caused Mrs James' death. *Circumstances in which the death occurred* are usually confined to those circumstances which are sufficiently proximate and causally relevant to the death. As no one has been charged by Victoria Police and Victoria Police made a public apology to the James family in 2017 over 'an error in the

² Preamble and section 67 *Coroners Act 2008* (Vic).

³ Section 89(4) *Coroners Act 2008* (Vic).

⁴ Section 67(1)(c) *Coroners Act 2008* (Vic).

handling of a particular exhibit,⁵ consideration of the *circumstances in which the death occurred* has included an examination of the adequacy of the original Victoria Police investigation in 1980-82 and exhibit management.

9. The adequacy of the police original police investigation is also relevant to the coronial role which includes, through its independent investigations of deaths, the promotion of the administration of justice.⁶
10. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through investigation findings and by the making of comments and recommendations.
11. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.⁷ In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.⁸

RE-OPENED CORONIAL INVESTIGATION

12. The re-opened coronial investigation was undertaken on behalf of the coroner by a member of Victoria Police who was appointed as the coroner's investigator, Detective Senior Constable Leigh Prados from the Homicide Squad Cold Case Unit. On 30 March 2021, Detective Prados submitted a new coronial brief. The new coronial brief includes all the statements from the original coronial investigation, and additional witness statements from Mrs James' family, friends, neighbours and witnesses to events at the time and immediately subsequent to Mrs James' death. Statements were also taken from witnesses (those who were still alive), who had made reports to the police at the time of Mrs James' death, but where no statement had been taken at the time. Further, statements were also taken from those witnesses who had come forward in the years and decades following Mrs James' death as a result of publicity generated about the case by the ABC podcast, *Trace*, who had seen or heard something at the time, but for whatever reason did not make a report to police.
13. As part of the re-opened investigation, Professor David Ranson, Deputy Director of the Victorian Institute of Forensic Medicine (**VIFM**) prepared a report, considering both the original pathologist Dr McNamara's report, and the crime scene photographs, and an autopsy

⁵ Assistant Commissioner Steve Fontana Transcript of Press Conference on 13 July 2017.

⁶ Preamble *Coroners Act 2008* (Vic).

⁷ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

⁸ (1938) 60 CLR 336.

report for Vicki Cleary.⁹ Graham Ashworth, former Homicide Squad member and barrister, prepared an expert report reconstructing the circumstances of death from the crime scene and analysing the adequacy of the process and methodology of the initial homicide investigation. Sergeant Tracy Starr also provided an expert report with an opinion about the crime reconstruction.

14. I have referred to the above materials comprising the new coronial brief however the investigation considered the entirety of police investigations between 1980 and 2021 comprising 14 archive boxes of documents, and exhibits. Diary notes from the original Homicide detectives were incomplete, some retired police officers had their notes and others not.
15. At the time of writing this inquest finding, some investigations are still outstanding. I accepted the family's request and on 30 November 2021 made the following direction to Detective Prados:

Pursuant to section 55(2)(e) of the Coroners Act 2008 (and noting the functions of the Institute detailed in section 66(1) including subsections (a), (b) and (d) of the Victorian Institute of Forensic Medicine Act 1985), I direct coronial investigator, Detective Leigh Prados to deliver to Dr Dadna Hartman or her nominee at VIFM (following completion of the morphological analysis):

1. *the five human hairs taken from the pillowslip [Item 48 per K Bradley's email of 23 September 2021] for the purposes of mtDNA testing;*
2. *Y STR testing of the 'single source' profile/sample referred to in Bradley's report of 31 August 2021 [Sample Nos: 60B-1];¹⁰ and*
3. *mtDNA testing of 'the quilt hairs' [Item 60.1 per K Bradley's email of 23 September 2021]*

and to undertake the comparison of any profiles obtained from the analyses with the existing Maria James homicide investigation Persons of Interest DNA profiles/holdings.

16. Therefore, I have directed mitochondrial DNA testing of eleven human hairs from the recently located quilt (Item 7). As these hairs were identified in 2021, and not in 1980, there is

⁹ Ms Cleary died on 26 August 1987 of multiple stab wounds inflicted by Peter Keogh: Record of Investigation into Death of Vicki Maree Cleary made by Coroner Crowe dated 8 July 1988 (COR 1987/3732). Mr Keogh became a person of interest in the investigation of Maria James' death.

¹⁰ This testing was in fact carried out at McLeod not at VIFM.

a significant question regarding their potential evidentiary integrity given the loss in continuity of the exhibit. These results are outstanding and due in July 2022.

17. I have directed Y STR testing of the single source sample 60B-1 in Kate Bradley's report dated 31 August 2021.¹¹ Unfortunately, no profile was obtained.¹²
18. I also directed analysis of the five hairs collected from the pillowslips (Items 10A and 11A) at the crime scene including two hairs with roots. Unfortunately, this analysis failed to yield any mitochondrial DNA profiles.¹³
19. Also outstanding is the outcome of inquiries to identify the cause of the marks on Mrs James' face though a database in the United Kingdom.
20. A witness in Italy who may corroborate Mr Hircoe's evidence¹⁴ is being investigated by Detective Prados.
21. The Chief Commissioner of Police has confirmed '*...the Homicide Squad's Cold Case Unit will continue to vigorously investigate Mrs James' murder with every intention of identifying her killer.*'¹⁵
22. Although some enquiries remain outstanding, my findings are made based on the current state of the evidence. In addition to the outstanding DNA results, there is and continues to be new and additional lines of enquiry. (The strongest of the DNA tests, the five hairs taken from the pillow slip in 1980, has failed to yield any mitochondrial DNA profiles.) These findings bring some finality to the coronial proceedings which has fairness implications for the other Interested Parties whose interests are affected. Whilst the coronial investigations may conclude, the criminal investigation into Mrs James' death continues. The family's submission foreshadows an application for an exhumation if the DNA results are inconclusive. My summary of the current evidence against Father Bongiorno and my direction that his potential involvement continue to be investigated will be of assistance to the State Coroner when determining whether an exhumation is necessary and appropriate, pursuant to section 46 of the Act.

¹¹ Exhibit 62.

¹² Report of Kathryn Bradley dated 10 December 2021.

¹³ Report of Dr Dadna Hartman [misdated] 9 March 2021.

¹⁴ Mr Hircoe reported to police for the first time in 2014 observing a 'bloodied priest' at the St Mary's Presbytery in Thornbury.

¹⁵ Submissions on behalf of the Chief Commissioner of Police dated 25 October 2021

SCOPE OF THE INQUEST

23. The scope of the inquest was formulated as follows:
- (a) the cause and circumstances of the death of Maria James, including the identification of any person who may have caused her death; and
 - (b) the adequacy of the 1980-1982 investigation of Mrs James' death by Victoria Police including:
 - (i) exhibit management and analysis and how this impacted later forensic analyses; and
 - (ii) identification of any lessons learned, and changes to relevant policing practices that have been implemented, by Victoria Police since Mrs James' death.

EVALUATION OF AN HISTORICAL POLICE INVESTIGATION

24. Despite the time and place, and the extreme nature of violence inflicted on Mrs James, no one has ever been charged with her homicide. If the success of a homicide investigation is measured solely by whether a person has been charged with murder, then it has been unsuccessful. Detective Inspector Brian Ritchie, second in command of the Homicide Squad in 1980 stated:

*I have been asked my opinion about why this investigation remained unsolved; it is my opinion that the investigation remained unsolved because no evidence or witness pointed to a strong suspect or motive, despite every effort being made by the investigating team.*¹⁶

25. The coronial investigation has considered a different measure, namely the adequacy of the investigation and whether there were any deficiencies in the police investigation or missed opportunities to identify the assailant. This finding acknowledges the limitations in identifying deficiencies in the investigation as there is no causal connection to find, if something had been done differently, it would necessarily have led to a prosecution. A major challenge of this unsolved homicide was the sheer volume of the information received from the public, pre computerisation. The coronial investigation has revealed some examples of omissions and lack of follow up by Victoria Police. However, it is the mismanagement of and loss of exhibits, namely Mrs James' clothes and the two pillowcases by Victoria Police which

¹⁶ Supplementary Brief (SB) 2154.

represents the most significant lost opportunity to potentially recover DNA belonging to the assailant. Following the conclusion of the 1982 inquest, there is no clear indication of who was responsible for the continued investigation of the case.

26. To avoid hindsight bias, it was important that the evidence at inquest considered the investigation process against the relevant policing standards at the time. Given the long passage of time, many witnesses had died and many witnesses' memory was affected. Enquires with Victoria Police revealed there was no Victoria Police Manual or operating instructions available which were applicable in 1980. Victoria Police provided the coronial investigation with extracts from a Detective Training Manual dated 1979 relevant to the time, which was reproduced in the coronial brief. In 1980 there were no computers to assist with logging and recording information which was all handwritten or typed. Statements and Information Reports were hand typed. Information Reports were kept in an index and although entries were cross referenced, this was time consuming as there was no ability to 'word search' the document or uniformity of nomenclature. The effluxion of time and lack of some records also affected witnesses' memories and impacted on their evidence. A frequent reminder by the former police witnesses in evidence was that lack of memory or a written record, did not mean that some part of the investigation was *not* done. An absence of written record however does leave open two possible conclusions: the enquiry was made but not recorded or the record was lost or, the enquiry was not made so there is no record. An example is the absence of a contemporaneous statement by Nicola Talevski.¹⁷ Detectives acknowledged he was a vital witness for Peco Macevski's alibi and were very surprised when it was put there was no statement from 1980 from Mr Talevski.¹⁸ Mr Macevski's initial lies to police and his sexual relationship with Mrs James, made him a suspect particularly once ex-husband John James had been eliminated on 17 June 1980. Taking into account the dangers of hindsight bias and now knowing the murder most likely occurred between 12.00 and 12.30pm, I would have expected particular attention by police when assessing his alibi.

STRUCTURE OF FINDING

27. The Coroners Court is not bound by the rules of evidence. Section 67 obliges the coroner investigating a death to pursue all reasonable lines of enquiry to identify a person who may be responsible for a death and not being bound by the rules of evidence obliges an expansive or inclusive approach.¹⁹ In my assessment of the evidence I have considered evidence that is

¹⁷ Coronial Brief (CB) 324 Mr Talevski's statement is dated 5 September 2019.

¹⁸ Mr Legg's handwritten Information Report (294) considered some of the timing discrepancies and is at CB 1445.

¹⁹ *Priest v West* [2012] VSCA 327 at 327-8.

relevant and logically connected to the facts I must find. In an inquest where the evidentiary test is the balance of probabilities, evidence must be more than speculation or mere suspicion. In terms of finding a factual narrative regarding events on 17 June 1980, I accept witnesses who gave evidence were honest and sincere however for accuracy of recollection I give weight to the evidence from witnesses who came forward proximate to the time of Mrs James' death and those who were able to directly connect their observations with the time and place of Mrs James' death. For that reason, I accept the truthfulness and accuracy of witnesses such as Mr James, Ms Fabris and Ms Savage who made their statements immediately proximate to Mrs James' death.²⁰ The reluctance of several important witnesses to come forward at the time of Mrs James' death impacted on the police investigation as they did not have the best available evidence at that crucial early stage of the investigation.

28. Facts in this finding have been established to the civil standard of proof by the evidence in the coronial brief, exhibits and evidence heard at inquest. On some topics, such as exhibit management, there was a complexity of detail which I will not repeat. This finding is a linear narrative for Mrs James' family and the public as follows: the circumstances of Mrs James' death and what was seen by witnesses immediately following, police attendance at the scene and the ensuing police investigation, the whereabouts of the exhibits, the current state of the evidence concerning the six persons of interest and whether there were any opportunities lost during the investigation to potentially identify Mrs James' assailant.
29. I will also clarify for the public record, matters reported in the media at the time, not established by the evidence. Also included is some information from the investigation not in the coronial brief, for example, inquiries made by Detective Prados of 'shoe print' databases.
30. The police investigation must be considered in the context of investigative systems in place in 1980, which pre-dated the use of computers, knowledge about DNA and its potential, as well as the instant communication tools of the internet, email and mobile phones.
31. The police investigation is considered in two ways. Firstly, the whereabouts of exhibits from the crime scene with specific reference to Mrs James' clothes, pillows and pillows slips and the quilt from her bed, and the context of Victoria Police record keeping and information managements systems. Secondly, the police investigation of persons of interest, statement taking and the way in which information reports were followed up.

²⁰ *Evidence Act 2008* section 65.

32. Incorporated is consideration of the relevance of specific issues considered at inquest, such as the relevance of the empty Wiltshire knife guard, the reported presence of Father Bongiorno assistant parish priest in 1980, and many years later person of interest, trying to enter the crime scene, and the weight and relevance of the allegations of the sexual abuse of children by parish priest Father O’Keefe and, Father Bongiorno.
33. An overview chronology of the police investigation shows after 1980-82 the investigation was peripatetic and responsive to information received rather than proactive. It was not clear which police officer retained responsibility for progressing the investigation after Detective Senior Sergeant Jack Robert Jacobs (who left the Homicide squad in 1981), but it appeared at different stages to be the detective in charge of Homicide Squad Crew 3, after creation of the Cold Case Unit in 2001, the detective in charge of that unit Detective Senior Sergeant Ron Iddles, and later, for a time during Operation Barmen, Detective Sergeant Nick Densley. Procedures developed within the Homicide Squad more recently have clarified the approach now taken to assess and prioritise outstanding unsolved homicide cases, including completion of an ‘Unsolved Review Record’ (URR), under the leadership of the Officer in Charge of the Cold Case Team. Detective Prados completed the URR of Operation Barmen in 2019.
34. In this finding I have considered the totality of the evidence including evidence heard at inquest, the coronial brief, the exhibits and the contents of submissions from the parties.

CIRCUMSTANCES IN WHICH THE DEATH OCCURRED PURSUANT TO SECTION 67(1)(c) OF THE ACT

35. Mrs James had operated the Book Exchange (bookshop) at 736 High Street, Thornbury from the early 1970s during her marriage to John James. The single storey building consisted of a single room bookshop accessible via the front door on High Street and a three-bedroom residence at the rear with private entry via the backdoor from an enclosed backyard, accessible via a pedestrian laneway off Mansfield Street. The public and residential areas of the building were separated by an internal door.
36. Mrs James was well-liked by other local traders, and attended St Mary’s Catholic Church which, with the presbytery and school, filled the block along High Street, between Mansfield and Rossmoyne Streets, Thornbury. Following her separation from John James in 1974, Mrs James continued to run the bookshop and live with their two sons Mark and Adam in the residence behind it. She and her ex-husband maintained an amicable relationship.

37. On Tuesday, 17 June 1980 at approximately 10.00am, Mrs James was observed walking from her car in Mansfield Street towards the bookshop by two local real estate agents, Mr Sirinotis and Mr Macevski.
38. At approximately 11.50-55am, Mrs James telephoned the Fitzroy Town Hall to speak to her ex-husband, who was the Town Clerk. He was not in his office and Mrs James said to his secretary, Isabella Fabris, '*there's someone in the shop, tell him to ring me.*'²¹
39. A short time later, Ms Fabris gave Mr James the message. He called Mrs James and she immediately asked him to "*hang on please*". Mr James then heard an indistinct discussion occur in the background, followed by "*a bit of a scream*", then further discussion and eventually silence. Mr James whistled into the telephone in an attempt to attract Mrs James' attention. He then heard Mrs James involved in further loud conversation and heard a second scream.
40. Concerned for her safety and appearing distressed, Mr James told Ms Fabris he was going to the bookshop, and then left the office in a hurry. He drove to the bookshop and tried to gain access to the premises; both the front (bookshop) and back (residence) doors were locked. He tried the buzzer at the front and went to the backyard but was unable to find the spare key in the laundry.
41. Returning to High Street, Mr James once again tried the buzzer and then went to the backyard and knocked on the rear door. Taking a ladder from the backyard, he went to the front to try and gain access down the side of the building. When unsuccessful, Mr James returned the ladder to the rear of the premises and bashed on the back door again.
42. Returning to the front of the shop, Mr James tried the bookshop's buzzer again and looked through the window and saw a movement of a curtain inside. When he went to the backyard a fourth time, he could hear the buzzer and so he returned to the front where he saw a man with a moustache outside the bookshop who was later identified as Michael Mel. Mr Mel, and another prospective customer Aubrey Nagel, had been outside the bookshop at around 12.20-12.30pm. Both had found the front door locked but with the 'Open' sign still displayed. Mr Mel had used the buzzer and saw the curtain on the door separating the bookshop from the

²¹ CB 168. I note Sergeant Tracy Starr who prepared a reconstruction of the incident notes puts the time Mr James was speaking to Mrs James as 11.50am. (SB 3405).

residence move and then remain still.²² Neither Mr Mel nor Mr Nagel gained entry to the bookshop and left the area.

43. Mr James then went to the back neighbour in Mansfield Street, Joan Gibbs, and asked to use her phone; Mrs James' number was engaged. He told Mrs Gibbs he would attempt to break down the back door and asked, if he did not come back within minutes, for her to call the police.
44. Mr James could not kick the door open but eventually gained entry to the residence through the rear side kitchen window. He immediately unlocked the back door to facilitate an escape if needed, armed himself with a small, green-handled knife from a cupboard, and then made his way through the house. Mr James located Mrs James deceased on the floor of her bedroom. Mrs James was fully clothed; her hands were tied together at her front and there was blood 'all over the place'.²³
45. Mr James left the residence via the back door and returned to Mrs Gibbs' home and used her telephone to call 000 at 12.32pm.²⁴
46. Following his phone call, he told Mrs Gibbs to stay and watch if anyone comes out the back whilst he went to the front to wait for police. Mr James ran to the front of the bookshop and discovered the front door was now unlocked and a customer inside. Eva Smith had been in there for several minutes prior to Mr James' arrival. She had entered through the front door of the shop, which she found open and did not observe any person leave the shop. Mr James asked Ms Smith to leave and not to touch anything, realising the assailant must have left the premises through the front door onto High Street.²⁵ Mr James and Ms Smith went outside, pulling the 'hook and not the handle'²⁶ lest they obscure fingerprints. Mr James could hear an ambulance coming, and a car pulled up and two police officers got out.
47. Eva Smith arrived by the High Street tram around midday and went to the bookshop but the door was locked. Michael Mel arrived at the bookshop at 12.20pm²⁷ Aubrey Nagel arrived at the bookshop between 12.25 and 12.45pm.²⁸

²² CB 174.

²³ CB 172.

²⁴ CB 1137.

²⁵ CB 1151.

²⁶ CB 172.

²⁷ CB 174.

²⁸ CB 176.

Conclusions

48. The above chronology of the circumstances of Mrs James' death is largely based on Mr James' evidence. He was originally a person of interest but was eliminated by police by the evening of 17 June 1980 after they spoke to Ms Fabris and other co-workers who confirmed his account. Both Mr James and Ms Fabris are now deceased, and I accept the evidence of Mr James' statement and his reportage under hypnosis, and the statement by Ms Fabris as the truth. Save for the 000-call recording, there are no telephone records available from the time.
49. It is estimated Mrs James was murdered sometime after 11.55am when it is believed Mr James returned Mrs James' phone call. She is last known to be alive sometime around midday. Eva Smith arrived at the book shop at about midday and found the front door locked. (I note as well as being the first at the scene, to find the bookshop locked, Ms Smith is also the last at the scene, being found *in* the bookshop when Mr James returned having made the 000 call.) Mr James is believed to have arrived at the scene sometime between 12.10 and 12.15pm and parked his car in Mansfield Street. It appears he found his ex-wife's body inside at approximately 12.30pm. His 000 call was made at 12.32pm from 1 Mansfield Street, the first house next to the back lane. In his 000 call he twice says of Mrs James '*I got a distress call from her, she was screaming on the telephone.*'²⁹

Mr James' phone call to Mrs James

50. Mrs James' murder was most probably overheard in part by her ex-husband who was on a telephone call to her when the attack occurred, and he heard a scream and then a second scream from Mrs James. Photographs from the scene show the phone receiver off the hook³⁰ and when Mr James called Mrs James' on the phone from Mrs Gibbs' house, the number was engaged. Ms Fabris also described trying to telephone her a number of times from work and getting an engaged signal on more than one occasion and then possibly the phone rang again after that with no answer.³¹

Mr James' drive from Fitzroy to Thornbury

51. I am satisfied following the phone call to Mrs James, at approximately 12.00pm, Mr James left Fitzroy in a hurry and drove to 736 High Street Thornbury. The estimated distance

²⁹ CB 1137 & 1138.

³⁰ CB 722-4.

³¹ CB 169.

between these locations is 6.3km,³² which today, would take about 16 minutes to travel by car. Mr James would have arrived at 736 High Street at about 12.16pm.

Mr James' attempts to enter the premises

52. He parked his car in Mansfield Street and I am satisfied that the front and back doors of the premises were locked when he first tried to gain entry. It is evident that several minutes elapsed during Mr James' multiple attempts to enter before successfully doing so via the unlocked kitchen window.

The assailant's movements

53. It is most likely the assailant entered the shop through the front door and then locked it. I am satisfied the assailant was in the premises with the front door locked when Mr James arrived at the bookshop, however the back door may have been previously locked by Mrs James, as she was known to do. When Mr James returned to the front for the third time, the assailant was probably watching from behind the curtain which divided the shop from the residential premises, and this explains the movement of the curtain seen by both Mr James and Mr Mel. I am satisfied Mrs James was probably dead at this point and the assailant was watching the front for an opportunity to flee the scene.

54. Sometime between Mr James' last check of the front door, when he saw Mr Mel, and entering through the kitchen window, the assailant has probably left the scene via the front door. On entering, Mr James described the building as 'dark' and, under hypnosis, 'something feels wrong'.³³ As Mr James only went in as far as the bedroom, it is also possible that the assailant was still in the premises when he entered, hiding silently in the front, and leaving via the front door as Mr James exited by the back door.

55. After locating Mrs James deceased, I am satisfied that Mr James exited the house by the back door; his 000 call was made at 12.32pm.

Identity of the assailant

56. Some factors point to the likelihood the assailant knew Mrs James, namely knowing she was alone in the premises, and lived out the back, as well as some familiarity with the lay out of her property. The description given by Mr James of the telephone call suggested Mrs James knew who was in her shop as she was interacting with someone and asked Mr James to 'hang

³² According to a Google search.

³³ CB 1150.

on.’ In her reconstruction, Sergeant Starr concluded ‘*There is also no indication that the offender was a stranger or there was a threat of a danger if [Mr] James’s account is correct as Maria did not alarm him to a stranger being in the residence.*’³⁴ Detective Prados was also of the opinion:

*On all the available information, it is considered likely that [Mrs James] was killed by a person known to her (based on evidence from John James, the nature of the attack upon her, and the absence of any other crime evidently attending her death) and that this person may not have attended ... intending to kill her ...*³⁵

57. I accept there are factors suggesting Mrs James may have known her assailant. If this is the case it considerably narrows the possibilities for the identification of her assailant.

IMMEDIATE EYEWITNESSES

58. Lorna Agosta was walking down High Street when she saw a man rush out of the bookshop, cross the road and almost get hit by a car before running down Hutton Street. She described him running down the northern side of Hutton Street then onto the footpath after he passed a little old woman carrying shopping. The man she described was European and tallish, with slicked back straight black hair, olive skin, deep set eyes and no facial hair, wearing a white T-shirt with something on the front.³⁶ As Mrs Agosta’s children had attended St Mary’s primary school, she knew Father Bongiorno by sight. Mrs Agosta stated it was *not* Father Bongiorno whom she saw running across the road.
59. At the same time Jeanette Hodson was driving her car up High Street towards Hutton Street when at about 12.25pm a man on foot suddenly appeared in front of her car running across the road from her right to left, forcing her to brake. He crossed High Street in line with the door of the shop on the corner of High and Hutton Streets.³⁷ The only description Ms Hodson provided at the time was that the man was ‘expressionless’ and there was nothing else ‘out of the ordinary’ about him.³⁸ In her evidence at inquest, she stated he was wearing a fawn suit and that he put his hand out towards her car and was wearing a gold ring.³⁹
60. Almost certainly the same man was seen by Patrick Cashman, who lived in a flat at 14 Hutton Street which is further west from High Street. Through his window he saw a man running

³⁴ CB 3411.

³⁵ CB 637.

³⁶ CB 196 Lorna Agosta statement 17 July 2017.

³⁷ CB 183 Jeanette Hodson statement 20 June 1980.

³⁸ CB 183 Jeanette Hodson statement 20 June 1980.

³⁹ Transcript (T) 376.

west down the street on the southern side at approximately 12.25pm who nearly knocked over an old woman. He was described as overweight, favouring his right leg, in his late '30s, *no taller than 5'7"* wearing bright blue trousers and a white or cream patterned short sleeve shirt. He described his build as similar to that of Father Bongiorno.⁴⁰ He saw the man cross the railway line through the southern pedestrian gate. This was in an Information Report made on 19 September 1980.⁴¹ No statement was taken from Mr Cashman at the time.

61. At approximately 12.30 or 12.45pm Peter Wilson was driving north on St Georges Road near its intersection with Hutton Street when he saw a man running along St Georges Road. When his wife pointed the man out as having blood on him, Mr Wilson looked and said he noted the man had blood across the front of his upper body clothing and described him as taller than 5'7" and thick set. That evening, Mr Cashman saw Mrs James' murder reported on the news and he spoke to his wife and called Crime Stoppers and reported to police what he had seen.⁴² In July 2017, he saw on Facebook, 'Australia's real cold cases.' He stated he saw a post on Facebook with a photo of two men and stated to his wife, *'that's the guy we seen that day.'*⁴³ Mr Wilson stated that the two photos he saw on Facebook were of Father Bongiorno and Father O'Keefe. It was Father Bongiorno he recognised as the man he saw running across St Georges Road covered in blood, although Mr Wilson did not mention this in his statement to police.

Conclusions

62. I accept Ms Hodson as a witness of truth. Given her statement was made contemporaneously it is unclear why she was not asked for more descriptive detail of the man she saw. She subsequently identified three different men as the man she saw running across High Street in front of her car. Her evidence at inquest raised questions about the integrity of the identification parade she attended, for example, she stated she was shown a photo book and an individual photo of a man prior to the parade.⁴⁴ Lorna Agosta made her statement in 2017 and was unable to verify the exact date she saw the man but recalled Mrs James' murder was reported the same night on television. Mr Cashman (since deceased) made his statement in 2002 and it is unclear why his sighting was only recorded as an Information Report in

⁴⁰ CB 200 Patrick Cashman statement 11 February 2002.

⁴¹ CB 1571 Information Report by Mr Legg.

⁴² CB 202 Mr Wilson never heard back from police and made a statement to the investigation 7 July 2017.

⁴³ T432.

⁴⁴ T385.

September 1980. Mr Wilson immediately reported to Crime Stoppers⁴⁵ what he had seen on St Georges Road but for some reason this report was not followed up or communicated to the Homicide Squad. He made his statement to police on 7 July 2017. Caution must be exercised when accepting his identification evidence which is based on a photograph seen on a Facebook page some 37 years after the event.

63. The credit of these eyewitnesses was not impugned and despite the time passed between the incident and their statements (in one case 22 years and two cases 37 years after Mrs James' death) there is a consistency in description that convinces me they have all seen the same man at different points running from the scene on 17 June 1980. They were able to reference the date by the news that night on television. In Mr Cashman's case he recalled Mrs James' murder as it was close to where he lived and occurred the day after Queen's birthday weekend, however a Google search reveals the Queen's birthday weekend in 1980 was on 9 June. If all these reports had been received by police contemporaneously to Ms Hodson's statement, it may have assisted to focus the police investigation on the likelihood it was the assailant fleeing the scene and away from reports of men seen in the vicinity of the bookshop at other times, such as '5am man' and 'Survey man'.
64. This man may have been Mrs James' assailant, or he may have coincidentally and innocently been running across High Street and down Hutton Street. This man has never come forward and identified himself to police. Ms Agosta positively states the man she saw was *not* Father Bongiorno, Mr Cashman describes the man as having a build similar to Father Bongiorno and Mr Wilson identified the man he saw on St Georges Road as Father Bongiorno from a photo on Facebook.
65. The first photo image released by police to the public was on 21 June 1980.⁴⁶ This image was based on information from Mr Lambrick who saw someone standing outside the shop at 9am on 17 June 1980.⁴⁷ On 23 June 1980 the second image released to the public was 'Survey man'.⁴⁸ The third image released was '5am man',⁴⁹ an unidentified man seen in the proximity of the bookshop at 5am. Detectives explained that without close suspects the horizon

⁴⁵ It transpires that Crimes stoppers started in 1987 but I have no reason to disbelieve Mr Wilson made the report and spoke to someone at Victoria Police.

⁴⁶ CB 1212.

⁴⁷ CB 206.

⁴⁸ CB 1207.

⁴⁹ CB 1210.

broadens, and police cast the net widely. Most responses from the public nominated people who resembled the images, rather than people who were connected with the case.⁵⁰

IDENTITY OF THE DECEASED PURSUANT TO SECTION 67(1)(a) OF THE ACT

66. On 18 June 1980, Antonio Aleandro visually identified his sister, Maria James, born 23 August 1941.
67. Identity is not in dispute and requires no further investigation.

MEDICAL CAUSE OF DEATH PURSUANT TO SECTION 67(1)(b) OF THE ACT

68. On 18 June 1980, Dr James Henry McNamara, a Senior Government Pathologist, conducted an autopsy and provided a written report. In that report, Dr McNamara concluded that a reasonable cause of death was '*Haemorrhage from stab wounds*'.
69. Toxicological analysis identified the presence of alcohol (0.008 g/100mL).
70. I accept Dr McNamara's opinion as to cause of death.
71. Professor David Ranson prepared an additional report for the coronial investigation whereby he reviewed Dr McNamara's report and the crime scene photos, re-transcribed it within his report and added some comments.⁵¹ He also prepared three diagrams of Mrs James' injuries to her front, her side and her back.⁵²

Dr McNamara's report – wounds, bruising & bleeding

72. Professor Ranson noted Dr McNamara was not trained as a forensic pathologist and as the Victorian Institute of Forensic Medicine was not established until 1987, forensic pathology standards varied at the time. Since 1980 there have been many advances in the field of pathology.⁵³
73. Professor Ranson noted Dr McNamara's report did not distinguish between '*wounds that are lacerations and wounds that are incised or are of stab type.*' Lacerations are caused when an

⁵⁰ T 766.

⁵¹ Report by Professor David Ranson, April 2021, Exhibit 1.

⁵² Three diagrams depicting injuries prepared by Professor Ranson, Exhibit 2.

⁵³ Dr McNamara's *Lectures in Forensic Medicine* are included in the extracts of the Detective Training Manual 1979 provided by Victoria Police.

object with a sharp edge is drawn across the skin rather than pushed into the skin. Professor Ranson noted the majority of wounds were stab wounds.⁵⁴

74. The laceration towards the top of the scalp was not recorded as showing bruising, which may have not been recorded by Dr McNamara or may not have been present; as Professor Ranson noted, '*if the blunt head injury lacerations were inflicted after death (when there would have been no or minimal blood pressure) the scalp bruising might have been minimal.*'⁵⁵ The absence of bruising means the injuries could have occurred around the time of death.
75. Professor Ranson noted that scalp injuries bleed a lot and stab wounds can also bleed, but the bleeding may occur internally. There was no description of bleeding or quantity of blood lost in Dr McNamara's report. There are at least six stab wounds which penetrated the body, and although there is blood in the tissues, there is no quantum recorded to determine whether there was active haemorrhage, which could have potentially indicated whether the wounds were inflicted peri- or post-mortem.
76. The head injury could have been the cause of death, although Dr McNamara made no mention of skull fracturing or haemorrhage around the base of the brain which Professor Ranson would have expected if a head injury was the primary cause of death.⁵⁶

Pattern of injuries

77. There were 68 wounds to the torso, neck and face and three injuries to the head. There were clusters of injuries to the upper part of the chest, the front of the abdomen, a cluster of injuries to the right side of the body in the flank area and a wide distribution but some clustering of injuries to the back.⁵⁷ Professor Ranson described the number and type of clustering in this case as 'unusual.'⁵⁸
78. The striking feature of significance was the pattern of distribution of stabbing incised injuries. These were in a cluster pattern to the trunk and in the upper part of both breasts, the centre of the upper back and the right side of the chest and adjacent flank. Professor Ranson agreed the cluster of stab wounds above each breast was significant and suggested the assailant was male.⁵⁹

⁵⁴ Exhibit 1, page 6.

⁵⁵ Exhibit 1, page 6.

⁵⁶ T 45.

⁵⁷ T 40.

⁵⁸ T 95.

⁵⁹ T 58.

79. Noting that the injuries to the side were mainly horizontal, Professor Ranson stated:

*It has the look about someone's got an exposed area available and they repeatedly stabbed in that area with very limited ability of the person to react or move away from them to destroy that order of the cluster, if you like.*⁶⁰

80. Therefore, the clustering wounds on different parts of Mrs James' body suggest an inability by her to move away or avoid the blows. If she had been able to move, '*the injuries wouldn't ... have that regularity of cluster formation.*'⁶¹

*So my impression would be that this individual's been immobile, received cluster injuries and they've occurred to different parts of the body at different times implying the body has got to have been moved between them.*⁶² '*It's more likely to be someone who was immobile and lying down ...*'⁶³

81. In Professor Ranson's view, the type of immobilisation suggests more than just the hands being tied, and that Mrs James' may have been deceased or unconscious or with a very low blood pressure, faint or other mechanism such as asphyxia, '*... that could also be an explanation for why she might not be able to adequately move and defend herself.*'⁶⁴

82. There were no defensive injuries to the hands or forearms which are areas expected to be injured if a person was being attacked with a sharp object.⁶⁵ Even though her wrists were tied, Professor Ranson noted that this would not have stopped her using her arms and hands to protect parts of her body. The inference in this case is the likelihood that Mrs James '*was either dead when the majority of these injuries were inflicted or was unconscious when they were inflicted or otherwise incapacitated is more probable.*'⁶⁶

Types of injuries and weapon

83. Professor Ranson noted there were two major categories of injury to Mrs James.

84. One type of injury was blunt force injuries to the head. The three primary head injuries could have been caused by the same implement. They could be the result of the head striking an object or an object striking the head in three separate applications of force. The big flap

⁶⁰ T 53.

⁶¹ T 54.

⁶² T 54.

⁶³ T 85.

⁶⁴ T 54.

⁶⁵ T 63.

⁶⁶ T 64.

laceration above the left eye was likely the result of accelerated force on the edge of something hard.

85. In Professor Ranson's view, if this scalp wound was inflicted before death there would have been bleeding on the face.⁶⁷
86. Professor Ranson noted the photos showed very little blood on the carpet around the head⁶⁸ but there were other patches of blood where the body was not lying, as well as patterns of injuries, suggesting the body had been moved around at the scene.⁶⁹
87. The head wound to the scalp could have been caused by a shoe with a hard edge and the patterning on the face could be from the sole of a shoe.
88. The second type of injury was sharp force stab type injuries very likely caused by a knife.⁷⁰
89. The wounds vary in size up to one inch suggesting a knife with a one to one and a half-inch tapered blade was used. The injuries could have been caused by a kitchen Wiltshire stay sharp knife or a knife used in the kitchen, such as a knife for peeling vegetables. Most of these stab wounds were not applied with sufficient force to cause internal injuries.
90. Professor Ranson explained the different sizes of wounds in different directions is caused by the elasticity of the skin and the way the skin sits. If there is lateral force when a knife is pushed in this may make the wound appear larger; alternatively, different lengths of wounds may be caused the further a knife is pushed into the body⁷¹ explaining how a single weapon could have been used.

Internal injuries

91. Mrs James' internal injuries included five wounds to the liver, injuries to the lungs, and some haemorrhage around the kidneys although no penetration site was found.⁷² The left mandible laceration of one inch was an incised wound which damaged the jugular vein.⁷³
92. Professor Ranson stated it is extremely difficult to say which injury cause Mrs James' death. The formulated cause of death, haemorrhage from stab wounds, was reasonable given,

⁶⁷ T 80.

⁶⁸ CB 644.

⁶⁹ T 81.

⁷⁰ T 50.

⁷¹ T 49.

⁷² T 61.

⁷³ T 62.

‘injuries to the liver, injuries to the lung, injuries to a major vessel in the neck, are all capable of causing blood loss and blood loss can lead to death.’⁷⁴

93. There are six penetrating wounds that are deeper and caused injury to the lungs and liver, Force is difficult to assess because a knife has to penetrate clothing, skin and some of the injuries went between the ribs however Dr McNamara did not examine the ribs to ascertain if the surfaces had cuts or nicks, which was a deficiency in the autopsy report.
94. Although Professor Ranson could not comment on the order in which the injuries occurred, he agreed the blow to the head might have reduced Mrs James’ capacity to resist so that might have been the first. However this is confounded by the absence of bruising which makes it hard to say when the injury occurred and difficult to interpret the autopsy report.

Marks on face

95. Professor Ranson described the marks to Mrs James’ face as an *‘imprint-type mark.’⁷⁵* They could have been caused by a sole of a shoe, or a grill, or if the body has rested on a surface with those raised characteristics. He also noted the patterns themselves are different: loops on the right side of the face, linear marks on the left-hand side.
96. In an attempt to match these marks with shoe imprints, Detective Prados made inquiries with the Major Crime Scene Unit. The now obsolete database, ‘Shoeview’ which operated from 1994, and evolved from a Victorian system ‘shoe sole pattern file’ in 1982 was unhelpful. Likewise, the current system ‘Soulmate’ which came into operation in 2001, does not hold shoe prints from 1980.⁷⁶
97. Inquiries are also being made with the UK database in an effort to identify the object that may have caused the marks.

Evidence of smothering

98. The Form 83⁷⁷ the initial police report of the case to the coroner specifically mentions the possibility a pillow may have been used to smother Mrs James. Professor Ranson was surprised Dr McNamara’s autopsy report did not comment on whether or not this suggestion was supported by anatomical findings. This would include checking for petechial haemorrhages or nasal or lip pallor which is seen when an object is forced against the face.

⁷⁴ T 62.

⁷⁵ T 64.

⁷⁶ Email from Detective Prados dated 21 February 2022.

⁷⁷ CB 1179.

None of these indicators are described in the report, and there is no evidence from the photos. These are subtle changes, and a pathologist today would indicate in the report what was identified. Professor Ranson was of the view this was a deficiency in the autopsy report as when this information is pointed out to the pathologist (as in this case via the Form 83), it is the role of the pathologist to assist the investigator to work out what has happened. Professor Ranson was unable to identify any of these features given the quality of the photographs. He noted the smothering could have rendered Mrs James unconscious during the attack.⁷⁸

99. Given the Form 83 was dated 8 July 1980 which is 21 days after Mrs James' death, it may well be Dr McNamara did not read it as the autopsy was performed on 18 June 1980. Detective Sergeant Jacobs may have communicated to Dr McNamara his suspicion that a pillow was used to smother Mrs James.

Toxicology

100. Although Professor Ranson doubted volatile or pacifying agents would have been tested for in 1980, he noted they are difficult to test for because volatile agents dissipate from the body and samples. This means there is little chance of testing any remaining samples for these substances.

Conclusions

101. The lack of recorded bruising and active bleeding, the lack of defensive wounds and the clustering pattern of stab wounds on front, flank and back all suggest Mrs James was incapacitated, either by head trauma or smothering or chemical means during most of the attack. It was more probable Mrs James was dead or unconscious when the majority of injuries were inflicted.

POLICE INVESTIGATION - ARRIVAL AT THE CRIME SCENE

Northcote CIB

102. On 17 June 1980 at 12.37pm, Detective Sergeant (**DS**)⁷⁹ Cliff Hall from Northcote Crime Investigation Branch took the call from D24 to attend 736 High Street Thornbury regarding a possible murder. He drove in an unmarked police car to the scene with Detective Senior Constable (**DSC**) Peter Laidler and arrived at 12.40pm.

⁷⁸ T 68.

⁷⁹ Although the police officers involved in the investigation of Mrs James' death in 1980 were at the time of the inquest in 2021, retired, for the sake of narrative clarity this finding refers to them by rank.

103. On their arrival, they met Mr James at the front of the bookshop. They walked through each room in the house, then secured the crime scene. DS Hall could not recall if he checked the back door, however agreed securing a scene included securing all entry points. DS Hall could not recall whether the back gate which opened onto a lane was open or locked. He stated he did not touch anything and did not use the toilet.
104. The Ambulance arrived at 12.45pm and cleared the scene at 1.00pm.⁸⁰
105. Whilst awaiting the arrival of the Homicide Squad, DS Hall took control of the scene, from a position at the front door of the bookshop. Uniformed police arrived in a marked police car to assist with scene management. DSC Laidler went next door and took a statement from Mr James which was signed and dated 17 June 1980 at 2.20pm.⁸¹ DSC Laidler confirmed in evidence after surveying the crime scene, his role was to isolate Mr James, as he was a person of interest.⁸²
106. Three aspects of DS Hall's involvement with the initial management of the crime scene were relevant.

Ambulance personnel

107. An ambulance arrived around 12.45pm and DS Hall took paramedics into the crime scene. Whilst the priority is the preservation of life, he knew preservation of the crime scene was crucial. He could not recall whether they touched anything or moved Mrs James' body.⁸³ When he viewed a photo of Mrs James' body '*in situ*'⁸⁴ he was unable to say whether that was the position Mrs James was in when he first saw her. Paramedics established Mrs James was deceased.

Father Bongiorno's attempted entry to the crime scene

108. DS Hall stated:

I recall Father Bongiorno trying to force his way into the crime scene at 736 High St that day. He was adamant about getting in and administering the last rites. He

⁸⁰ CB 1178.

⁸¹ CB 171-3.

⁸² T 1148-9.

⁸³ T 114.

⁸⁴ CB 644.

*actually tried to physically push past me, and I had to physically push him away to keep hm out.*⁸⁵

109. DS Hall recalled Father Bongiorno arrived at the scene prior to the arrival of the Homicide Squad.⁸⁶ DS Hall stated he may have told Father Bongiorno that Mrs James' was deceased. He described a '*confrontation*' with Father Bongiorno, that he kept pushing, DS Hall had to apply reasonable force to stop him entering the scene and it was *an 'interaction [that was] pretty heated'*,⁸⁷ DS Hall described Father Bongiorno as aggressive and domineering and though he was not arrested, he was removed from the scene in a divisional van because he was interfering with the investigation.
110. Father Bongiorno was wearing his priest robes, and DS Hall did not notice any blood on him.
111. No one else recollects seeing Father Bongiorno at the scene. I note no statements were taken from the uniformed police who attended the scene and DSC Laidler was next door to the bookshop taking a statement from Mr James.
112. In evidence DSC Laidler had no recollection of seeing Father Bongiorno at the scene on 17 June 1980 or of seeing or speaking to him on that day.⁸⁸ However, in March 2015 DS Catherine Booth spoke to DSC Laidler *'and he confirmed the alibi and times of speaking to Bongiorno on the day of the murder. This information corroborated some of what Father Sean O'Connell had told me.'*⁸⁹
113. Homicide Detectives Senior Constable Roland Legg⁹⁰ and Sergeant Robert 'Jack' Jacobs⁹¹ were both unaware of Father Bongiorno's appearance at the crime scene or the manner of his removal.
114. This incident is of significance in so far as Father Sean O'Connell provided an alibi for Father Bongiorno in 2014 and stated on 17 June 1980 he had lunch with Father Bongiorno.⁹²

⁸⁵ CB 601.

⁸⁶ T 145.

⁸⁷ CB 602.

⁸⁸ T 1154.

⁸⁹ Statement of Detective Sergeant Jennifer Booth dated 6 September 2021.

⁹⁰ Detective Legg was a Senior Constable at the time of Mrs James' death though when he returned to the Homicide Squad in 1994, he did so at the rank of Detective Senior Sergeant.

⁹¹ Detective Jacobs was a Sergeant at the time of Mrs James' death, rising to the rank of Senior Sergeant in 1981 which he held until his retirement nearly 20 years later.

⁹² CB 556.

115. DS Hall's evidence of his interaction with Father Bongiorno at the crime scene calls into question Father O'Connell's 2014 alibi evidence. I will return to this when I consider Father Bongiorno as a person of interest.

Wiltshire knife block

116. DS Hall recalled, '*there was a 'Wiltshire' knife block in the kitchen that was missing a knife and it was believed this missing knife could have been the murder weapon.*'⁹³ He made no written note of this.⁹⁴

117. DS Hall could not recall if this was just his view or a shared view and could not recall if he told Homicide Squad members about it or they saw it themselves. He thought he would have told the crime scene examiners about the knife block, but he did not recall.

118. The crime scene examiner Senior Constable (SC) Terrence Collins was not aware of the Wiltshire knife block but assumed it would have been examined by the fingerprint officer.

119. There is no record of the Wiltshire knife block being examined by fingerprint experts.

120. DSC Legg was of the view that the empty Wiltshire knife block was a critical item to have tested for fingerprints.⁹⁵ It was of potential forensic value as even if there was no blood or fingerprints detected, if a knife was subsequently located, this could assist establish if the knife was seized from the kitchen drawer opportunistically, or the assailant had brought a knife to the scene.⁹⁶

121. Police clearly considered the empty Wiltshire knife block relevant to the investigation, although it is not recorded or referenced or taken from the scene as an exhibit. In a memo dated 18 August 1980 seeking permission to send police officers and Ms Hodson to Brisbane to interview and potentially identify Lyle Perkins who had been arrested in Queensland in possession of a knife and instruments of bondage, Detective Chief Inspector (DCI) Paul Delianis noted, '*...the knife is the same brand and size as one missing from the deceased's shop.*'⁹⁷ Further, in the Victoria Police Criminal Offence and Modus Operandi Report dated 8

⁹³ CB 604.

⁹⁴ T 114.

⁹⁵ T 737

⁹⁶ T 739

⁹⁷ CB 1624

July 1980, Detective Sergeant Jacobs refers to Mrs James having been stabbed ‘with a knife similar to a small ‘stay-sharp’ knife.’⁹⁸

122. There is no evidence the empty Wiltshire knife block, referenced by DCI Delianis as potentially having contained the missing murder weapon, was checked for fingerprints. There is no evidence it was forensically examined, and it did not appear to become an exhibit. A scene photograph of an open kitchen drawer depicts the block beneath other utensils suggesting it may have remained in the kitchen drawer.⁹⁹ This seems unusual given at the time it was regarded as a potential source of the murder weapon.

Homicide Squad

123. The Homicide Squad on-call crew 3 arrived at 1.30pm and took control of the scene and the investigation.
124. Detective Senior Sergeant (**DSS**) Brian McCarthy (now deceased) was the lead investigator, and DS Jacobs was the ‘primary’, which is police speak for the person who becomes the informant when an arrest is made and prepares the coronial brief. The role of the ‘primary’ is to compile and index the Information Reports. Together with DSC Legg and Detective Senior Constable Ronald Iddles,¹⁰⁰ who joined the crew a couple of weeks after Mrs James’ death, they were the four police members who ran the investigation. The crew was also assisted from time to time by other homicide detectives, and second in charge of the Homicide Squad, Detective Inspector Brian Richie also had a role in the investigation. Retired detectives Legg, Jacobs and Iddles gave evidence at the inquest.
125. As it was important to keep people entering the scene of death to a minimum, DSC Legg, who had a good recollection and was a very responsive witness, stated he had a quick look at the scene and then left to make further inquiries. To ensure the preservation of forensic evidence DSC Legg stated the rule was not to touch anything and watch where you are walking. He could not recall whether they wore rubber gloves in 1980. DSC Legg was not present for the crime scene examination by SC Collins, or the collection of exhibits from the scene, or for the fingerprint examiner or the scene photographer.¹⁰¹

⁹⁸ CB 1181

⁹⁹ CB 714

¹⁰⁰ Detective Iddles was a Senior Constable at the time of Mrs James’ death and when he retired at the rank of Detective Senior Sergeant he had been attached to the Homicide Squad for more than 20 years.

¹⁰¹ T 717.

126. In 1980 it was a manual process for gathering, recording and managing information collected to solve the crime. Police officers kept diaries and also made contemporaneous notes on loose-leaf paper kept in a folder. An 'Information Report' was also typed up at the first opportunity. The Information Reports were typed on paper, kept in lever arch folders and were chronologically or consecutively numbered.¹⁰² DSC Legg's recollection was that all information was recorded using these three methods: diary, contemporaneous notes and Information Reports, with a heavy reliance on the Information Report. There was also an A-Z Index of all the Information Reports.¹⁰³
127. Mr James was an initial suspect. Joan Gibbs who lived at 1 Mansfield Street Thornbury and Mr James' secretary Isabella Fabris were both crucial witness to Mr James' alibi. Both DSC Legg and DS Jacobs noted a main issue early on was to confirm or eliminate Mr James as a suspect. DS Jacobs stated, '*... a major part of the very first efforts was to find out whether John James was involved or not.*'¹⁰⁴ After a statement was taken from his secretary Ms Fabris, by the evening of 17 June 1980 Mr James was eliminated as a suspect.¹⁰⁵
128. On 18 June 1980 a search of the area was conducted with assistance of the Search & Rescue Squad, Independent Patrol Group, the Homicide squad and Northcote CIB for a potential murder weapon and any discarded blood-stained clothing.¹⁰⁶
129. A now seemingly bizarre aspect of the original police investigation was the setting up of a Homicide office in the bookshop itself for about six weeks after the forensic analysis and searches had been completed. In the pre-computerisation and mobile phone era, DS Jacobs explained, '*The decision also allowed us to maximise time spent in the area of the crime and avoiding unnecessary travel between the Homicide squad and the scene.*'¹⁰⁷

Rewards

130. Three days after Mrs James' death on 20 June 1980 the government announced a \$50 000 reward for information leading to the identification of the person responsible for Mrs James' death.¹⁰⁸ DSC Legg did not know the reason for the announcement (on day three of the investigation) but did he recall the \$50 000 reward triggering an influx of information from

¹⁰² T 855.

¹⁰³ T 721.

¹⁰⁴ T 955.

¹⁰⁵ T 732.

¹⁰⁶ T 748.

¹⁰⁷ SB 2147.

¹⁰⁸ CB 2020.

the public, although not in an overwhelming way. He did not recall it stretching limited resources or that it was offered because ongoing avenues of inquiry were exhausted.¹⁰⁹

131. On the other hand, DS Jacobs, who was responsible for information management said the reward resulted in a huge influx of information, which created a lot of extra work including false leads.¹¹⁰ DS Jacobs described the workload on the crew as *huge* and:

*... the James job was probably the biggest homicide investigation I had been involved in due to the sheer volume of information and work done on the case. There were no significant breakthroughs or leads in the case despite the work.*¹¹¹

132. He stated:

*The biggest issue that confronted this investigation was the amount of information that came in as a result of the \$50 000 reward. It just generated a huge volume of information ... The scope of this job was huge, the sheer information that needed to be handled was an issue.*¹¹²

133. I note the observation by Mr Ashworth about the large amount of information offered by the public:

*Often this can be a double-edged sword in that the sheer bulk of information at times threatens to overwhelm the investigation ... investigations in 1980 did not have computer bases systems to record, track and interrogate information provided. Those tasks were undertaken through time consuming manual processes most often by the investigating detectives themselves.*¹¹³

134. It appeared the investigation struggled to distinguish worthwhile leads although this may be an observation made with the benefit of hindsight. As aforementioned, there was significant focus on men who had been in the bookshop at various times rather than a concerted focus on the man seen by Ms Hodson running from near the scene at the time of the murder.

¹⁰⁹ T 755.

¹¹⁰ T 972.

¹¹¹ SB 2148.

¹¹² SB 2150.

¹¹³ SB 3451.

Finger printing

135. At 2.05pm Harry Benda¹¹⁴ and James Falloon, members of the Fingerprint Bureau attended the crime scene. Mr Falloon examined three rooms, namely the bedroom, lounge and living area, as well as Mrs James' Toyota Corona, but no prints were found. The diagrams in his diary note he '*powdered*' surfaces including the door and door frame of the bedroom, bedhead, wardrobe, record player cover and telephone with nil prints located. In the lounge room he powdered the small plastic table, and in the kitchen, he powdered 'inside and outside surrounds of window' with 'nil prints' found.¹¹⁵ There is no suggestion in his notes or other evidence that he 'powdered,' around the internal side of the front or back doors. It is accepted that Mr James entered through the kitchen window.
136. Significantly although it is likely the assailant left through the front door, it does not appear the internal surface or handle of the front door was tested for fingerprints. DSC Legg agreed it should have been printed.¹¹⁶
137. There is no evidence of any reference by Homicide detectives or fingerprint experts to Mr James' statement, taken by 2.30pm on 17 June 1980, that the assailant may have exited the bookshop through the front door. Under hypnosis, Mr James describes discovering Ms Smith inside the shop upon re-entering the premises from the front following his 000 call. Ms Smith entered through the now unlocked front door. Realising the assailant has most likely left through the front door he yells out to her not to touch anything in an apparent attempt to preserve the scene.
138. Senior Constable Terrence Collins, who examined the crime scene, told the inquest it was the fingerprint examiner and Homicide detectives who decide what surfaces should be tested for fingerprints. There is no reference in either Mr Falloon's statement or his diary notes to any discussion with the Homicide detectives at the crime scene on 17 or 18 June 1980, although there is reference to attending the 'command caravan' on 18 June 1980. The case is referred to as 'Margaret James' in Mr Falloon's diary notes. DSC Legg stated the fingerprint expert would be directed by a combination of input from the senior investigator and the crime scene examiner.¹¹⁷

¹¹⁴ Mr Benda had passed away and there was no statement from the time or handwritten diary notes available.

¹¹⁵ Exhibit 98.

¹¹⁶ T 912.

¹¹⁷ T 723-4.

139. The absence of any fingerprinting of the internal area around the front door is a potential missed opportunity by the police investigation.
140. Mr Ashworth noted from his examination of the coronial brief, *‘There is little in the material provided that indicates the coverage of fingerprinting conducted at the scene to form conclusions on the adequacy of the fingerprint search’* when referring to the likelihood the assailant drew the curtains and locked the front and back doors.¹¹⁸

Crime scene photographs

141. The crime scene photographs indicate Mrs James’ body and her shoes were moved whilst the photos were taken.¹¹⁹ As paramedics had cleared the scene by 1.00pm and the police photographer did not arrive until 1.50pm, I am satisfied paramedics were not responsible for the movement recorded in the photographs. The movement has clearly occurred photographing the crime scene despite detectives emphasising the importance of preserving the crime scene.
142. I note Mr Ashworth’s comments about the scene, *‘The crux of an investigation of this sort is how the crime scene and surrounds are initially handled and what investigators can learn from them.’*¹²⁰
143. The Detective Training school notes state: *‘The crime scene must be preserved in its original state until it has been viewed, photographed, fingerprinted and searched.’*¹²¹ There is more on this point exhorting investigators to, *‘Preserve the scene in its original state’* and *‘Prevent contamination of the scene by human or natural agency.’*¹²²
144. Most of the photographs were taken with black and white film.¹²³ There are far fewer photos taken of the crime scene as compared with current practice. However important photos are absent, for example there is no photo of the internal curtain in the residence that Mr James and other witnesses refer to as moving, and neither is there a close-up photo of the blood staining on the quilt.

¹¹⁸ SB 3454.

¹¹⁹ CB 644-645.

¹²⁰ SB 3451.

¹²¹ Det manual P 7 / 016.

¹²² Det manual 021.

¹²³ There is one colour photograph from the scene in the coronial brief however Sgt Starr found SC Collins’ original notes and the contact sheet of colour photos of the photos of the bloody carpet taken after the bedroom furniture had been moved.

145. Photographs from the kitchen revealed a single empty teacup, two spoons, a knife and a used Tetley tea bag¹²⁴ in the kitchen sink. There was no potato masher found at the scene that matched the marks on Mrs James' face. The toilet seat was up when photographed, however all police witnesses assured the inquest that they did not, nor would a police officer ever use a toilet at a crime scene.
146. The photos from the scene also include photos of the black umbrella¹²⁵ and the car window winder handle¹²⁶ which Mr James took into the residence from his car.

Crime scene examiner

147. SC Collins was the crime scene examiner who arrived at the scene at 1.45pm with Sergeant Peters and a police photographer. SC Collins was attached to the Field Investigation Section of the Forensic Science Laboratory (FSL) in Spring Street, Melbourne, and in training to be a crime scene examiner. In those days there was no formal course, and the training was *on the job*. Mrs James' death was his first homicide crime scene investigation.
148. There were two separate aspects to SC Collins' evidence relevant to the coronial investigation. The first was his physical examination of the scene, and how thorough it was relevant to standards at the time. The second relates to his collection of exhibits from the crime scene. Analysis of the exhibits forms a significant part of the inquest scope.

EXAMINATION OF THE SCENE

149. SC Collins described his main purpose at the crime scene was to '*collect what I believe was relevant blood samples...in the bedroom and anywhere else located within the premises.*'¹²⁷ SC Collins' examination focussed on the description and lay out of the premises, the placement of furniture and description of Mrs James' body, as well his observations of blood, which he noted on two pillows, the carpet in the bedroom, the quilted bedspread, doors of the wardrobe and a wall.¹²⁸
150. The only blood found by SC Collins was in Mrs James bedroom. He examined the interior sides of the front and back doors but did not identify any blood.¹²⁹

¹²⁴ CB 701-703.

¹²⁵ CB 658.

¹²⁶ CB 710-712.

¹²⁷ T 170.

¹²⁸ Mr Collins made contemporaneous handwritten notes, at SB 3413-3430 and his contemporaneous, undated statement, is at CB 610.

¹²⁹ CB 675.

151. As Mrs James' assailant had used a knife, it was quite likely there would be blood on the assailant's hands, however SC Collins did not identify any blood stains at the scene consistent with this theory.¹³⁰ DSC Legg also considered that the frenzied nature of the attack made it more likely than not that the assailant received an injury or had blood on their clothing.¹³¹ The detective agreed it would have been important to check all taps and sinks to see if the assailant had washed themselves however it is unclear whether these were checked.¹³²
152. SC Collins noted the electric blanket on the bed was on and warm with both switches set to Number 2 setting.¹³³

Direction from Homicide Squad

153. Evidence of communication between SC Collins and either homicide detectives or fingerprint examiners at the crime scene is scant. DS Robert Jacobs recalled going through the scene with the crime scene examiner, however he could not recall being present when SC Collins examined it.¹³⁴ Although DS Jacobs stated there would have been discussion about how they reconstructed what they thought may have occurred and guidance would have been given to the crime scene examiner, he could not specifically recall this occurring. Neither could he recall anything about what should have been fingerprinted. Unfortunately, Sergeant Jacobs' original notes from the time are not available.
154. DSC Legg explained the usual process is:

*... the senior investigator would be constantly discussing with the crime scene examiners and ensuring that everything that he thought was relevant should be taken and the crime scene examiners have their own expertise too but they work together.*¹³⁵

The crime scene examiner would be directing the photographer what to photograph. The senior investigator and the crime scene examiner would in combination direct the finger printer.

155. There is no evidence of this occurring, which is not to say it did not. The absence of any record of collaboration between experts supports the introduction of a formal process for recording important decisions during an investigations and reasons for those decisions at key

¹³⁰ T 237 & Mr Legg also agreed this was certainly a possibility T 745.

¹³¹ T 745.

¹³² T 746.

¹³³ T 261.

¹³⁴ T 954.

¹³⁵ T 723.

stages of a homicide investigation. This is particularly important in unsolved cases as when a crime is committed it is never known if or when the crime will be solved.

EXHIBITS

Collection and recording exhibits

156. There was no Homicide Squad policy at the time as to how to manage and store items taken from a crime scene or related to a crime.¹³⁶ There were simply practices, and it was up to the individual investigator as to how exhibits were controlled. Crime scene exhibits that required forensic analysis were seized by the crime scene examiner and lodged at the Forensic Services Laboratory (*FSL*) in Spring Street, Melbourne and entered in the Liaison Office Book (**LOB**). Other items might be taken from a crime scene by a detective and remain in their possession or be placed in the Homicide storeroom or taken to the Property Office. In 1980, records relating to the collection, retention and movement of exhibits was paper based and were – and remain – essential to demonstrating chain of custody and the integrity of exhibits, particularly if later used in a criminal prosecution.
157. SC Collins selected the exhibits taken from the crime scene, he says in consultation with the Homicide detectives.¹³⁷ On 17 June 1980 he collected blood and hair samples, as well as the continental quilt.¹³⁸ On 18 June 1980, SC Collins collected the pillows, Mrs James' shoes and two blood samples from the carpet (although why this was done on consecutive days was not explained).¹³⁹ On 18 June 1980 he also attended the mortuary and collected Mrs James' clothing and autopsy samples. SC Collins itemised the exhibits, packaged them and conveyed them to the FSL.

Five exhibit errors

158. The management of the exhibits was part of the inquest scope and the inquest focussed on the two pillows (Items 10 and 11), the pillowslips (Items 10A and 11A), the quilt from Mrs James' bed (Item 7) and Mrs James clothes (Items 17-20). The pillow slips and clothes are missing, and the quilt was not able to be located for arguably a decade until June 2021. In addition to the lost exhibits, a pillow from the unrelated McCoy murder investigation was included with the bag containing the two pillows from the James crime scene. A DNA profile extracted from the McCoy pillow in 2003 was then used to incorrectly exclude persons of

¹³⁶ There is a chapter on Exhibits in the extracts of the Detective Training Manual 1979 provided by Victoria Police.

¹³⁷ T 179.

¹³⁸ CB 610.

¹³⁹ T 178.

interest in the investigation of Mrs James' death. DS Densley described fourteen years of the police investigation as being lost as a result of this 'mix up'. The remarkable point of the exhibit errors was that they all occurred for separate reasons and were not connected.

Liaison Office Book

159. The system in place in 1980 provides the context to follow the movement of exhibits taken from the crime scene. There was no overarching system of exhibit management at that time and one person at the FSL co-ordinated the receipt of exhibits when lodged which were transcribed into a Liaison Office Book.¹⁴⁰ Once lodged, exhibits could be dispersed to different sections of FSL for further analysis.¹⁴¹ The LOB (kept under the counter in the liaison office) was the sole method used to record the dates and location and internal and external movement of exhibits.¹⁴²
160. The LOB was an artefact of its time, a precursor to the excel spreadsheet, with pages neatly ruled with red pen into squares with insufficient space to record the numerous movements of exhibits, which were recorded in neat black fountainpen, with block letters for the item names and cursive script to describe the movements. The lack of space for each entry necessitated abbreviations, such as the oft repeated, 'As Item I,' and a specially made stamp: 'RETURNED TO STORE' for the manual insertion of an item number and date.
161. During the inquest, a significant amount of time was spent tracing the movements of exhibits after they were taken from the scene. This was painstaking evidence referencing a multitude of handwritten (and at times poorly copied) documents, to construct a chronological narrative tracking exhibit custody and movement.
162. SC Collins recorded items he took from the scene in several documents including his handwritten notes¹⁴³ and the Casework information log¹⁴⁴ which was 'required to be filled out prior to lodging the exhibits and handed to the liaison office.'¹⁴⁵ (SC Collins' own copy of pages from the Liaison Office Book¹⁴⁶ and the copy of the original Liaison Office Book were in the coronial brief.)¹⁴⁷

¹⁴⁰ T 160-1.

¹⁴¹ T 162.

¹⁴² T 202.

¹⁴³ Supplementary Brief (SB) 3443.

¹⁴⁴ Exhibit 8, SB 3443.

¹⁴⁵ T 161.

¹⁴⁶ Exhibit 7, SB 3436.

¹⁴⁷ Exhibit 12, CB 890.

163. SC Collins collected items from the crime scene on 17 and 18 June 1980 and filled out a Casework information log listing items 1-27, dated 19 June 1980. The entry in the LOB confirms the items were collected and retained by SC Collins 17 June 1980.¹⁴⁸
164. There are simple discrepancies between the dates in SC Collins' Casework information log and the LOB. For example, Mrs James' green jumper was collected by SC Collins from the mortuary with other clothing on 18 June 1980. It was recorded as Item 18 'Green jumper (JAMES)' in the Casework Information log dated 19 June 1980.¹⁴⁹ The LOB records Item 18 green jumper (James) 'as item 1 17/6/1980.'¹⁵⁰ In SC Collins' copy of the liaison book, but not in the LOB itself, the words 'stink room' are added.¹⁵¹ Mr Collins explained that 17 June 1980 '*would be the date the item was recorded in the Liaison Office Book, but not actually lodged in the liaison office.*'¹⁵² He also noted some items would be listed in the LOB but in fact retained in his possession.¹⁵³ SC Collins conceded that the recording details of some of the exhibits did not effectively reflect who was holding them and where they went.¹⁵⁴
165. Such a discrepancy is noted merely to illustrate it was a quaint recording system of its time, which easily fostered early innocent inaccuracies. Ultimately, exhibits containing potentially pivotal evidence have gone missing caused by both human error and imperfect recording systems which failed to accurately identify and track the whereabouts of exhibits.
166. As noted above, SC Collins recorded Mrs James' clothes as in the 'stink room'. The 'stink room' in the FSL was used to handle noxious items, namely damp items requiring drying. There is no information about how items were dried, whether the room was ventilated or how items from different crime scenes were managed.¹⁵⁵ The 'store' was a reference to the storeroom, which was opposite the liaison office. The description '*retuned to store*' meant the item was held in the storeroom.

¹⁴⁸ CB 890.

¹⁴⁹ SB 3443.

¹⁵⁰ Exhibit 12, CB 890.

¹⁵¹ Exhibit 7, SB 3436.

¹⁵² T 186-7.

¹⁵³ T 187.

¹⁵⁴ T 193.

¹⁵⁵ T 207.

The Lost Exhibits:

Mrs James' clothes

167. SC Collins was not aware that Mrs James' clothing were missing. His copy of pages from the LOB records items 17-20 (pullover, bra, green jumper, dark blue jeans, panties and pantyhose) as being in the 'stink room.'¹⁵⁶ This is the last known entry dated 17 June 1980 regarding the clothes. SC Collins had no knowledge of what happened to Mrs James' clothes.

Pillow slips

168. As indicated, on 18 June 1980 SC Collins collected the pillows, Items 10 and 11¹⁵⁷ from the crime scene; '*Item 10 pillow near deceased's head*' and '*item 11 pillow near deceased's feet*'. The crime scene photos reveal both had conspicuous amounts of blood on them, were in close proximity to Mrs James' body when she was found, and thus may potentially have had the assailant's blood on them. SC Collins, '*... examined the pillow slips, items 10 and 11 at the laboratory and from them collected hair samples, item 36.*'¹⁵⁸

169. The Form 83 completed by police for the coroner, reported: '*It appears that a pillow may have been used to smother the deceased.*'¹⁵⁹

170. Around 19 June 1980 the pillows were separated from their pillowslips; the latter became Items 10A and 11A¹⁶⁰ in the LOB. ¹⁶¹ This is recorded in SC Collins' handwritten notes '*Items 10A and 11A to Henry Benda Fingerprint section at 3pm on 19/6/80.*'¹⁶² It appears the pillows and pillowslips were separated to enable testing of apparent blood-stained fingerprints on the pillowslips.¹⁶³

171. The LOB entry, at Item 11A, suggests on 25 June 1980 at 9.30am the pillowslips were received by SC Scott.¹⁶⁴ On 30 June 1980 the entry suggests, as per 10A, '*To Sgt Benda 1.20pm 30 June 1980.*' The entry for item 11A reads '*Direct to S/C Collins from C/Smythe on 13/8/81 at 8.50 am.*'¹⁶⁵ Underneath it states, '*item 11 RETURNED TO STORE 1.15 16/11/82.*'

¹⁵⁶ CB 892 & SB 3436.

¹⁵⁷ Item 10 was the pillow located near Mrs James' face; item 11 was the pillow located near her feet.

¹⁵⁸ Exhibit 10, CB 614.

¹⁵⁹ Exhibit 66.

¹⁶⁰ It is noted that Item 10A was described as a pillowcase and Item 11A as a pillow slip; I will use the label 'pillowslip'.

¹⁶¹ CB 891.

¹⁶² SB 3429.

¹⁶³ T 225.

¹⁶⁴ CB 891.

¹⁶⁵ CB 891.

172. SC Collins recalled the pillowslips:

*... had what looked like a possible handprint or fingerprints on them in blood, and I recall there were at least discussions about the possibility of sending these overseas to the United States for testing at the time. I do not know what became of these discussions, nor if they ever were sent for this testing. I recall that David Gidley was at the Spring Street Laboratory at the time and would have also known about these discussions.*¹⁶⁶

173. SC Collins was unable to say what happened to the pillowslips after they were returned to him on 13 August 1981.¹⁶⁷ Any record of where they went after they were returned to SC Collins should have been recorded in the LOB. SC Collins was surprised he had not recorded the further whereabouts of the pillowslips in his handwritten notes.¹⁶⁸

174. Dated 25 November 1981 there is a page in SC Collins' notes: 'S/C M Rafferty F/Prints 9.45 am 25-11-81 10A & 11A.' SC Collins had no memory of this entry and Michael Rafferty, a police officer who was with the fingerprint bureau between 1979 and 1989 was asked about the Maria James investigation stated: 'I cannot recall this name nor any involvement in such a case.'¹⁶⁹

175. SC Collins agreed the recording details of these items did not effectively reflect who was holding them and where they went.

176. Sergeant Rodney Jones, a 42-year veteran of Victoria Police involved in property and exhibit management for in excess of 15 years and presently stationed at the Central Property Management Branch (CPMB Collingwood), analysed the management of the exhibits in the Maria James murder investigation in 2018. He observed that the entry in the LOB dated 13 August 1981 is the last known entry regarding the whereabouts of the pillowslips, Items 10A and 11A. In his view, the whereabouts of the pillowslips subsequent to SC Collins may have been recorded in a since destroyed property book.¹⁷⁰ Sgt Jones believes the pillowslips and Mrs James' clothing were returned to the Homicide Squad 'and probably entered in an MPB [Miscellaneous Property Book] and subsequently disposed of as a biological hazard.'¹⁷¹

¹⁶⁶ CB 615.

¹⁶⁷ T 195.

¹⁶⁸ T 197.

¹⁶⁹ Exhibit 106.

¹⁷⁰ T 1445.

¹⁷¹ SB 3344.

177. Sgt Jones exhausted the documentary trail and believed a physical search for the pillowslips would be futile as ‘... *in relation to Crime Department property I’ve basically sighted everything that is within our control.*’¹⁷²
178. There is no further paper trail regarding the pillowslips.

OTHER PROBLEMS WITH EXHIBITS

179. As well as the loss of Mrs James’ clothes and the two pillowslips, there were three further problems with the James’ exhibits: firstly, the inclusion of an exhibit, the McCoy pillow, from the unsolved McCoy murder with the James exhibits, secondly, forensic analysis of the McCoy pillow and use of the DNA profile derived from it to ‘eliminate’ persons of interest in Mrs James’ murder and thirdly, the inability to locate the quilt from Mrs James’ bed for more than a decade. As mentioned, Sgt Jones’ analysis of property movement records – from the original paper-based system and through the successive electronic systems used by Victoria Police - was central to understanding management of exhibits in the Maria James case.

Locations of exhibits

180. DS Jacobs described the following process applying to exhibits:

*... when FSL would finish with it, ... the responsible member of the homicide squad, or some other member of the homicide squad would pick it up and take it back to the office ... then from there, you’d take it over to the Property ... office.*¹⁷³

He described that the exhibit would be signed out of the FSL, and it could remain with the police member for a while and then if it went to the property office¹⁷⁴ – whether that was a designated warehouse facility,¹⁷⁵ a physical space inside the Homicide Squad office¹⁷⁶ or a property office co-located with particular Crime Squads and managing their exhibits¹⁷⁷ – it would be signed into a property or exhibit book (or later, an electronic equivalent). In short,

¹⁷² T 1445-6.

¹⁷³ T 963.

¹⁷⁴ One of the factors confounding comprehension of Victoria Police’s exhibit management systems over a 40-year period was the use of descriptors like ‘property office’ to refer to a (large) number of different types of locations or facilities where exhibits are stored. That said, ‘Property Office’ was often used to refer to the Russell Street Property Office, which itself consisted of multiple locations on Russell Street, including a garage and a bike shed.

¹⁷⁵ For example, the Central Property Management Branch at Collingwood which opened in 1994 in advance of the closure of the Russell Street Property Office, the latter located within Police Headquarters when located in Russell Street.

¹⁷⁶ Such as the Homicide Squad storeroom which was a physical place inside the Homicide Squad office (when located at Russell Street) used for short-term storage of exhibits, for example as an intermediate step between the Russell Street Property Office and FSL.

¹⁷⁷ For instance, at St Kilda Road Police Complex there was an area, known as the Logistics and Exhibits Office (LEO), where exhibits relating to Crime Squads’ investigations were stored on-site; the St Kilda Road LEO has since been replaced by the Spencer Street Property Centre which performs a similar function.

each exhibit was labelled and its movements hand-to-hand documented. DS Jacobs was not aware of any policy regarding exhibits, it was up to the investigator '*how he controlled the exhibits.*'¹⁷⁸ When asked about missing items such as the continental quilt, the two pillowslips and Mrs James' clothes, DS Jacobs stated if they came from FSL, they would go to the property office. If items were signed out, '*... it would be officially signed out of the Property Office and the member collecting it for continuity purposes would record something in his notes.*'¹⁷⁹

181. In his analysis, Sergeant Jones was of the view that in 1982 the quilt, and in 1983 the two pillows, were moved from FSL to the Russell Street Homicide office. This is consistent with DS Jacobs' evidence that exhibits with the FSL would be picked up by the responsible member of the Homicide Squad. In the LOB the last entry for Items 10 and 11 (the pillows) states: '*returned at 1pm on 4/2/83 to Kedge, Senior Constable 19835*'.¹⁸⁰ These are recorded in the Russell Street property register as lodged at Russell Street on 18/2/1983.¹⁸¹

Destruction of exhibits policy

182. DS Jacobs referred to a policy whereby some exhibits were destroyed if they posed a biological hazard. A Victoria Police memo from 27 April 1994 foreshadowed that the Russell Street Property Office was moving in April 1995 requesting that investigation files be reviewed regarding the evidentiary value of exhibits.¹⁸² DS Jacobs was referred to a memo in his name dated 29 November 1994 with the subject: '*Destruction of items listed on Russell Street property office File E 09413 Hom. – Unsolved Property Book 21/94 Authorisation for same.*'¹⁸³ The memo refers to two pillows contaminated with blood from the deceased which are a biological hazard and that the items remained 'unclaimed.' DS Jacobs had no recollection of either of these documents and noted the memo under his name was not signed.
183. There is no receipt or documented record of destruction, and as the two pillows were subsequently involved in a mix up with the McCoy pillow and recorded in storage as a 'quilt,' clearly, they were not destroyed. However, biological hazard was often used to justify destruction of clothing after forensic analysis¹⁸⁴ though if this occurred it would be

¹⁷⁸ T 966.

¹⁷⁹ T 970.

¹⁸⁰ T 1447.

¹⁸¹ CB 937.

¹⁸² CB 2052.

¹⁸³ CB 2057.

¹⁸⁴ SB 3344.

recorded.¹⁸⁵ There is no record that Mrs James' missing clothes or the pillowslips were destroyed.

Exhibit recordings systems

184. The Russell Street Property Office used Miscellaneous Property Books 'E Basic' numbers to record exhibits. In 1995 the Russell Street building was closed and the Homicide Squad moved to St Kilda Road, which its own Logistics and Exhibits Office. On 1 December 1994 the Collingwood storage facility, CPMB Collingwood, opened with its own recording system using E basic references. From the mid-1980s the FSL used the PRIME database for recording purposes and in 2003 used Trackdown Evidence (**TE**) and Forensic Case Management (**FCM**). In short, Victoria Police has used a number of exhibit storage facilities and recording systems in the past 40 years and for some of that time Victoria Police and FSL used different recording systems.
185. It appears the Maria James exhibits were on a Homicide Squad list of property taken from the Russell Street Property Office to CPMB Collingwood on 14 August 1995.

Pillows and erroneous inclusion of a third pillow

186. Exhibits held in the CPMB Collingwood Homicide Room, a long-term storage area for items relating to unsolved murders, among them that of Mrs James, were audited and verified. In about 1999,¹⁸⁶ bags containing exhibits were opened for inspection and then re-sealed with a security seal '0817'.¹⁸⁷
187. Sgt Jones believes the two pillows from the James crime scene were mixed up with an additional pillow from the McCoy murder investigation some time between 1994-5, the date when exhibits were moved from the Russell Street Property Office to CPMB Collingwood, and 1999, when the James exhibits were re-sealed after the audit.¹⁸⁸ He observed that some exhibits from the James case and McCoy case had been stored on the same shelf in either the 'garage' or the 'bike shed' in the Russell Street Property Store.¹⁸⁹
188. It appears the James exhibits (including the McCoy pillow) remained at CPMB Collingwood until 13 July 2001 when acting on new information about a person of interest, Peter Keogh, Detective Senior Sergeant Iddles, then head of the Cold Case Unit, directed DLSC Rae to

¹⁸⁵ T1502.

¹⁸⁶ T 1457.

¹⁸⁷ SB 2159.

¹⁸⁸ T 1470.

¹⁸⁹ T 1469

check the exhibits out of CPMB Collingwood and take them for further testing at the Victoria Police Forensic Service Department in McLeod (**FSD McLeod**) which had replaced FSL. DLSC Rae did not open or review the exhibits.

Analysis of the McCoy pillow

189. In evidence, DSS Iddles stated he discussed the testing with the FSD McLeod biologist Nigel Hall by phone and was guided by him as to what should be tested. He did not look at the crime scene photos when having this discussion and the conversation was along the lines of Mr Hall saying he will look at the key exhibits and *'I'll let you know what happens.'*¹⁹⁰
190. In 2003 Mr Hall examined item 9, a plastic bag sealed with string and tape and labelled '0817' containing two plastic bags. The first plastic bag, designated 9(a), was sealed and labelled and contained two pillows without pillowslips. The second plastic bag, designated 9(b), was unsealed and without a label and contained a pillow and pillowslip. Mr Hall did not examine Item 9(a) because the two pillows did not have the pillowslips and pillowslips were depicted in photographs from the James crime scene.¹⁹¹
191. Mr Hall took samples from item 9(b), pillow and pillowslip (which was not in the crime scene photos) for analysis and identified the DNA profile of an unknown male.¹⁹²
192. From 2003 the investigation of Mrs James' murder proceeded by attempting to identify the donor of the unknown male DNA who was assumed to be her assailant. Samples were sought from persons of interest for comparison. Unfortunately, the unknown male DNA from the third pillow was eventually confirmed to be that of homicide victim McCoy. Use of this DNA profile in the James case led to the mistaken exclusion of persons of interest.
193. In July 2004 DLSC Rae returned the exhibit bags to CPMB Collingwood, under the label E28740¹⁹³ but also bearing a barcode from FSD McLeod, ETS 053596008.¹⁹⁴

¹⁹⁰ T 1602-3.

¹⁹¹ SB 2159.

¹⁹² Analysis of nuclear DNA was first used in Victoria in forensic applications in about 1989.¹⁹² DNA is abundant, readily deposited and transferred, and collected: these days DNA can be obtained from (amongst other things) blood, saliva, hair and touched substances. DNA can be obtained from items associated with a crime scene such as a weapon or clothing and can be compared to DNA known to come from people suspected of involvement in the crime whether complainant/deceased or a suspect. DNA cannot be 'aged' and in the absence of other information, it is impossible to ascertain from a DNA result alone if the DNA deposit occurred during the alleged offence, before it or because of inadvertent contamination some time after.

¹⁹³ SB 3342.

¹⁹⁴ T1471.

194. In 2009 FSD McLeod biologist and Senior Case Manager Kathryn Bradley reviewed the case and became concerned when she could not identify item 9(b) (the pillow Mr Hall tested) amongst the pillows in the Maria James crime scene photos. She emailed DSS Iddles raising this as a query and suggested re-lodging the exhibits for further examination. They discussed this on 13 March 2009. DSS Iddles did not look at the crime scene photos¹⁹⁵ nor did he re-lodge the exhibits. If he had, the error would have been identified earlier. DSS Iddles denies this stating, *'No, I don't think so because Kathryn Bradley wasn't saying 'This is the wrong pillow.' All she was asking me at the end was to re-lodge the exhibits and to see if I could find a pillowcase.'*¹⁹⁶
195. DSS Iddles stated there was nothing to suggest to him the DNA result did not come from Maria James' pillow. He did not believe that what Ms Bradley raised with him was sufficient to alert him to a concern about exhibit integrity.
196. The mistake was ultimately identified in 2017 by DS Densely and examined below in more detail under the heading 2016 Operation Barmen.

Quilt

197. There were two errors relating to the quilt. Firstly, the pillows were mislabelled as 'quilt' at the time of or after Mr Hall's examination, but it is unknown by whom. This error was discovered in 2010 and remedied in 2013. The second error was that the quilt was lost by Victoria Police, whereabouts unknown, between 2011 and 2021.

Two different items labelled 'quilt' with the same barcode

198. On 14 December 2010, Kevin Wilson, property manager, during preparation for PaLM, (Property and Laboratory Management, a new property management system) identified a conflict in files at CPMB Collingwood, namely two items which were described as 'quilt' and bearing the same ETS barcode 053596008.¹⁹⁷ He suggested collection, sorting and re-lodging the exhibits to resolve the conflict.
199. Sgt Jones organised for staff to collect the two parcels from CPMB Collingwood for his inspection at St Kilda Road. On 30 September 2011 he emailed DSS Iddles to advise he

¹⁹⁵ T 1606.

¹⁹⁶ T 1606.

¹⁹⁷ CB 1098

suspected FSD McLeod had recorded the pillows (James Items 10 and 11 and the McCoy exhibit, together described by Mr Hall as Item 9) as a quilt.¹⁹⁸

200. The quilt (James Item 7) had its original number of ETS 053596008 and the bag with the three pillows had been given the same number. From the size of the barcode sticker Sgt Jones view was the quilt was in its original bag from around 1982 when lodged at Russell Street Property Office.¹⁹⁹
201. Sgt Jones stated the bag containing pillows was described as a ‘quilt’ at FSD McLeod before they were given to Mr Hall. Possibly the squashed items looked like a quilt.²⁰⁰ *‘The pillows were then analysed however their listed description for property management purposes remained quilt.’* Mr Hall makes no reference in his report statement or notes to a ‘quilt’ only to the pillows 9(a) and 9(b). It is unknown when the error occurred.

Quilt lost between 2011 and 2021

202. On 13 March 2012 the bag containing the three pillows was administratively separated from 053596008 and allocated a unique ETS reference number 053596036 and its descriptor changed to ‘pillows from #9’.²⁰¹
203. Until recently, the last recorded ‘location’ for (both) ETS 053596008 items, but relevantly, the quilt from Mrs James’ bed was CPMB Collingwood on 4 November 2011. Sergeant Jones took issue with the proposition the quilt was lost, stating between that date and 2021 the quilt ‘couldn’t be located’.²⁰²
204. In 2012 Victoria Police introduced a new property recording system, PaLM, a barcode system with a property reference and description of the item. Data from the two case management systems used at FSD McLeod, TE and FCM were migrated into the PaLM in about 2015.
205. A property audit on 9 February 2021 identified ETS 053596008 as a discrepancy on the audit list. The item located at Aisle 14 Bay 4 Shelf 1, was identified within PaLM as a ‘quilt.’ It had a barcode from TE but no FCM sticker. The database showed it was returned on 21 March 2005, to Aisle 9 Bay 1 Shelf 6, then moved to Long Term Storage. On 30 September 2011 it was moved to Aisle 18 Bay 3 Shelf 1 and Sgt Jones sighted it during an audit on 4 November 2011, prior to the rectification of the duplication of labels ETS 053596008. In Sgt Jones’

¹⁹⁸ SB 3350

¹⁹⁹ T 1467

²⁰⁰ SB 3344

²⁰¹ SB 2229.

²⁰² T1486.

view, the physical configuration of the storage area explains the descriptions of the locations as Aisle 14 Bay 4 Shelf 1 and Aisle 18 Bay 3 Shelf 1.

206. In 2015, due to complicated process transitioning TE and FCM to PaLM, ETS 053596008 was transferred without a 'store location' and defaulted to a blank field (apparently being the only item transitioned to PaLM to do so) due to an apparent conflict of data across the exhibit management systems.²⁰³ The location data of other James exhibits carried onto the PaLM system without difficulty.²⁰⁴
207. This is a complicated and complex way of saying that despite having no location recorded on PaLMs since 2015, the quilt (Item 7) labelled ETS 053596008 was located during a property audit at Collingwood in February 2021. It went to the FSD McLeod for testing. A number of hair samples are now undergoing mitochondrial DNA testing in an effort to extract a DNA sample of a possible assailant.

CONSIDERATION OF SUSPECTS

Crime reconstruction

208. The reconstruction of the crime is to try and work out how it was done; identifying how a crime occurred will inform development of a case theory and, in turn, who may have committed the crime.
209. The Form 83²⁰⁵ prepared by DS Jacobs appears to contain the only documented contemporary consideration of what occurred at the bookshop around midday on 17 June 1980 based on the crime scene and autopsy findings. The key details were:

*[Mrs James] was found lying on her back on the floor of her bedroom ... fully clothed ... hands tied in front ...no evidence of sexual assault ... stabbed 68 times to her back and ... front ... scalp [injury] ...pillow may have been used to smother [her] ...*²⁰⁶

*[the incident occurred] between midday and 12.30pm ... not known if [items were stolen] ... offender [entered and left] via shop door ... [stab wounds inflicted] with a knife similar to a small "stay sharp" knife.*²⁰⁷

²⁰³ SB 3346.

²⁰⁴ SB 2229.

²⁰⁵ CB 1179.

²⁰⁶ CB 1180.

²⁰⁷ CB 1181.

210. Mr Ashworth and Sergeant Tracy Starr each reconstructed the crime and crime scene and the method of the assailant by working with the crime scene photos.
211. Mr Ashworth noted the importance of *'re-creating the method of the crime- identifying as fully as possible the modus operandi.'* He stated the investigators no doubt considered hypotheses as to the commission of the crime and applied the scientific method in some form. *'That is, observations are made that describe a problem, a hypothesis is created, the hypothesis is tested, conclusions are drawn and the hypothesis is further refined.'*²⁰⁸ Mr Ashworth was of the view there is insufficient evidence to *'make a definite conclusion that this process was undertaken as completely as it might have been.'*²⁰⁹
212. Mr Ashworth formulated an hypothesis of how the crime occurred from the crime scene photos and the coronial brief at 47(i)- (xxvi) of his report.²¹⁰
213. Sgt Starr was also of the view the assailant may have used the missing Wiltshire knife from the kitchen.²¹¹ In her reconstruction, she theorised that the assailant may have been either male or female.

Homicide case theory

214. DSC Legg was of the view the assailant was a *'highly disturbed individual totally unrelated to her or was someone known to her that was highly disturbed and /or someone well-known to her who committed a 'crime of passion.'*²¹²
215. In his statement he also opined:
- One aspect of the investigation was the phone call placed by the deceased to John James prior to her death, in my opinion all the circumstances suggested she was not concerned or fearful at the time of the call and it was possibly not related to the person responsible for her death.*²¹³
216. DS Jacobs noted there was not a single line of enquiry, but there were various leads that needed to be pursued. *'I don't recall there being 'strong' suspects during the entire*

²⁰⁸ SB 3455.

²⁰⁹ SB 3455.

²¹⁰ SB 3456-3458.

²¹¹ SB 3408.

²¹² Exhibit 48, paragraph 17.

²¹³ SB 2143.

*investigation. I recall there being numerous possible persons of interest that had to be pursued.*²¹⁴ He stated, *'There were no 'good' suspects identified in the job.'*²¹⁵

217. Detective Inspector Brain Ritchie, second in charge of Homicide Squad noted:

*Despite every effort by the team and numerous avenues of enquiry being pursued, no other strong motive or suspect was ever identified, and there was little physical evidence from the crime scene to assist investigators. Enquiries into Maria's background and lifestyle also revealed no strong motive for her death ... As to my opinion about possible motives or suspects, I believe that everything remains possible as there is no one motive that is stronger than any other. There was simply insufficient evidence to justify one possible motive above another.*²¹⁶

218. Detective Prados noted:

*Investigation into Maria's lifestyle and background revealed no major risk factors that could readily identify an obvious motive for her death, let alone the extremely violent nature of the apparent attack on her. Likewise, no other crimes could be linked to her death.*²¹⁷

219. It clear from the evidence from the original homicide investigators, that save for DSC Legg's 'covering the field' opinion the assailant was a *highly disturbed individual either known or unknown to Mrs James and/ or a crime of passion* there was no case theory formulated regarding the identity of the assailant. The overwhelming influx of information generated by both the media reports and the rewards may have had the unintended consequence of swamping the investigation's resources and obscuring the ability to identify meaningful leads when they did emerge. The extracts from the Detective Training Manual 1979 provided by Victoria Police cover very practical topics of investigative techniques, and does include consideration of topics such as the conceptual analysis of a crime or how to develop a case theory.

220. Notwithstanding submissions to the contrary,²¹⁸ I am not satisfied that the original investigators developed (or documented any refinement of) a hypothesis about how the crime occurred or by whom it was committed. Rather, the evidence suggests the investigative

²¹⁴ SB 2148.

²¹⁵ SB 2149.

²¹⁶ SB 2153.

²¹⁷ CB Summary 2.

²¹⁸ Made on behalf of the Chief Commissioner of Police.

approach was largely responsive, and lacking a positive framework or case theory to drive the investigation forward.

Peco Macevski

221. Peco Macevski, sometimes known as Peter Macevski, was a real estate agent who worked at Peter P Peters Real Estate agents at 732 High Street Thornbury and had been in a sexual relationship with Mrs James prior to her death.
222. Mrs James' elder son Mark was aware of the 2 or 3-month relationship, not only had she told him, but two or three times he had come home from school and Peter would be at the dining table having a coffee, chatting to his mum. He believed his mother had placed the lock on her bedroom door during the relationship, for privacy. Mark believed his mother had broken off the relationship a few weeks before her death as she found out he was still in a relationship with his wife.²¹⁹ Mark also clarified for the record his mother was not engaged in multiple intimate relationships.
223. Mark did not believe Mr Macevski was responsible for his mother's death.
224. On 17 June 1980, when asked by police whether his mother was in a relationship, Mark recalled walking two police officers down the street to Peter P Peters Real Estate, and pointing out Mr Macevski saying, '*That's the guy.*'²²⁰ None of the police officers who gave evidence at the inquest recalled this.
225. Mr Macevski was a person of interest given his recent sexual relationship with Mrs James. He also initially lied to police stating he knew Maria only to say 'hello', he did not know her surname, and that he had never been in her bookshop.²²¹ However, during their relationship, they met in the bookshop around midday on weekdays and would have sex in her bedroom. The murder took place in her bedroom between 12.00 and 12.30pm; at the time of her death, both sides of the electric blanket were on '2' and the bed was warm. With respect to Mr Macevski's initial lies to police, DSC Legg stated: '*... is he denying the relationship to save a marriage or is he denying a relationship to avoid a charge of murder?*'²²²
226. Given Mrs James' time of death, between 12.00-12.30 pm, Mr Macevski's movements on 17 June 1980 bear analysis.

²¹⁹ T 289.

²²⁰ T 289.

²²¹ CB 315.

²²² T 781.

227. At about 10am on 17 June 1980, Mr Macevski and his colleague, Con Sirinotis left the agency to visit properties. They bumped into Mrs James on Mansfield Street near where Mr Sirinotis was parked. She had just parked her car in Mansfield Street. They exchanged greetings and Mr Sirinotis jested about borrowing her umbrella as it was raining. She walked off towards High Street.
228. Mr Sirinotis drove while he and Mr Macevski visited properties in Greensborough, Watsonia, Bundoora; their last visit was to 49 The Fairway, Kingsbury. Mr Sirinotis states they arrived at about 11.50am²²³ and left around midday to return to the agency. In an interview with police recorded in an Information Report dated 2 July 1980,²²⁴ Mr Sirinotis described his route from Kingsbury to Thornbury as Plenty Road, Bell Street, Hotham Street and into Mansfield Street.
229. As he drove up Mansfield Street Mr Sirinotis stated he saw a man going into the agency. Mr Macevski stated, *'That's my client. Let me out here.'* Mr Sirinotis stated, *'He got out and ran over to the office. This is the last I saw of Peter for the time being.'*²²⁵ Mr Sirinotis described dropping Mr Macevski in Mansfield Street before turning right into High Street looking for a park. He travelled 50 metres north up High Street and did a U turn, parking outside the bookshop at 736 High Street behind Peter Macevski's blue car. *'It was now about 12.15 pm.'*²²⁶ He stated he walked past the bookshop on his way to the agency and its door was closed. The Information Report records the time of Mr Sirinotis' return to the agency as 12.15pm but in his statement dated 18 June 1980²²⁷ he says it was about 12.20pm.
230. Mr Macevski stated he arrived back at the office at 12.30pm and a client, Nicoli Talevski was waiting for him.²²⁸ Prior to going inside he saw an ambulance and police in front of Maria's bookshop.
231. We now know that Detectives Hall and Laidler arrived at the scene at 12.40pm in an unmarked police car and that the ambulance was on scene at 12.48pm.
232. There is a 10 or 15-minute discrepancy between Mr Sirinotis' statement that they were back at 12.15pm or 12.20pm and Mr Macevski who states it was 12.30pm. Further, Mr Macevski

²²³ See Exhibit 29, Mr Sirinotis' handwritten statement which clarifies 11.50 am.

²²⁴ Number 353.

²²⁵ CB 1506, IR 353.

²²⁶ CB 1506.

²²⁷ Exhibit 28.

²²⁸ CB 315.

stated he saw police and ambulance outside the bookshop which is not possible at 12.30pm; Mr James' 000 call did not end until 12.36pm and no first responders arrived before 12.40pm.

233. When Mr Sirinotis returned to the office at about 12.20pm²²⁹ he met Tim Poulos who was looking to buy a house. This was not a planned appointment and Mr Sirinotis described asking Mr Poulos if he had time to look at a couple of properties. *'We left the office and walked past Maria's shop and got into my car. It would have been about 12.30pm by now.'*²³⁰ Neither Mr Sirinotis' statement nor the Information Report refers to seeing Mr Macevski after he left the car in Mansfield Street or to seeing any police or ambulance in High Street.
234. Mr Sirinotis and Mr Poulos attended properties in Thornbury and Northcote before Mr Sirinotis dropped him on the corner of Grandview and Bastings Streets, Northcote. Mr Sirinotis then drove to the Terminus Hotel Queens Parade Clifton Hill where he met friends for lunch. In evidence he stated he did not have lunch with Mr Macevski that day, and that a friend of his owned the hotel and he had been there a few times for lunch.
235. He did not know Mrs James and Mr Macevski were having an affair.
236. In Mr Macevski's second statement to police he admitted having an affair with Mrs James and the last time he saw her was on the morning of 17 June 1980 on High Street as he left his work premises with his colleague Mr Sirinotis.²³¹
237. Mr Talevski was the client Mr Macevski met when he returned to the agency some time after midday on 17 June 1980.
238. There does not appear to have been a statement taken from Mr Talevski until 5 September 2019.²³² There is an Information Report which records that on 19 June 1980 police spoke to Mr Talevski. The handwritten note headed *19/6 Ritchie, McCarthy, Jacobs, Legg*, states: *'1.25pm to scene. Spoke to Nic Tilvsk...re appointment with Machevski at 12.30 pm 17/6. Confirms story.'*²³³

²²⁹ CB 322.

²³⁰ CB 1506.

²³¹ CB 317-320 incorrectly dated 3/6/1980; the statement was likely made on 3/7/1980, the same date as the corresponding Information Report.

²³² Exhibit 31.

²³³ CB 1187.

239. DSC Legg stated, '*a significant alibi witness would have a statement taken from him*' and that he would be *astounded* if no statement had been taken. '*He's too important a witness not to have a statement taken.*'²³⁴
240. DSC Legg took a detailed Information Report from Mr Macevski on 3 July 1980²³⁵ which details his movements with Mr Sirinotis on the morning of 17 June 1980. Although the Information Report contains times of visits to various houses for sale, the return time is referenced by Mr Macevski having a 12.30pm appointment and that person being at the agency upon their return. It notes Mr Talevski as a bus driver and that he needed to look at houses quickly to get back to work. Mr Macevski's account matches with Mr Sirinotis' save for the order of the last premises visited and the time of return to the agency.
241. Mr Macevski was eliminated from the inquiry at this stage, 3 July 1980.
242. DSC Legg agreed lack of a contemporaneous statement from Mr Talevski was an oversight.²³⁶
243. In evidence, Mr Talevski could not recall if he visited houses with Mr Macevski that afternoon. He recalled he was working at Duncan Green bus company, and believed he visited the real estate agency during a lunch break on a split shift on 17 June 1980. Mr Talevski could not recall when his morning shift ended, whether it was 11.30am or 12.00pm but that he had a couple of hours between the two shifts.
244. He drove from Heidelberg to High Street Thornbury and parked. As he walked south down High Street towards to real estate agency he recalled a man coming from the opposite direction brushed past him and they nearly collided. He was not able to say whether the man came out of a shop or if he continued up High Street or crossed the road.
245. Mr Talevski recalled that he went back to work and police attended and took him to the police station. He could not recall which police station or for how long he was questioned.
246. On the evening of 17 June 1980 police attended Mr Macevski's house and spoke with his wife Stojanka Macevski.²³⁷ Mrs Macevski stated police did not tell her there had been a murder, but asked her about her relationship with her husband, '*do we sleep together, what our*

²³⁴ T 787.

²³⁵ CB 1145.

²³⁶ T 936.

²³⁷ Mrs Macevski made a statement 25/2/2021, Exhibit 32.

*relationship was like, do we fight and if he was going and buying books from the bookshop.*²³⁸

247. After the police left, she rang her husband at the fish shop where he was working a second job. She told him the police came and he said there was a murder in the street. It was a quick phone call because he was working.
248. Mrs Macevksi stated that the police never mentioned her husband had been having a relationship with Mrs James.
249. She confirmed Mr Macevski would wear a suit to work every day and was sure he had more than one suit. She also confirmed she always did the washing. She was shown a photo²³⁹ of Mr Macevski in a light grey suit with stripes which she identified as a suit he would wear to work in 1980. She knew this because of other photos she has of him in this suit with their children and she can date it from the children's ages.
250. Mrs Macevski stated she found out about her husband's affair with Mrs James in February 2021 when the police told her. Up till then she stated she knew nothing about it.
251. Mrs Macevski confirmed her husband did not wear a wedding band but wore a gold ring with a red stone on his left hand.
252. DSC Legg estimated Mr Macevski was eliminated as a suspect, 'as far as he possibly could be'²⁴⁰ when he made his second statement to Sgt Hall on 3 July 1980.²⁴¹ DSC Legg explained '*we'd been able to alibi him through Sirinotis and Talevski ... as far as we possibly could and no information had come to light to change our opinion.*'²⁴²
253. On 27 January 1982 Mr Macevski was part of an identity parade at Russell Street where he was identified by Jeanette Hodson and Mr Cashman as the man they saw running in High/Hutton Streets on 17 June 1980. This did not appear to renew any interest by police in Mr Macevski as a possible suspect. DSC Legg could not recall the identification parade.
254. In addition to his two statements, in 2021 Mr Macevski was interviewed as a suspect and given his caution and rights. He was extensively questioned. There were some discrepancies compared with his accounts from 1980, for example he had no memory of Nicoli Talevski,

²³⁸ Exhibit 32, CB 347-8.

²³⁹ CB 1221.

²⁴⁰ T 796.

²⁴¹ This statement was misdated 3 June 1980.

²⁴² T 797.

and he was initially reluctant to admit the sexual relationship with Mrs James despite having done so in his second statement. He made no admissions and consistently denied any involvement in Mrs James' death.

255. I accept the submission there was a 'casual acceptance' of Mr Macevski's alibi and I am of the view the original investigation should have scrutinised the inconsistencies and time discrepancies between Mr Macevski and Mr Sirinotis' accounts. Further, a statement should have been taken from Mr Talevski before eliminating Mr Macevski as a suspect on 3 July 1980. The Cold Case Unit has had to obtain statements which should have been made in 1980. Given the timeline based on Mr James' evidence I have found most likely for the commission of Mrs James' murder, and Mr Macevski's own evidence and alibi regarding his movements, I am of the view it is improbable he had the opportunity to commit the crime, and there is no other evidence (only suspicion arising from his relationship with Mrs James' and his initial lies about it) to suggest he did. In the absence of new evidence, I am not of the view there is utility in any further investigation of Mr Macevski.
256. Mr Macevski was on the witness list to appear and give evidence at the inquest. He made an unopposed application to be excused from appearing on the grounds of ill health which was granted.

Father Bongiorno

257. On 17 June 1980 Ms Sharpe was in a passenger in a car travelling south down High Street saw a priest at about 11.00am outside the bookshop at 736 High Street Thornbury. She recalled it was a Tuesday following a wedding she had attended on Saturday 14 June 1980.²⁴³ She later identified the priest as Father Bongiorno from a photo provided to her.²⁴⁴
258. On 17 June 1980 before the Homicide Squad arrived, Sgt Hall had to prevent Father Bongiorno from entering the crime scene to administer the '*last rites*' to Mrs James. No other police member recalls this event, but this evidence calls into question Father Bongiorno's alibi. His posthumous alibi was provided in 2014 by Father O'Connell, a Catholic priest from St Paul's Catholic Church in Coburg. Father O'Connell detailed a long-standing custom of about twenty years, whereby priests, including himself and Father Bongiorno, had a weekly Monday lunch together, which typically started at 12.30pm and they would be seated for lunch by 1.00 pm. He stated on 17 June 1980 after the lunch, he drove Father Bongiorno back

²⁴³ SB 2231 Wedding invitation.

²⁴⁴ I am aware of the dangers of identification evidence by photo only.

to Thornbury at (he guesses) about 3pm.²⁴⁵ Driving up Hutton Street they saw the bookshop taped off with police tape. Father O'Connell describes Father Bongiorno getting out of the car and speaking to a police officer, who was Father Terry Laidler's brother (Terry Laidler is DSC Laidler's brother.) Father Bongiorno returned to the car and told Father O'Connell he had been told that Mrs James had been murdered.²⁴⁶

259. At inquest DSC Laidler had no recollection of seeing Father Bongiorno on 17 June 1980 however had confirmed doing so when asked by Detective Booth years later. Father Medici stated Father O'Connell also told him he was having lunch with Father Bongiorno on 17 June 1980. Father Medici, who took over the position as the Assistant Parish Priest at St Mary's after Father Bongiorno moved to St Ambrose's, stated Father Bongiorno would have had *Tuesdays* off as he did when he became assistant parish priest. Mark James gave evidence that at approximately 4pm on 17 June 1980, Father Bongiorno picked him up from school by taxi and broke the news to him that his mother was dead.
260. In summary, Mrs James died between 12-12.30pm on Tuesday 17 June 1980. DS Hall states he had a confrontation with Father Bongiorno at the scene between 12.40pm and 1.30pm. Father O'Connell stated he and Father Bongiorno always had lunch on a Monday, commencing at 12.30pm, '*typically it was a Monday because t[h]at was our day off.*'²⁴⁷ When Father O'Connell made his statement in 2014 he stated, '*I cannot recall the date specifically that this occurred, only that it was a long time ago and that it would have been a Monday.*'²⁴⁸ On driving Father Bongiorno back to Thornbury at about 3.00pm he states they see the police at the bookshop and Father Bongiorno gets out of the car and speaks to DSC Laidler who informs him Mrs James has been murdered. At Inquest DSC Laidler had no recollection of seeing Father Bongiorno at all on 17 June 1980, however he had earlier confirmed with DSC Booth in 2014 (when she was investigating Father Bongiorno in light of Adam James' evidence) the reference to seeing Father Bongiorno on 17 June 1980 in Father O'Connell's statement. Father Medici gave evidence that the Parish Priest would have Mondays off, but the Assistant Parish Priest had Tuesdays off. In my view Father Bongiorno's alibi from Father O'Connell is significantly weakened by DS Hall's evidence and Father O'Connell's statement that the lunches were on Mondays. Mark James also gave evidence that on the day of his mother's death Father Bongiorno arrived at his school in

²⁴⁵ CB 557.

²⁴⁶ CB 557.

²⁴⁷ CB 556.

²⁴⁸ This is confirmed in the statement from retired Catholic Priest, Leslie Harper that the lunches took place on Mondays, 'because Mondays was our day off'. (SB 2106) and retired Catholic Priest Salvatore (Sam) Dimattina (SB 2104).

Preston at about 4pm, and broke the news to him, in a brutal manner, then took him home by taxi.

261. As Father Bongiorno is now a person of interest, if he was the assailant, the question arises regarding his reason for being at the scene and demanding admittance immediately following the murder. He stated to DS Hall that he wanted to administer 'last rites,' but an inference is that he wanted to enter the crime scene in case he needed to later explain the presence of his fingerprints. Mark James gave evidence that he expected Father Bongiorno would have attended the bookshop, he had no recollection of him ever attending the family residence.
262. Northcote City Council Electrician Alan Hircoe was doing work at St Mary's presbytery when a priest with blood on the side of his face and hands appeared from the back garden. Mr Hircoe could not give year, date or time to this sighting. He also referred to the presbytery front door being answered by an Italian housekeeper dressed in a very white well pressed pinafore on the same day. Mr Hircoe believed he heard her shouting in Italian to the 'bloodied priest'. Mr Hircoe identified Father Bongiorno in 2013 from a photo in the newspaper, over 35 years later, and did not report what he had seen to police until 2014.²⁴⁹ Mr Hircoe had been reluctant to report what he had seen to police so many years later, as he did not want to waste the police time, and he did not want to get involved. About one year after seeing the newspaper article he mentioned what he had seen to a friend in the Homicide squad, Howard Beer, and soon afterwards he was interviewed by Detective Sergeant Booth. Mr Hircoe's evidence is weakened as he came forward after seeing a photograph in the paper a long time after the event and when Father Bongiorno was already a suspect. His vivid account is undated and uncorroborated.
263. Father Medici, the assistant priest in 1981 gave evidence there was never a 'housekeeper,' Italian or otherwise, or any person other than the priests living at the presbytery in 1980 or in the 1980s. Father Medici advised Cath O'Connor cooked one evening a week at the presbytery and another lady who cooked a meal at home that the priests collected on a Saturday for re-heating. Margaret Whiting did some house cleaning and dusting. Father Medici recalled Anna Zanata took over from Mrs Whiting in 1984. Enquiries in Italy to locate or identify the 'housekeeper' are on-going. This is in an effort to corroborate Mr Hircoe's evidence. Father Bongiorno's predecessor as Assistant Parish Priest at St Mary's from 1974-1976 was Desmond Cahill. He stated whilst he resided at the presbytery at St Mary's there was a housekeeper, '*Mrs Maguire, who resided in her own living quarters attached to the*

²⁴⁹ I am conscious of the dangers of identification from a single photograph.

back of the presbytery...'²⁵⁰ Margaret Duggan, the Principal of St Mary's school between 1978-1985 stated to her knowledge there was no resident housekeeper whilst she was principal.²⁵¹

264. Mrs James was a devout Catholic and she and her sons attended mass at St Mary's Church regularly. Mark James recalled attending a church service where Father Bongiorno criticised his mother during the sermon for selling pornography in her bookshop and casting aspersions about her character. He described his mother as terribly upset about this and that she had various confrontations with Father Bongiorno. Mark James also described an occasion when Father Bongiorno gave him a chocolate bar, and that he later felt uncomfortable and tried to avoid being in the presence or company of either Father Bongiorno or Father O'Keefe. Mark James also said his mother would, on occasion, take his younger brother for 'so-called godly counselling' with Father Bongiorno.²⁵²
265. In 2013 Adam James told his brother he had been sexually abused by Father Bongiorno and that he had told his mother shortly before she was murdered. Further, Adam James heard his mother make a phone call to the parish and believed she was going to confront Father Bongiorno about the sexual abuse. Mark James also heard his mother on the telephone the morning of her death asking to speak to Father Bongiorno.
266. Father Bongiorno was later charged in relation to sexual abuse of other young boys. In a County Court trial in 1996 he was found not guilty by a jury of four counts of indecent assault. ██████████ gave evidence at Inquest of being abused by Father Bongiorno when he was young at St Ambrose's Parish, Brunswick.
267. Anttony D'Amico grew up in High Street Thornbury, as his mother owned a hairdressing business and they lived in the shop's rear residence. He attended St Mary's primary school. He gave evidence that one weekend, when he was a child, he recalled a time seeing Father Bongiorno with scratches on his arms, but he could not place which year.
268. DSC Legg stated at the time of Mrs James' death Father Bongiorno was not considered a suspect, and both DS Jacobs and DI Ritchie concurred. DSC Legg recalled a heated discussion with the priest; he '*exploded*' during a conversation about a priest divulging information from within the confessional.²⁵³ DSC Legg stated in 1980 there was nothing to

²⁵⁰ SB 2112.

²⁵¹ SB 2102.

²⁵² T 292.

²⁵³ T 818.

suggest either Father Bongiorno (or Father O’Keefe) had been involved in Mrs James’ death, however if there had been cause to suspect one or both, they would not have been treated differently by police because they were clergy. DSC Legg described Father Bongiorno as *‘dealt with predominantly as a possible witness or source of information.’*²⁵⁴ DSC Legg was sure Mark and Adam James were spoken to regarding whether their mother had had any arguments or disputes or ‘unpleasantness’ with anyone prior to her death. There was no record of any disputes between Mrs James and Father Bongiorno.

269. There appears to be a widespread public perception that Mrs James’ murder has been solved and Father Bongiorno was the assailant.²⁵⁵ I am of the view Father Bongiorno remains a significant person of interest in the investigation. Taking the evidence at its highest given Adam James’ allegations, both Adam and Mark’s evidence of hearing their mother on the telephone to the Parish on the morning of her death and Father Bongiorno’s discredited alibi, he had both motive, proximity and opportunity. He is placed outside the bookshop on High street by Ms Sharpe and DS Hall, before and immediately after Mrs James’ death. Attempts to corroborate Mr Hircoe’s evidence should continue. Father Bongiorno remains a significant person of interest and investigation regarding his involvement should continue.

270. I am not of the view there was sufficient evidence for him to have been considered a suspect or person of interest by investigating police prior to Adam James’ revelations in 2013.

Father O’Keefe

271. There has been no evidence of Father O’Keefe’s whereabouts on 17 June 1980 and there is no evidence he was ever considered a person of interest by police.

272. Father O’Keefe asked Mark James one day at the presbytery if he wanted to look at the pornographic magazines which were kept on a table in the foyer.²⁵⁶ Mark James and Mr D’Amico gave evidence about Father O’Keefe having pornography at the presbytery. Mr D’Amico was also shown guns, bayonets and pornography by Father O’Keefe.

273. Father Medici became parish priest following Father O’Keefe’s death from a heart attack. He stated following Father O’Keefe’s death he found pornography in his room (which he destroyed) and stated that Father O’Keefe was very fond of British armoury, and he was aware of him having a gun, but no knives.

²⁵⁴ SB 2143.

²⁵⁵ CB 637.

²⁵⁶T 294.

274. In 2017 Adam James disclosed sexual abuse by Father O’Keefe, which occurred with Father Bongiorno and proximate to Mrs James’ death. Although he was never charged there has been other evidence of Father O’Keefe’s alleged history of sexual abuse of children. ██████████ ██████████ provided a statement supportive of Adam’s account of abuse, which is tendency evidence of his sexualised criminal behaviour towards children.
275. There is no evidence Mrs James was aware Father O’Keefe had abused her youngest son.²⁵⁷ Therefore, unlike the evidence against Father Bongiorno, Father O’Keefe has no known motive and there is no evidence of his whereabouts on 17 June 1980. Living at St Mary’s presbytery he was proximate to the murder and Mr Hircoe’s evidence about the ‘bloodied priest’ refers to another priest being present, however no inferences can be drawn from this.

Mario Falcucci

276. Mr Falcucci lived at 3 Hutton Street which a street is opposite Mrs James’ bookshop.
277. Mr Falcucci knew Mrs James for many years. There is an Information Report whereby Mrs James’ brother in law, Frank Spada nominated Mr Falcucci as a suspect and described an incident whereby Mrs James verbally abused him for walking through the shop and into her residence without invitation.²⁵⁸ The Information Report also noted that Mrs James feared Mr Falcucci but also that he had been excluded by Mr Cashman as the man running down Hutton Street.
278. Mr Falcucci was identified as ‘9am man’ and admitted to having been at the bookshop the morning of Mrs James’ death and arguing with her when she refused to purchase some *Parade* magazines. DSC Legg recalled police were unable to eliminate Mr Falcucci but were unable to take his potential involvement any further.
279. An Information Report by DS Jacobs dated 6 July 1980²⁵⁹ indicates Mr Falcucci was interviewed, suffered memory loss, admitted to attending the bookshop twelve months earlier with 12 *Parade* books for sale. The report indicates he entered the bookshop and the hallway of the residence; Mrs James was in her dressing gown told him to leave. Mr Falcucci may have been to the bookshop on the day of the murder, but he was unsure. Mr Falcucci was

²⁵⁷ Save for references in Adam James’ VARE in 2017 made after his original three statements in 2013 and 2015.

²⁵⁸ CB 1594.

²⁵⁹ CB 1258.

described as *'very vague and unsure of himself.'* DS Jacobs could not recall interviewing Mr Falcucci or being involved with any follow up investigations of him.²⁶⁰

280. DSC Legg recalled Mr Falcucci did not have a strong alibi but *'... ultimately we weren't absolutely satisfied with him but we could take it no further ...'*²⁶¹

281. Mr Falcucci had entered Mrs James residence when he should not have, and he had an argument at the bookshop on the day of her murder. He lived in Hutton Street, opposite the bookshop. His alibi was not 'strong'. I am not of the view Mr Falcucci can be excluded as a person of interest in Mrs James' death.

Lyle Perkins

282. Lyle Perkins lived in Melbourne and worked for Telecom but had no connection to Maria James. Mrs James was said to have told her doctor she was seeing someone who worked for Telecom, but this may have been erroneously recorded by the doctor.

283. Though it is not known when he travelled to Queensland, Lyle Perkins was arrested there in August 1980 for kidnapping two female hitchhikers. In his car police found a rifle, bottles of ether, cord, adhesive tape and a Wiltshire brand knife (in a knife board). He pleaded guilty to the charges and as he had no prior convictions, following a pre-sentence report on 25 August 1980 at Southport Magistrates' Court he was placed on three-year probation order with treatment conditions.²⁶²

284. The same day he was positively identified by Ms Hodson in an ID parade as 'High Street' man. (This was the second man Ms Hodson identified as 'High Street' man.)

285. There is no other evidence implicating him in Mrs James' murder although police never established his alibi.

Peter Keogh

286. On 11 August 1980 an Information Report was received from Inspector Bert Liddell regarding a report from William Goulding, a hypnotherapist, that a social worker and parole officer named Margaret²⁶³ had some information that might assist the investigation of the murder at the Thornbury bookshop. It reported Margaret knew a man called Peter Keogh

²⁶⁰ T 959.

²⁶¹ T 815.

²⁶² CB 1656.

²⁶³ Margaret Hobbs.

whom she described as a butcher living in the Thornbury area who had a violent record for sexual offences and *'hate[d] women.'*²⁶⁴

287. On 13 August 1980 police checks were made with Council and utilities and confirmed Peter Keogh lived at 3/223 Westgarth Street Northcote.
288. On 14 August 1980 DSC Iddles spoke to Mr Keogh who said on 17 June 1980 he would have been with his girlfriend. The detective then spoke to the girlfriend, Judy McNulty who said she was with him that day. Based on this information Mr Keogh was eliminated as a suspect by DSC Iddles. There was no evidence Mr Keogh knew Maria James.
289. In evidence DSC Iddles confirmed he did not take a statement from Ms McNulty although she was an alibi witness for Peter Keogh or make a separate Information Report. Further, although Mr Goulding and Ms Hobbs were both qualified allied health professionals and Mrs Hobbs nominated Peter Keogh as being involved with Mrs James' murder, neither of them were canvassed by him.²⁶⁵
290. In response to a media appeal, on 4 February 1982 DSC Iddles completed an Information Report from Mrs Miles who nominated Peter Keogh as the assailant, a butcher who carries a knife.²⁶⁶ Mrs Miles was with her sister Judy McNulty when she made the call to police. DSC Iddles did not follow this up and did not know that Mrs Miles was Judy McNulty's sister.²⁶⁷ A second Information Report of the same day recorded that Josephine Reeves nominated Peter Keogh, her sister's boyfriend, who had threatened her with a knife.²⁶⁸ The note by police following this report indicates Mr Keogh had been interviewed (IR 495) and eliminated on the word of a previous girlfriend. The police did not realise the report by Ms Reeves referred to the same girlfriend, and that Ms Reeves was Ms McNulty's sister.
291. After these two Information Reports, there was no follow up contact by police with Judy McNulty. DSC Iddles was not of the view the Information Reports from either Mrs Miles or Josephine Reeves warranted any further follow up however he was not aware they were both Judy McNulty's sisters.

²⁶⁴ CB 1566.

²⁶⁵ T 1588.

²⁶⁶ CB 1592.

²⁶⁷ T 1590.

²⁶⁸ CB 1593.

292. In her statement in 2001 Mrs Miles believed that her sister Judy suspected Mr Keogh's involvement in the murder and was very surprised to learn that Judy had provided Mr Keogh's alibi. Judy died in 1997.
293. On 20 February 1989 DS Jacobs received a call from Phil Cleary nominating Peter Keogh as a suspect in Mrs James' murder, the detective noted, '*based on rumour only.*'²⁶⁹ DS Jacobs did not recall this call or note but explained '*it looks like I didn't follow up so I assume that the IRs must have eliminated Keogh.*'²⁷⁰
294. On 17 March 1997 Phil Cleary contacted police again about Peter Keogh. An Information Report indicates Phil Cleary advised police Judy McNulty contacted Phil Cleary's mother, Lorna in 1994 after Peter Keogh's trial for the murder of Phil Cleary's sister Vicki. Apparently, she said she was Peter's girlfriend before Vicki and said to Lorna Cleary, '*he's got away with it again*' and explained Mr Keogh had said to her, '*I'll do to you what I did to Maria James.*'²⁷¹
295. There are a number of Information Reports during 1997 with police following up Lorna Cleary (Phil's mother), Marilyn Reeves (mother of Mr Keogh's son, Damien), Jim Goulding and John Hobbs, Josephine and Gay Reeves (Judy McNulty's sisters), Dorothy Reeves (Judy McNulty's mother), Terrie Delaney (Judy McNulty's daughter) and Carol Rice (Judy McNulty's sister).²⁷²
296. In 2001 DSC Iddles, by then a Detective Senior Sergeant, was in charge of Cold Case investigations.²⁷³ He tasked Detective Leading Senior Constable (**DLSC**) Rae to take statements rather than Information Reports, and DSC Rae took a statement from Christopher Wheeler, Vicki Cleary's boyfriend at the time of her death. Mr Wheeler stated Vicki told him Peter Keogh had said to her, '*I'll do to you what I did to that girl in the bookshop,*'²⁷⁴ and that she was convinced he was responsible for that death. He also said Mr Keogh knew Mrs James and that her back door was kept unlocked.

²⁶⁹ Exhibit 56.

²⁷⁰ T 976.

²⁷¹ CB 1596.

²⁷² CB 1596-1611 Information Reports.

²⁷³ T 1327.

²⁷⁴ CB 363.

297. DLSC Rae also took a further statement from Jeanette Hodson on 17 July 2001²⁷⁵ when she was shown a photo board and identified photo 2, Peter Keogh, as the man who ran across High Street on 17 June 1980.²⁷⁶ This was the third man Ms Hodson had identified.
298. DLSC Rae did not contact Mr Keogh and as some of the relevant witness statements are not dated it is not clear if they were taken before or after Mr Keogh's suicide in June 2001.
299. DLSC Rae was of the view the original investigation should have taken statements from both Mr Goulding, who gave the information about Margaret Hobbs, and Judy McNulty as she was an alibi witness for Mr Keogh.²⁷⁷
300. At the time of Mrs James' death Mr Keogh was living in Westgarth Street Northcote. Mrs Miles/Haynes gave evidence to the inquest that she went to Mr Keogh's flat with her sister Judy McNulty on the afternoon of 17 June 1980, around the time of the murder, to collect some clothes for him as he believed he was being watched by the police. As Mrs Miles statement was not taken until 2001 police were unaware of this.
301. Cherrie Davies gave evidence to the inquest she was attacked at her home in 1970 by Peter Keogh. She was approached by a man at the Croxton Hotel and they had a conversation. She gave him her address as she had a car for sale he was interested in buying. He told her his name was Peter. A few days later he attended her home. When she asked him to return when her partner came home, he kicked the glass panel of the front door, put his hand in and opened the door.
302. The man hit her around the face and head, and she pretended to faint. He dragged her to the bedroom and threw her onto the bed. He started to fumble with his pants, one hand undoing his belt and the other taking something out of his pocket. She described the object as glittery or shiny and she believed it to be a knife and twine.
303. She realised he was about to rape her so she ran out of the room and escaped. Ms Davies reported the assault to police and went to Russell Street police station to look at photos and picked out Peter Keogh, who was subsequently charged.
304. Further Ms McNulty's daughter Terrie wrote to Phil Cleary describing chilling family violence incidents from the early 1980s involving Peter Keogh terrorising her mother and family and using a knife.²⁷⁸

²⁷⁵ CB 185.

²⁷⁶ CB 1871.

²⁷⁷ T 1340.

305. In 1987 Mr Keogh attacked his recently separated girlfriend Vicki Cleary and stabbed her to death as she was arriving at the kindergarten where she worked. He was found guilty of manslaughter after a defence of provocation was accepted.
306. Professor Ranson prepared a report in which he considered Dr Richard Collins' 1987 autopsy report for Vicki Cleary. This was a six-page report and included a diagram outlining Ms Cleary's injuries.²⁷⁹
307. Professor Ranson was asked if there were any commonalities with Mrs James' autopsy report. In Professor Ranson's opinion there was no pathological link between the two cases, he stated chest and neck injuries were very common and three or four major injuries was not uncommon. In the absence of photos of Ms Cleary's injuries, he was not able to say whether a similar weapon was used.
308. Peter Keogh's suicide on 24 June 2001 prompted renewed interest in examining his potential involvement in Maria James' death. DLSC Rae obtained a sample of his DNA.
309. In 2001 DLSC Rae also collected the Maria James exhibits and took them to the FSD McLeod for analysis. He believed there was no reason to question the integrity, continuity or contents of the exhibits and did not assess or review them.²⁸⁰ In 2003 he was advised that an unidentified DNA profile extracted from an exhibit did not match Peter Keogh's DNA, which effectively eliminated him from involvement in Mrs James' death. It is now known that the unidentified DNA profile came from an exhibit in the McCoy murder investigation.
310. I am of the view the original investigation did not properly consider Peter Keogh as a suspect for the following reasons:
- (a) In August 1980, no statement was taken from his alibi Judy McNulty and no Information Report was made;
 - (b) Further enquiries in 1980-82 would have revealed Mr Keogh lived in Northcote and had worked as a butcher for a time near Mrs James' bookshop and that in June 1980 he worked the 6pm-2am nightshift at Pampas Pastry, Oakover Road Preston, near the corner of High Street and therefore had the opportunity to commit the crime;

²⁷⁸ Exhibit 69.

²⁷⁹ Report by Professor David Ranson, April 2021, Exhibit 3.

²⁸⁰ T 1299.

- (c) Neither William Goulding nor Margaret Hobbs, both of whom were professional allied health workers and Ms Hobbs had a professional relationship with Mr Keogh, were approached, questioned or asked to give statements to the police investigation;
- (d) Neither Mrs Miles nor Josephine Reeves were followed up when they named Peter Keogh as a suspect in 1982. Police did not identify their relationship with Peter Keogh's alibi witness, Judy McNulty;
- (e) Phil Cleary contacted DSS Jacobs in 1989 nominating him as a suspect but there was no follow up; and
- (f) Mr Keogh had a criminal history of committing violent offences against women, as indicated by the attack on Ms Davies in 1970.

311. A pillow from the James crime scene has produced a partial mixed DNA profile of at least two contributors and there is 'slight' support Mr Keogh is a contributor to the DNA profile.²⁸¹

312. I am of the view Peter Keogh was quickly eliminated as a suspect without proper grounds given neither William Goulding nor Margaret Hobbs had been spoken to by police.

313. Although there is no evidence that Mr Keogh and Mrs James knew each other, Mr Keogh grew up and lived in the Northcote/Thornbury area and Mrs Miles evidence was that he had worked as a butcher in High Street near the corner of Westgarth Street.

314. After his trial in 1989 Ms McNulty later told Mrs Lorna Cleary that Mr Keogh made an admission to her about killing Mrs James. Further, Vicki Cleary told her boyfriend Mr Wheeler he had said a similar thing to her. He also stated Vicki had said Peter knew the girl in the book shop and the back door was left open and Peter would always go in through the back door and park his car in the lane behind the shop. Margaret Hobbs had also been told by Mr Keogh '*that he was going to get her*' but she was never questioned by police.

²⁸¹ A nuclear DNA profile provides a summary of the differences between individuals evident at several sites – or loci – of their DNA. As DNA technology has improved, the number of sites at which comparison may occur has increased (from 10 to 21), though comparison is only possible if profile information is obtained at the relevant loci. In practice, DNA profiles other than those generated from a single known source (or reference profile) may be partial or mixed. A partial DNA profile does not contain DNA profile information at all DNA sites (Loci) tested. Such results are common where there is a low amount of DNA Present in the sample and when DNA is degraded and/or aged. A mixed DNA profile contains DNA from more than one person or contributor; interpretation of results may involve assumptions about the number of contributors.

This complicates analysis and interpretation of results and, likely, the strength of any evidence of a 'match', expressed as the likelihood ratio.²⁸¹ To be used in a criminal prosecution, in addition to proving a strong DNA 'match' between the DNA profile obtained from the crime/scene (that is, an evidence profile) and a reference profile, evidence demonstrating an intact chain of custody for the evidence profile and the exhibit from which it was generated is required.

315. Mr Keogh remains a significant person of interest and the investigation into his potential involvement should continue.

2016 Operation Barmen

316. The new information provided by Adam James and Mr Hircoe in 2013-14 saw renewed activity in the Maria James investigation by then code-named Operation Barmen.

317. In 2014 DSC Catherine Booth was tasked to investigate Father Bongiorno's involvement. DSC Booth noted Father Bongiorno had an alibi, namely being at the lunch with other clergy at the time of the murder. DNA from a relative²⁸² excluded him from the DNA which had been identified by Mr Hall on pillow 9(b).

318. On 18 September 2016 DS Nick Densley joined the Homicide Squad responsible for Operation Barmen. He reviewed the investigation and identified Peter Keogh, Peter Macevski, Mario Falcucci, Lyle Perkins and Father Bongiorno as persons of interest.

319. On 12 April 2017 DS Densley received an email from FSD McLeod biologist Kate Bradley querying the whereabouts of some of the Maria James exhibits and seeking information about where pillow 9(b) had been located, as she could not see it in the crime scene photos. After some investigation and reviewing the crime scene photos, DS Densley formed the view it was unlikely pillow 9(b) was from the Maria James crime scene. After reviewing crime scene photographs from 1975-1989, DS Densley visually matched pillow 9(b) to the photos from the crime scene of the 1975 unsolved stabbing murder of Noel McCoy.

320. DS Densley described the pillow exhibit mix up as setting the James murder investigation back by 14 years as all the persons of interest who had been excluded as not matching the unknown male DNA were now back in the frame.²⁸³

321. On 27 May 2017 Sgt Jones was tasked with reviewing the exhibit records and developing a timeline of movements relating these exhibits from records held.²⁸⁴

322. On 14 July 2017 the case was transferred from DS Densley's team to Homicide Cold Case Team which took carriage of the Maria James investigation for immediate review.

²⁸² This DNA sample was from Father Bongiorno's sister meaning it is mitochondrial DNA (mtDNA). This DNA is inherited from the mother only and has a single chromosome. As a result, while each person's nuclear DNA is unique, they will share mitochondrial DNA with maternal relatives.

²⁸³ T 1736.

²⁸⁴ DS Densley p 5.

323. In 2017 Detective Sergeant Michael Hanna was seconded to Homicide Squad Cold Case Team where he was tasked to review the property and exhibits from the Maria James case from 1980 to 2017 to determine the current Victoria Police holdings. This was to determine what was in Victoria Police's current possession and able to be subjected to further testing.
324. DS Hanna was present on 26 July 2017 with Sgt Jones at the Melbourne West Police station property office when all the exhibits located were 'photographed, repackaged and labelled.'²⁸⁵ The spreadsheet prepared by DS Hanna included numbers attached to the exhibits over the years by different property exhibit management systems, however it does not track the different whereabouts of items, but simply where they originated from in 1980 and where they were located in 2017 and whether they had been subject to analysis and the result.²⁸⁶
325. In 2017 Victoria Police held a media conference and apologised to the James family for the exhibit mix up that saw a pillow from another crime scene being stored with the Maria James exhibits and DNA extracted from that pillow used as offender DNA to exclude suspects. The DNA was extracted in 2003, and the error was identified in 2017.
326. Neither the media conference nor the James family were advised that this was not the only exhibit error during the course of the investigation. In addition, in 1980 the clothes worn by Mrs James disappeared. In 1981, two crucial exhibits, namely the pillowcases which were covered in blood, also disappeared. The quilt from Mrs James' bed was lost in 2011 and not found until mid-2021 raising major continuity concerns for any evidence extracted there from.
327. This constitutes five errors with regarding exhibit management and none of the errors appear to be causally linked.

RECENT FORENSIC ANALYSIS OF EXHIBITS

328. Although police began to use DNA as an investigative tool in 1989, it was between 2001 and 2021,²⁸⁷ when exhibits from the Maria James crime scene were subjected to DNA analyses to detect biological material that may have originated from Mrs James' killer. Most of the biological material detected was attributed through DNA analysis to Mrs James, though there were some partial minor components of foreign DNA detected in some samples.

²⁸⁵ Exhibit 71.

²⁸⁶ Exhibit 72.

²⁸⁷ Other types of biological analysis, such as identification of biological materials and blood typing occurred before 2001, particularly immediately following Mrs James' death: see generally the Statement of Kathryn Bradly dated 20 April 2020.

329. Reference DNA profiles²⁸⁸ from Mrs James, Mark and Adam James, Peter Keogh, Peco Macevski, Mario Falcucci and Lyle Perkins were available to FSD for comparison with any evidence DNA profile generated from exhibits.

Clothes/Shoes

330. As indicated above, the whereabouts of the clothes Mrs James was wearing at the time of her death is unknown. Her shoes survive and analysis undertaken in 2017 produced a partial, mixed DNA profile involving three contributors including Mrs James; Mark and Adam James were possible contributors, but no persons of interest were contributors.²⁸⁹

Twine

331. The twine used to bind Mrs James' hands was analysed in 2003, 2017 and 2019. No DNA foreign to Mrs James was detected.²⁹⁰

Pillows/pillowslips

332. Pillows collected from Mrs James' bedroom (Item 9a) were subject to DNA analysis in 2015²⁹¹ and again in 2017. During the most recent testing, seven samples were taken from areas of the pillows where there was apparent blood staining and submitted for PP21²⁹² DNA analysis. The presence of blood could not be confirmed in any of the samples nor could a YFP DNA profile²⁹³ (a male, Y chromosome profile) be generated. Four samples produced partial, mixed DNA profiles and Mrs James was assumed to be one of the contributors. The result from only one sample²⁹⁴ provided 'slight'²⁹⁵ support for a person of interest being a contributor: the DNA evidence was two times more likely if Peter Keogh was a contributor.²⁹⁶

²⁸⁸ These samples were assessed as suitable for DNA comparison. A nuclear DNA profile provides a summary of the differences between individuals evident at several sites – or loci – of their DNA. As DNA technology has improved, the number of sites at which comparison may occur has increased (from 10 to 21), though comparison is only possible if profile information is obtained at the relevant loci.

²⁸⁹ SB 2185.

²⁹⁰ SB 2184-5. In 2019, a comparison was made of the twine used to bind Mrs James and that found behind the bookshop counter. No significant differences were found in the construction of the twine and so the analyst opined that the two samples of twine could have originated.

²⁹¹ An area of staining on one pillow screened positive for blood and an area sampled for DNA analysis; Mrs James could not be excluded as the source of the partial profile obtained from the sample: SB 2188.

²⁹² PP21 – PowerPlex 21 – enables DNA analysis from 21 loci which has been used at FSD since 2013.

²⁹³ YFP – Yfiler Plus DNA Profile – analyses specific sequences of the DNA (loci) on the Y chromosome used at FSD since 2016.

²⁹⁴ The sample described as 44-6 in Kathryn Bradley's report: SB 2188. This sample included information from six of 21 loci: T1075.

²⁹⁵ T1076

²⁹⁶ And the same sample produced the result that the DNA evidence was three times more likely if Adam James was a contributor and could not confirm that Mrs James was a contributor: SB 2188.

Senior Case Manager at FSD, Kathryn Bradley, explained that one in every two people could produce the same likelihood ratio as this result.²⁹⁷

333. Fifteen hairs were collected from pillowslips from Mrs James' pillows. Only five hairs were human and only two of these with the root intact. Although the two hair roots were separately submitted for DNA analysis, neither produced a DNA profile.²⁹⁸

Quilt

334. In the 1980s, three samples of apparent blood staining on the quilt from Mrs James' bed were subjected to biological testing in the form of blood grouping: Mrs James' blood group was identified.
335. The quilt was unable to be located until June 2021. After it was located it was resubmitted for DNA testing involving DNA analysis of apparent bloodstains (14 samples) and areas that were not stained (eight samples). The results were indicative of 'degradation' of DNA, likely due to the age of the item and its storage in plastic.²⁹⁹
336. None of the 'trace' samples (from areas of the quilt where staining was not apparent) produced a DNA profile.³⁰⁰
337. Of the 14 samples taken from apparently bloodstained areas of the quilt, eight produced a partial single source DNA profile of which Mrs James was assumed to be the contributor and could not be excluded as the contributor.³⁰¹
338. The remaining seven samples, each produced a partial, mixed DNA profile involving two contributors one of whom was assumed to be Mrs James. Only two of these samples³⁰² contained sufficient information about the second contributor to warrant comparison with reference samples. The results of both comparisons excluded or supported the exclusion of Adam James and the persons of interest as contributors and were neutral/did not exclude Mark James as a contributor.³⁰³
339. In Ms Bradley's opinion, it is not possible to ascertain if any of the minor components of foreign DNA are more likely if they originated from the offence or offender or from unrelated

²⁹⁷ T1076.

²⁹⁸ SB 2191.

²⁹⁹ SB 3337; see also the Report of Dr Dadna Hartman at SB 3629-3633.

³⁰⁰ SB 3337-3339.

³⁰¹ SB 3337-3339.

³⁰² Samples described as 60-8 and 60-6A in Kathryn Bradley's report: SB 3339 and 3338 respectively.

³⁰³ SB 3337-3339.

activities given when the exhibits were collected and their history of examination. In her view, the statistical evaluation of DNA results from the James exhibits does not provide evidence to support a contribution of DNA from any of the persons of interest whose DNA has been compared by the FSD.³⁰⁴

340. Ms Bradley raised the issue of continuity and chain of custody regarding the eleven hairs found when the quilt was rediscovered in 2021. These were not mentioned in 1980 when the quilt was examined in by SC Collins,³⁰⁵ ‘... *there was no indication that hairs were collected at that time.*’³⁰⁶

Mitochondrial DNA

341. Although nuclear DNA analysis is ordinarily used in the forensic context because of its potential to *identify* an individual, mitochondrial DNA may be used to include or exclude an individual as a donor of a sample. Given that mitochondrial DNA is ‘not as informative,’ as nuclear DNA, as maternal relatives will share the same mitochondrial DNA profile, its use is considered a ‘last resort’.³⁰⁷
342. Mitochondrial DNA testing relies on a single source sample. As a hair is a single source, it is suitable for mitochondrial DNA testing. Nuclear DNA testing on a hair requires the root of the hair, and for the hair to be in the growth phase, known as ‘anagen phase.’ However hair fragments without the root are suitable for mitochondrial DNA testing. When Dr Hartman was asked about the possibility of finding a profile match that might be of probative value, she recommended, for those hairs that did not have a root enabling nuclear DNA profiling, ‘... *some of those hairs could be submitted for mitochondrial DNA testing, and therefore could then be used for comparisons to include or exclude persons of interest.*’³⁰⁸
343. Dr Hartman cautioned that not all hair samples generate a good mitochondrial DNA profile; it depends on the size, age and exposure to chemicals. She agreed it was possible where a hair sample had not generated a nuclear DNA profile it may be possible to generate a mitochondrial DNA profile. She stated her preference to analyse a single hair rather than

³⁰⁴ SB 2177.

³⁰⁵ CB 610-615.

³⁰⁶ T 1096.

³⁰⁷ SB 3631.

³⁰⁸ T 1129.

material that has already been profiled.³⁰⁹ Dr Hartman also noted in releasing the biological material to extract DNA usually the entire hair will be consumed in that process.

344. The VIFM is one of only two laboratories in Australia accredited to undertake mitochondrial DNA profiling for forensic application.
345. At the request of Mrs James' sons, at the conclusion of the inquest I directed that the human hair samples taken from the pillowslips and quilt be subjected to mitochondrial DNA testing at the VIFM, and that sample 60B-1 (referred to in Exhibit 62) be subjected to Y STR profiling. At the time of writing, the analysis of the 'pillowslip hairs' has completed.³¹⁰ Unfortunately, all five hairs submitted for analysis failed to yield a mitochondrial DNA profile.³¹¹ The Y STR profiling of sample 60B-1 also failed to yield a result.³¹²
346. Dr Hartman asked about future technology which could expand current knowledge about DNA testing and profiling. Currently mitochondrial DNA can only be done on a single source sample but she referred to work overseas where laboratories are doing what is known as 'massively parallel sequencing' or 'next generation sequencing' in sample mixes where there are two donors.
347. In response to a question whether, if the pillowslips were ever found, could they yield any DNA profile. Dr Hartman stated, '*... you would have to try ... and collect trace evidence.*' She referred to new research being undertaken using dyes or staining techniques to look for trace amounts of biological material as minute as one or two cells and being able to recover a DNA profile.³¹³
348. There is a DNA sample from Father Bongiorno's sister which means scientists have access to a mitochondrial DNA profile for Father Bongiorno. Because of the limitations of mitochondrial DNA, as mentioned above, any analysis of a DNA profile from a mixed source would require DNA from Father Bongiorno himself. When asked if DNA could be obtained from a body buried 20 years ago, Dr Hartman replied, '*I expect so.*'³¹⁴
349. The James family has submitted they will seek an exhumation of Father Bongiorno to obtain a DNA sample if the outcome of the DNA hair testing is inconclusive.

³⁰⁹ T 1138.

³¹⁰ The 'quilt hairs' have only just been submitted to VIFM following morphological analysis by the Australian Federal Police on the advice of VIFM's Chief Molecular Biologist, Dr Dadna Hartman.

³¹¹ Report of Dadna Hartman (incorrectly) dated 9 March 2021, received on 10 March 2022.

³¹² Report of Kathryn Bradley dated 10 December 2021.

³¹³ T 1130-1.

³¹⁴ T 1139.

350. I note pursuant to section 43 of the Act an application for exhumation of a body is made to the State Coroner.
351. My summary of evidence implicating Father Bongiorno as a suspect and directing that investigations against him should continue will be of assistance to the State Coroner in considering any application pursuant to section 43.

CONCLUSIONS

352. I make an open finding regarding the identity of the person who killed Mrs James.
353. This means the criminal investigation will continue and if any new facts and circumstances come to light the coronial investigation can be re-opened. As noted earlier, the Chief Commissioner of Police has indicated the Homicide Squad's Cold Case Unit will continue to *vigorously investigate*.
354. As indicated during the course of this finding I am of the view there were inadequacies in the police investigation on a number of levels and this led to potentially lost opportunities to identify Mrs James' assailant.
355. I confirm my measure is the adequacy of the police investigation. I take into account the relevant investigative standards and norms of the time and the perils of hindsight bias. I also confirm the measure of an investigation is not solely based on whether it was solved. There is no doubt the investigating officers worked hard and diligently, challenged by the enormity of the amount of information and case management restrictions of pen and ink and typing on paper. I have examined the handwritten Index of the Information Reports and it is a truly impressive and comprehensive document which formed and remains the Rosetta stone of the investigation.

The crime scene

356. There was no evidence of collaboration or specialist input between the crime scene examiner, the Homicide detectives, photographs, fingerprint experts. Intelligence relevant to the crime scene gleaned from early statements, such as from John James, completed at 2.30pm whilst the crime scene was still being examined, does not appear to have been used to advantage. It was not documented to have occurred, but if it did occur, it was not optimised. There were mistakes made at the crime scene examination such a failure to preserve the scene by moving the body and Mrs James' shoes whilst it was being photographed, and a failure to fingerprint

around the front interior of the front door through which the assailant exited. The back door interior surrounds were not fingerprinted either.

357. As fingerprinting was one of the few forensic tools available to investigators at the time I am surprised by the seemingly cursory response by the fingerprint experts and the loss of potentially important evidence, particularly from around the front door.
358. There appeared to be a lack of communication between the crime scene examiner, fingerprint experts and the homicide detectives. Although there might not be direct evidence of the lack of communication, it is reflected in the outcome which appears to be a very limited examination of the crime scene for fingerprints. As with the lack of documentation between the forensic pathologist and the evidence of Ms James being smothered, this supports the importance of a record of key strategic decisions regarding the course of the investigation.

No case theory formulated

359. The absence of any formulated crime reconstruction or case theory meant it was difficult to identify valuable leads in an inundation of information. Sergeant Starr and Detective Prados are both of the view now that the assailant may have been known to Mrs James. As I have stated, the evidence suggests the investigative approach was largely responsive, and lacking a positive framework or case theory to drive the investigation forward.

No designated leadership for the course of the investigation

360. Over the course of a forty-year investigation the police officers responsible for leading an investigation will inevitably change. However, after 1982 it is difficult to identify who was actively in charge of the investigation and the case seemed to pass through many hands. When DSS Iddles took over as head of the Cold Case Unit in 2001 there was no systematic process to review the state of the evidence and formulate a forward investigative process. It appeared responsive only, but not so much as to pick up the cues when a scientist contacted DSS Iddles in 2009 querying exhibit integrity. The lack of action to re-submit exhibits for further testing shows a disregard towards the integration of specialist input.
361. There should be a designated process in Victoria Police regarding who is in charge of an investigation into an unsolved crime after the initial investigation exhausts itself and a process as to how the investigation will progress and approach new leads.

Information collection and management

362. Once persons of interest were eliminated, there was a reluctance to consider new leads which may have contradicted known information or offered new evidence about persons of interest such as Peter Keogh. When Peco Macevski was identified in an identification parade there was no action or review regarding the relevant evidence. This meant suspects were eliminated too quickly and discrepancies and inconsistencies not explored properly, particularly so with Peter Keogh.
363. There was a failure to take key alibi statements. The failure to take statements from key alibi witnesses led to enormous effort in a retrospect by Cold Case investigators to cover the information lost, for example, from witnesses Nicoli Talevski and Judy McNulty. Police distinguished between 'suspects' and 'persons of interest' regarding whether alibi statements were taken or not, but not even an Information Report was made regarding Judy McNulty.
364. There was a failure to follow up on information from the public for example William Goulding and Margaret Hobbs which, given the source of that information, clearly indicated a potentially viable lead was ignored.
365. The preference for the use of Information Reports over statements was reasonable given the influx of information, but not at the expense of significant corroborative alibi witnesses. This has resulted in extensive time and effort by the Cold Case investigation following up statements that should have been taken contemporaneously in 1980.

Recording decision making

366. A major decision book may have improved the retrospective analysis of police decision making.
367. Detective Iddles made reference to the method in the United Kingdom whereby the Senior Investigator records key decisions on a log and the rationale for making such decisions. Whilst this has been adopted by the West Australian Police Department, to his knowledge it has not been adopted in Victoria.³¹⁵
368. In 2001 the investigation was re-invigorated by the Cold Case unit but there was no evidence of a full review of the case at that time. The exhibits were sent to FSD McLeod without an audit and there was a conversation between DS Iddles and Mr Hall about what was to be

³¹⁵ SB 2138.

tested. In his 2003 analysis, Mr Hall did not test the two pillows without the slips as there were crime scene photos of the pillows with slips yet he did test a third pillow that was not even in the crime scene photos from which he extracted the offender DNA that was then used to exclude suspects. DS Iddles did not act on the email from and conversation with Kate Bradley in 2009 alerting him to her suspicions about the exhibit integrity given the crime scene photos and her request for the exhibits to be re-lodged. I am of the view this was a missed opportunity to identify the error well before its ultimate identification in 2017.

Exhibit handing errors

369. The gravest failures of the investigation concerned the management of the exhibits and the loss of Mrs James' clothes and pillowslips. The security and integrity of exhibits was not maintained through a combination of individual and systems failures. This produced five exhibit errors described above that were not related or from a common cause.
370. There was an ad hoc approach to the collection of exhibits by SC Collins and inaccurate recording of their whereabouts. For example, exhibits were not collected at the same time, the pillows were left at the scene and only collected the following day. Accurate documentation was not made recording the movement of exhibits. Additionally, an item such as the knife block was not taken as an exhibit.
371. Mrs James' clothes and the pillow slips are lost.
372. There has been co-mingling of an exhibit from a different crime scene, and it is unknown what effect, if any, this has had on the two pillows for the crime scene.
373. The exhibit from the McCoy crime scene, namely the McCoy pillow was used to obtain a DNA profile that was used to eliminate persons of interest from the James investigation over a period of 14 years. This has also no doubt compromised the use of that exhibit in efforts to solve the homicide of Mr McCoy.
374. I reject that Victoria Police can rely on a 'presumption of regularity' argument regarding their management of the exhibits that it was reasonable to accept the 2003 DNA analysis by Mr Hall.
375. A labelling error meant the pillows (with the third pillow) were labelled as being a 'quilt'.
376. The actual quilt was located in an audit at CPMB Collingwood on 8 February 2021 and Detective Prados was notified on the 23 June 2021.

377. The five exhibit handling errors cannot be attributed to a single cause.

Violence against women

378. Mr Cleary contacted the Homicide Squad a number of times during the investigation, first in 1989 and then in the late 1990's suggesting Peter Keogh may have been involved in Mrs James' death. He wrote to the Chief Commissioner in 1997 with his concerns. Peter Keogh killed Mr Cleary's sister Vicki in 1987. Mr Cleary made a statement to the investigation in 2001 and gave evidence at inquest.

379. Mr Cleary was a champion of law reform which resulted in changes to laws of provocation following the death of his sister Vicki. Mr Cleary had the gravest concerns about Peter Keogh's propensity for violence and was astounded he was '*so summarily excluded as a suspect in the Maria James case*' and expressed his concern '*it was irrefutable Homicide detectives ignored allegations and failed to interview key informants such as Hobbs and Goulding and the McNulty sisters.*'³¹⁶

380. I agree with Mr Cleary's assessment of the police investigation into Peter Keogh and that insufficient attention was given to his concerns about Peter Keogh. I have referred to investigators' 'tunnel vision' to alibis that marked a reluctance to re-visit a possible person of interest. I am satisfied from the evidence Mr Keogh perpetrated violence against many women. He had opportunity and proximity to the area, and he may well have known Mrs James and been aware she was alone in the book shop.

381. There are examples in the investigation which appear to have ignored women's voices. Police did not take a statement from Judy McNulty although she was Mr Keogh's alibi. There appeared no understanding or consideration of her position as a potentially vulnerable witness given Mr Keogh's violent history. Police did not speak to Ms Hobbs although she was Mr Keogh's social worker and had reported to a colleague her grave concerns about him. There was no follow up with Ms McNulty's sisters in 1982. DSS Iddles did not act on the email and discussion with FSL scientist Kate Bradley regarding her concerns about exhibit integrity. The fact the toilet seat was up at the crime scene was not queried at all by the crime scene examiners although Mrs James lived there with her two sons who, by the time she was attacked, had been at school for several hours. There was a casual acceptance of Mr Macevski's alibi and police did not mention to Mrs Macevski her husband's affair with Mrs James until 2021. At the time of her death, rumours circulated about Mrs James being in

³¹⁶ CB 356.

multiple intimate relationships as if her 'morals' were somehow to blame for her death. There is no evidence whatsoever to support this suggestion. I am unable to say whether these examples of police behaviour were intentional or the result of an unconscious bias and a product of the time.

382. No doubt having women in the Homicide Squad now enables a different perspective to investigations to ensure women's voices are listened to, heard and acted on.

COMMENTS PURSUANT TO SECTION 67(3) OF THE ACT

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

383. The PALM system of property and exhibit management introduced by Victoria Police should ensure the mistakes in the investigation will not be repeated. It contemporaneously records details of all movements in and out of the designated location at the time of movement and generates a property/exhibit number and description of the item. Exhibits are now retained for a minimum of fifty years.
384. Victoria Police has confirmed the Homicide Squad's Cold Case Unit will continue to vigorously investigate Mrs James murder with every intention of identifying her killer. This suggests the investigation will continue to be proactive rather than merely receptive to new information.
385. With respect to the family's submission for a complete physical search of Victoria Police's property holdings for the missing exhibits, in my view Victoria Police should make every effort to try and locate the missing items particularly given they lost them. Victoria Police rely on the likelihood the items have been destroyed as a biological hazard but there is an absence of any documented proof of this. Whilst there exists even the slightest possibility the exhibits may be within the property holdings, locating them should be a priority for Victoria Police.

FINDINGS AND CONCLUSION

386. Having investigated the death, and held an inquest, I find pursuant to section 67(1) of the *Coroners Act 2008* that Maria Theresa James, born 23 August 1941, died on 17 June 1980 at 736 High Street, Thornbury, Victoria, from haemorrhage from stab wounds in the circumstances described above and I make an open finding it was by a person unknown.

RECOMMENDATIONS PURSUANT TO SECTION 72(2) OF THE ACT

Pursuant to section 72(2) of the Act, I make the following recommendations:

To the Chief Commissioner, Victoria Police:

1. Victoria Police should immediately conduct a complete and thorough physical search for the lost exhibits, namely Mrs James' clothing and the pillowslips. This is the minimum Victoria Police should do reflecting the gravity of the consequences of the lost exhibits and the importance of clarifying the factual situation regarding their whereabouts.
2. Victoria Police should review the use of Interpose and, given the evidence Interpose could be used for this purpose, implement a documented process therein for the purposes of recording Major Decisions and the Reasons for those decision in all Homicide investigations. The purpose of this is to enable the progress and trajectory of an investigation to be followed on the basis that it is never known at the outset of an investigation which case will remain unsolved.
3. Victoria Police should review and, if necessary, amend any Victoria Police Manual policy or guideline relevant to investigation case management, particularly investigations in which Interpose is used, to ensure Major Decisions and the Reasons for those decisions are recorded by the Primary Investigator (or his/her nominee) and compliance with this requirement is monitored and enforced by the Primary Investigator's Supervisor.

I convey my sincere condolences to Mrs James' family.

Pursuant to section 73(1) of the Act, I order that this finding be published on the Coroners Court of Victoria website in accordance with the rules.

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

Mark James, senior next of kin (copy to Slater & Gordon Lawyers)

Chief Commissioner of Police (care of Victorian Government Solicitor's Office)

Peco Macevski (care of Dellios, West & Co)

Antonio Aleandro

Detective Senior Constable Leigh Prados, Victoria Police, Coroner's Investigator.

Signature:

C. English



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DEPUTY STATE CORONER

Date: 31 March 2022