



## STATE CORONER'S COURT OF NEW SOUTH WALES

<b>Inquest:</b>	Inquest into the death of <b>Kate Malonyay</b>
<b>Hearing dates:</b>	7 July 2014
<b>Date of findings:</b>	29 August 2014
<b>Place of findings:</b>	<b>State Coroner's Court, Glebe</b>
<b>Findings of:</b>	Deputy State Coroner HCB Dillon
<b>Catchwords:</b>	<b>CORONERS – Cause and manner of death – Homicide – Domestic relationship -- Identity of person who killed Ms Malonyay – Whether that 'known person' can be named if no longer alive at the time of inquest – Police investigation of circumstantial case – Tendency and coincidence evidence: previous incident of abuse – Suggestion of introduction of education program in NSW schools concerning domestic violence and abusive relationships</b>
<b>File number:</b>	2013/124713

<b>Representation:</b>	Ms K Edwards (Counsel Assisting) instructed by Ms S Lowes (Crown Solicitor's Office)  Ms Wendy Malonyay (Next of kin)
<b>Findings:</b>	I find that Kate Malonyay died between 17 and 19 April 2013 at McLeod Street, Mosman, New South Wales, as a result of injuries caused by asphyxiation and blunt force trauma to the head inflicted by Elliottt Coulson (Jr)

## REASONS FOR DECISION

### Introduction

1. This is an inquest into the death of Kate Malonyay. She was just 32 years old when she died. She was found by the police in her Mosman unit on 22 April 2013 a few days after her death.
2. Kate was last seen leaving her work as an Executive Assistant to the General Manager of a finance company at about 5:30pm on Wednesday 17 April 2013. In the days between 17 and 22 April Kate's friends became increasingly concerned about her welfare.
3. Despite receiving regular text messages from Kate explaining that she was off sick and she would contact them soon, they felt there something 'off' about those messages. The messages were not in Kate's usual style. Her friends became worried about this and by her refusal, despite a number of requests, to call them. Kate lived by herself in a unit in Mosman and her family were on the Central Coast. When Kate did not return to work on Monday 22 April, one her friends, Brigid Meagher, called the police and asked them to check on her welfare.
4. Police went to Kate's unit that afternoon and made a tragic discovery – Kate was dead, naked in her bed. She was covered up to her neck by a doona. There was bruising visible on her face above the doona.
5. Kate's credit card and her mobile phone were not in the unit when she was found.
6. Most disturbingly, text messages from Kate's phone continued to be sent to her friends after her body was found. Those text messages continued to assure friends she was alright and taking some time to deal with personal issues. One of Kate's friends – Brigid Meagher who made the call to the police - was actually in the police station giving a statement about Kate's death when she received a message from Kate's phone. The text messages continued asking Brigid for dinner the following night.
7. It was clear that another person had possession of Kate's phone and was impersonating her. On 23 April 2013 investigators traced the phone to 158 Ferny Avenue Gold Coast. This is the address of the Marriott Hotel, Surfers Paradise. The person who had Kate's phone at the hotel was her ex-boyfriend, Elliott Coulson. When confronted by police in his room at the hotel, he jumped from the balcony, killing himself 26 floors below.
8. While this very act might, by itself, convince many people that Mr Coulson was responsible for Kate's death, the NSW Homicide Squad and those assisting me –

my Counsel Assisting, Ms Edwards and her instructing solicitors from the Crown Solicitor's Office – have worked exceptionally diligently to ensure that the case has been fully investigated. It would compound the tragedy of Kate's death if an innocent person were wrongly blamed for it and the guilty person remained at large in the community. For reasons I will come to, however, I am persuaded that Kate's killer has been correctly identified by the investigators.

### **Kate Malonyay**

9. Although inquests are formally focussed on sudden and unexpected deaths, they have at the hearts of them the stories of living human beings. Their families and friends remember them and honour them and, in some important sense, they remain alive and loved in those memories and can be introduced to those of us who never met them in life.
10. Kate was an outgoing, vivacious and much-loved young woman. She had a gift for friendship. Indeed, it is perhaps an understatement to say Kate was popular or well-liked. It is rare that so many people describe another person as their best friend or a very close friend. This large group of close-knit and supportive and protective friends were a form of family to her. She was also very close to her own family. Her mother Wendy Malonyay and her brother Owen were present at the inquest with some of her friends.
11. Kate's mother Wendy described her in the following way:

*Kate was a gorgeous, stunning girl who would light up the room when she entered with her effervescent charm and that trademark smile. Kate loved life and enjoyed every minute of it. She was both caring and fun loving, showed compassion and warmth to others, had a positive attitude to life and always wanted to see the good side in everyone she met.*

12. Kate was a buoyant and joyful presence in the lives of almost everyone she came into contact with. She was not sick, she was not depressed or suicidal or self-destructive. She did not take her own life. Sadly, and to the horror and sorrow of those who loved her, her life was taken from her.

### **Role of the coroner**

13. The *Coroners Act 2009* requires an inquest to be held into any suspected homicide that occurs in New South Wales. The coroner's role is that of investigator and fact-finder. The coroner's function is to follow the evidence in an attempt to identify a deceased person, when and where that person died, the physical cause of death and how that death came about.
14. One of the reasons why homicide inquests are mandatory is that the family of the deceased, their loved ones and the community all have an interest in making sure that:
  - a case has not been closed by police incorrectly, or too soon

- that all possible suspects have been eliminated
  - that the police have not developed 'tunnel vision' and focused on an obvious choice thereby missing things that lead in another direction.
15. The critical issue that was explored in this inquest was: who killed Kate Malonyay?
  16. To answer that question there must be clear and cogent evidence as to the identity of the person who killed Kate Malonyay. The NSW Police Homicide Squad identified Elliott Coulson as the likely suspect at a very early stage in the investigation. Such a finding must be made with care. As Counsel Assisting, Ms Edwards, has noted, particular care must be taken with this assessment because Elliott Coulson is not here to defend himself nor does he have a senior barrister standing in his corner, defending his interests as he would have at a criminal trial.
  17. The question of the identity of Kate's killer, of course, assumes the answer to another underlying question – how did Kate Malonyay die? That threshold question must be addressed first.

### Cause of Death

18. Expert evidence was given by Professor Johan Duflou. Professor Duflou, a senior and very experienced forensic pathologist, attended the Mosman unit on 22 April to conduct an examination of the body in situ and the next day performed an autopsy. There was some decomposition of the body consistent with an interval of approximately 3-5 days between death and examination.
19. Although Professor Duflou could not determine the *exact* mechanism of death, in his view Kate died from a combination of asphyxia, probably from manual neck compression (ie, strangulation), and a head injury caused by blunt force, perhaps from some kind of edged implement or edged surface.
20. There is evidence of blunt force being inflicted to Kate's head – both the back of the head and the left side of her face and some facial fractures to the left side of the face. These injuries did not cause any fracture to the base of the skull and there was limited bleeding over the surface of the brain. There was no evidence of brain damage.
21. Bruises, lacerations and abrasions were found all over Kate's body. Some deep bruises were found on her back on the left hand side. Professor Duflou describes these bruises and abrasions as suggestive of a struggle.
22. There were also puncture marks or lacerations on the body which appear to have been inflicted by a knife. These include a possible stab wound on the lower left lip and a possible cut to the left hand. These types of injuries to the hands are sometimes called 'defensive wounds', although that is not a term used by the pathologist.

23. Finally, signs of manual neck compression, including some external bruising on the neck and haemorrhaging on the whites of the eyes and the eyelids, also known as petechial haemorrhaging, were observed and noted by Professor Duflou.
24. In summary, Professor Duflou the pathologist was satisfied that death was likely to be the combined effects of the head injury and asphyxia. The asphyxia may have occurred during a period of unconsciousness. There is no evidence to suggest that Kate died from 'natural causes', from disease or from any underlying pathology or that her injuries were self-inflicted.
25. This leads us back to the key question: who killed Kate Malonyay?
26. But before that question can be dealt with, it is necessary, because of the unusual circumstances of this case, to ask and answer a preliminary legal question: can that person be named?

### **Exception to general prohibition on identifying a 'known person' in inquests**

27. The question 'who killed Kate' is a somewhat unusual one for a coronial inquest. Inquests are not criminal trials – it is not the role or responsibility of coroners to determine whether a person is guilty or innocent of a criminal offence.
28. As I noted earlier, the function of a coroner is to investigate and, if possible, to ascertain the *facts* surrounding a sudden and unexpected death. Coroners have no power to draw legal conclusions and enter judgments against individual people from the facts they find proven. Indeed, they are specifically prohibited from even suggesting that a 'known person' has committed a criminal offence.<sup>1</sup> Whether the facts – if proven to a jury's satisfaction beyond a reasonable doubt – would constitute a criminal offence is question of law and can only be answered definitively in a criminal trial court or perhaps a criminal appeals court.
29. One of the reasons for this general prohibition is that, because coroners carry out inquiries or investigations, they are permitted to see and hear evidence that is not admissible in criminal or civil trials. That inadmissible evidence may be very prejudicial to a 'person of interest'. It may be reported in the news media. It would be a miscarriage of justice if that inadmissible but prejudicial evidence influenced the way a jury approached its separate task of fact-finding in a trial.
30. Because the tasks and functions of coroners are different from those of juries and judicial officers sitting in criminal courts trying cases, the standard of proof in an inquest is not the criminal standard of 'beyond reasonable doubt' but the lower civil standard of 'the balance of probabilities'.
31. This means that where versions of events are contested they can be regarded by a coroner as sufficiently proven one way or the other if the coroner is satisfied that it is 'more probable than not' that one version is correct. This may, nevertheless,

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<sup>1</sup> See ss 78, 81 and 82 *Coroners Act 2009*.

leave some room for rational and objective uncertainty. The criminal standard of proof is significantly more stringent.

32. It is self-evident that criminal trials must be fair and that accused persons must be tried and verdicts of guilty found only on the evidence admitted appropriately at the trial and which has been proven beyond a reasonable doubt.
33. Reputations are also at stake and can be damaged by coroners' opinions. Those opinions may be based in part or in whole on evidence that is inadmissible in a trial court.<sup>2</sup>
34. Competing public and private interests – investigation of sudden or violent deaths; fair trials; protection of reputations from unfair prejudice – overlap in the coronial and criminal jurisdictions. Protections for 'persons of interest' whose conduct has been investigated in inquests have therefore been developed and incorporated into coronial legislation.
35. Normally, if a coroner forms a view during an inquest that a jury could find a person guilty of homicide, he or she is obliged to suspend the inquest and refer the papers to the Director of Public Prosecutions. Coroners are prohibited from expressing opinions that any named person has committed a criminal offence.
36. If, however, the killer of the victim is also dead by the time of the inquest, the prohibition on naming him or her appears to me to have no further legal effect. Murder – suicide cases, for example, are, unfortunately, quite common.
37. Once a person has died, he or she has no *legal* personality. The dead cannot sue or be sued. The dead have no rights under the *Defamation Act 2005* (NSW) because they no longer have feelings that may be hurt by damage to their reputations. More significantly in the circumstances of this case, they cannot be placed on trial nor found guilty or not guilty of a criminal offence. They cannot suffer a miscarriage of justice due to unfair prejudice because justice cannot reach them. Their living relatives and friends may suffer vicariously for them but they cannot reciprocate.
38. The purpose of the prohibitions found in ss 78, 81 and 82 of the *Coroners Act* is to ensure that the reputations and rights to a fair trial are maintained for the benefit of living 'known persons', not for those who have died. In this case, the relevant 'known person' is no longer alive. There is a strong public interest in the full investigation of Kate's death (and any other similar death).
39. One of the aspects of a full investigation is the identification of the person responsible for that death (if that is possible). This gives the family of the victim the small comfort of knowing that the responsible party has not escaped. It also enables the community at large to be satisfied that a homicide does not remain unsolved. For these reasons, in the occasional cases when the person responsible for a homicide has died

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<sup>2</sup> See *Attorney-General for NSW v Maksimovich* (1985) 4 NSWLR 300.

before trial or inquest, it is appropriate to name that person in the public hearing and coronial findings.

### **The death of Kate Malonyay**

40. Elliott Coulson died in Surfers Paradise on April 24 2013 when he deliberately dropped from a balcony on the 26th floor of the Marriott Hotel shortly after NSW detectives investigating Kate's death had entered his hotel room.
41. As I have already noted, the police had discovered the link between Kate's phone and the Marriott Hotel. The phone was found in Elliott Coulson's room at the hotel. Her credit card, which had also disappeared from her Mosman flat, had been used to pay for the room and to pay for Mr Coulson's flight to Surfers Paradise.

### ***The relationship between Elliott Coulson and Kate Malonyay***

42. Police attention focused on Elliott Coulson very early in the investigation. He was a former boyfriend of Kate Malonyay. He was a sailor in the Royal Australian Navy who grew up on the Gold Coast but was based in Sydney. He had had a serious romantic relationship with Kate from about December 2011 to January 2013.
43. Many of Kate's friends did not warm to Coulson from the start. They were distrustful and suspicious of him. When he was trying to be nice to them they thought he was a fake and they considered some of his behaviour – particularly things they heard about from Kate - to be aggressive and controlling. Increasingly they believed he was telling Kate a series of lies including lies about his drinking, his movements and his work.
44. On the other hand Coulson was extremely well liked and popular in the navy. He was considered a gentle and caring person, a good listener and a compassionate friend. Some of his friends called him 'brown bear' because he was big but caring. Others described him as 'a gentle giant', someone you could speak to about a problem.
45. When Kate went missing, some of her friends were immediately concerned that Coulson had done something to her. There were text messages on Kate's phone from her friends asking why she would not call them and whether it was something to do with Coulson.
46. Nevertheless, before her death, there is no real evidence that the relationship between Kate and Coulson was generally a violent one. Kate did tell one of her friends, however, that Coulson had pushed against her wall at one stage. Significantly, she also complained to her friends about jealousy and verbal abuse – particularly in text messages. Kate was concerned he had a drinking problem and said he was a different person - and sometimes a scary person - when he had been drinking.



47. When the relationship started to seriously falter in January 2013 there were more issues. One night, around 6 January 2013, Coulson had an argument with Kate's good friend Melissa Meredith. Kate later reported to Melissa that the same night she believed that Coulson had used a key to enter her flat where he had damaged property and taken every present he had ever given her.
48. Kate expressed concerns to her friends that Coulson that may have hacked into her email account. She also became concerned he was stalking her after he sent a text message referring to her new bed after she had had a new bed delivered. Kate considered changing the locks to her unit, but it seems that the locksmith did not turn up.
49. She also considered getting an Apprehended Violence Order on the recommendation of a cousin who is a serving police officer but ultimately decided not to, telling the police that she was not afraid of Coulson.
50. In the weeks before her death, Kate became aware that Coulson had systematically lied to her. Why he did so is unclear, but she recorded the details. Some of the lies related to his whereabouts, or overstating the amount of his salary, or the value of a gift or how important he was at work. But others were quite bizarre. He falsely claimed that his father had a brain tumour, that his parents had booked first class tickets for them for a holiday in Hawaii and, most strikingly, that he had had a twin brother who had died in a car accident – Kate even told friends that Coulson had taken her to the grave site of his dead brother and they had mourned together.
51. Kate made contact with Coulson's sister Clare and discussed her concerns about the lies with her. It appears that Coulson became aware in early April 2013 that Kate was making inquiries about him and talking about his lies with his family. On 3 April 2013 Kate sent a text message to Mr Coulson's sister that read: *Elliott might be suss we've been in contact and treading carefully.*
52. Phone records reveal that text messages had started to be exchanged between Coulson and Kate on 10 April 2013. Kate told friends that Coulson had contacted her and said he wanted to meet up and discuss things.
53. On 11 April 2013 Coulson applied for leave from the Navy from 15-17 April. Coulson obtained the leave on the basis that his mother in Queensland was ill and could have cancer.
54. At about 3:20pm on 16 April 2014 he withdrew \$500 from an ATM on Pitt St, Sydney where he was photographed by a CCTV camera. On 16 April 2013 at 5:23pm Kate sent Coulson a text message. The content is not known but there had been a number of texts exchanged between them in the previous two days.
55. Coulson was seen leaving the Randwick Barracks at 2:16pm on Wednesday 17 April in a T-shirt and shorts or pants and carrying a backpack. The same day he requested an extension of his leave until 19 April.

### ***When did Kate Malonyay die?***

56. Melissa Meredith saw Kate at work on 17 April in the early afternoon. As usual she was 'bright and perky'. Her boss saw her leave work at about 5:30pm on 17 April in 'perfect health' but a phone call from her friend Hannah Everett at 7:00pm went unanswered. It appears that Coulson sent Kate a text message at 8:17pm that night.
57. The next day, Thursday 18 April 2013 Kate's boss received a text message at 7:17am saying that she was sick and would not be in to work. This was almost certainly not sent by Kate.
58. In the mid-morning Coulson sent text messages to two different naval friends asking how to 'unlock' a phone. Whether this was in reference to Kate's phone we do not know. Kate's phone did not have a passcode. It seems unlikely that he would have needed to ask for advice on how to unlock his own phone. The request suggests that he was seeking to find out how to unlock a phone from one network to be able to use it on another with a new SIM card. He may well have realised that using Kate's phone number would leave a trail for police to follow.
59. One of the more touching aspects of this case is that Kate's friends were immediately concerned for her when she did not turn up to work. Over the next few days several sought to get in touch with her. Most poignantly, Melissa Meredith sent a message to Kate at about 11:18am on 18 April 2013 saying that she had a funny feeling about Kate and was worried about her.
60. On the morning of 19 April 2013 a neighbour, Ms Morgan, saw a muscular male, thirties, short dark hair coming down stairs from Kate's building. This may have been Elliott Coulson but the evidence does not establish this. More significantly, Coulson flew that afternoon to Queensland on a flight paid for on Kate Malonyay's credit card.
61. It now seems apparent that Kate died at some time between 5.30 pm on 17 April and the morning of 19 April 2013.

### ***Elliott Coulson flees to Queensland***

62. Coulson's flight was booked over the phone at 10:28am. Coulson travelled to the airport by train from Circular Quay and arrived at the airport at 1:47pm. This is consistent with him having travelled from Mosman by ferry. At 1:48pm cell tower evidence indicates that Kate's mobile phone was being used at the domestic terminal at Sydney airport. As her phone was found in Coulson's possession after his death, it is highly likely that he was the person who used it there. The flight left Sydney at 3:10pm.
63. Coulson first stayed with his family in Queensland and then booked into the Marriott Hotel on 22 April 2013. Kate's credit card was used to secure the reservation and her phone to make a web reservation. Again, the irresistible inference is that he was the person who used the card and phone.

64. By this time, Coulson was Absent Without Leave and receiving an increasing number of calls and messages from friends and superiors about his whereabouts. He either ignored the messages or lied, falsely claiming to some to have resolved the issue and to others that he had booked a flight back to Sydney. If, as the evidence overwhelmingly suggests, he had killed Kate, he must have known that her body would soon be found and that to return to work would inevitably result in a confrontation with police investigators.
65. While Coulson was at the Marriott Hotel he engaged an escort. She later told Queensland police that he had told her that he 'done some bad things'. At the time she placed little weight on this statement because, like his further claim that he was a 'secret agent', such claims are frequently made to escorts.
66. Coulson seems to have been drinking very heavily while at the Marriott Hotel. This may explain, at least to some degree, the fact that Kate's phone, located at the Marriott, was being used to impersonate her by him and especially his preposterous assertions in text messages to his sister (in Kate's name) that 'she' had lied about Coulson because of relationship problems, that 'she' wanted to clear his name and that he was 'a perfect gentleman'.

### *The crime scene*

67. Entry to Kate's unit had not been forced. Whoever killed Kate either had a key or was able to enter without damage to doors or windows. Coulson had retained a key to the unit after his break up with Kate. However, Mr Coulson Sr notes that there is evidence in the brief which suggests Kate sometimes left the door ajar when she was at home. How the person who killed Kate entered the unit cannot be determined definitively.
68. In Kate's unit, there were many signs of Coulson's past presence. Coulson's palm prints and fingerprints and traces of DNA consistent with his were found at numerous points throughout the premises. While this in itself is not sinister – after all, Coulson had entered the flat many times at Kate's invitation, and DNA and fingerprints can last a long time on some surfaces – fingerprints were found on a glass which was located on a coffee table. His fingerprints were also found on a coffee mug and on a dish sitting unwashed in the kitchen sink.
69. Kate and Coulson had broken up some months before. She was a neat and tidy person who kept her belongings clean. Because fingerprints are left by oils in the skin, it is likely that they will be eradicated if washed with detergent. It is most unlikely that Kate would have left a glass, used by Coulson months before, unwashed. The strong inference is that Coulson had been in the flat shortly before Kate died. She had been unable to clean the glass after he left.
70. Blood and other DNA traces of both Coulson and Kate were found on various items and in various places around the flat. Significantly, DNA consistent with Kate's was found on scissor blades on a table near a laundry hamper full of cut and bloody clothing. DNA consistent with Coulson's and Kate's was found on the grips of the scissors. The autopsy found that Kate had been stabbed and cut. The scissors may have been the weapon or one of the weapons used to inflict those

wounds. A small knife was missing from the kitchen knife block and has not been located.

71. The laundry hamper was found in an unusual position near the front door. DNA samples taken from various pieces of clothing were consistent with the profiles of Kate and Coulson. Those items included bloodstained women's clothing – a blazer, a blouse, pants, a vest and underwear. That clothing had been cut and torn. On a pair of men's shorts and a pair of men's boxer shorts, DNA samples consistent with Coulson's and Kate's profiles were found. (This does not indicate that she wore those items herself – DNA can be transferred from item to item or person to person.) DNA taken from bloodstains on the shorts matched Kate's profile. Although such items are commonly worn by men, the shorts and T-shirt appeared to be similar to the clothes in which Coulson was photographed using the ATM on 16 April.
72. DNA samples taken from the kitchen sink and the bathroom sink matched Kate's and Coulson's profiles. Two bath towels on which blood stains were found tested positive for DNA consistent with the profiles of both Kate and Coulson. The kitchen sink and a sponge tested positive for a presumptive blood test.
73. Even more compelling than this, evidence was obtained from intimate swabs taken from Kate's body. They indicated that Coulson had had sexual intercourse with Kate within 24-48 hours of her death. Given their history, given the state of the women's clothing found in the hamper, and given that Kate was found dead not long afterwards, it seems most unlikely that she had consented.
74. Kate was found lying in bed naked covered by a doona. The doona had been flipped over to hide bloodstains found on one side. Police found a photograph on Coulson's phone that may be of Kate lying in bed following the attack upon her. Certainly there are similarities between her appearance in the photograph and her appearance in the crime scene photographs showing her covered by a doona.
75. Unfortunately, despite their best efforts, police technicians have been unable to identify the date and time the photograph was taken. The photograph was certainly on the phone on 18 April at approximately 11:00am but when and how it was taken cannot be determined.

### ***Elliott Coulson's suicide***

76. Detective Sergeant Hunt of the NSW Homicide Squad travelled with other police to the Gold Coast to execute a search warrant for the two mobile phones and Kate's credit card and to apprehend Coulson.
77. They intended to move swiftly when they reached the suite on the 26<sup>th</sup> floor but were impeded by security latches which had been placed on the doors. By the time the door was broken down Coulson was on the balcony. The police identified themselves as police officers but Coulson climbed over the glass barrier and deliberately let go of his handhold and started to fall. One of the officers tried to grab Coulson but could not save him. He fell to his death.

78. At the inquest held in Queensland, the coroner found that he died as a result of injuries from the fall, and that he had fallen to his death deliberately while heavily affected by alcohol. (His blood alcohol reading was 0.245). The coroner made no criticism of the police who were present when he died.

***Are there any other suspects?***

79. Shortly before her death, Kate was dating Alex Davidson. He gave a statement to police saying that they had had a number of dinner dates and that he visited her house twice. He said that they had had some physical contact – kissing and cuddling - but he never entered the bedroom or bathroom. His DNA profile was not found in either the bedroom or bathroom but a partial profile was found on a T-shirt in the laundry hamper.
80. Mr Davidson stated that he had had lunch with Kate in town on 16 April during which they had resolved amicably not to pursue their relationship. Mr Davidson was already living with a woman but said he never revealed that to Kate. According to a friend of Kate's, however, she was told by Kate that she had broken things off with Alex on the 17 April because she found out that he was in a relationship.
81. Apart from the facts that there was a brief and apparently friendly relationship, and that he had visited her flat, there is nothing whatsoever to link Mr Davidson to Kate's death. He is not a suspect and there is no one else whom police have identified who could be apart from Elliott Coulson.

***Anne Thoroughgood's account: tendency evidence***

82. After Coulson's death, a witness called Anne Thoroughgood came forward. She had been in a romantic relationship with Coulson for about two years before he met Kate. She gave an account of a relationship plagued with lies, erratic behaviour and jealousy. She suspected that Coulson was stalking her.
83. She also said that she thought that during the relationship he had accessed her email accounts as he was aware of details about her past relationship she had not disclosed to him. All this is, of course, strikingly similar to the picture we have of the deterioration of Kate's relationship with Coulson.
84. Most importantly she provided an account of one very significant incident which might provide the most insight into what happened to Kate. Ms Thoroughgood said that during an argument with Coulson he attacked her and threatened to kill her. She said that he had grabbed her hair and pushed her against a door frame causing her to lose consciousness. When she regained consciousness he was being solicitous but she was scared and sent a text to a friend asking if she could stay with her.
85. She said that Coulson discovered the text message and attacked her again. At one stage he was on top of her with both hands on her throat, squeezing her throat and pushing her down onto the mattress. She saw spots in her vision and feared for her life but managed to kick him in the groin and escape to another room.

86. On her account, she called Coulson's mother. She did not speak to her but left the phone line open in her pocket so that his mother could hear what was happening. She said that Coulson entered the room and started to stomp on her stomach while she cried out 'Elliottt you are hurting me....you are going to kill me' so that his mother would hear.
87. She again escaped by kicking him in the crotch, and escaped to another room. Her account is that she then spoke to Coulson's mother who was still on the line and was frantic, and who said the Coulson family would arrive shortly. Ms Thoroughgood recounts Coulson's demeanour changing from aggressive and threatening to that of a different person when he saw his father, mother and sister. He left her house with them.
88. Ms Thoroughgood later discovered that a friend had received a text message, ostensibly from her, during the attack, stating that she was fine and was cancelling their plans. A statement from her friend about this incident corroborates Ms Thoroughgood's version to that degree.
89. Some of these allegations are challenged by the Coulson family. In statements made to police, they have strongly denied that they ever overheard an attack over the phone or were aware of one. Their account is of a very short call in which Ms Thoroughgood said only that there had been an argument between her and their son and asked them to collect him. Mr Coulson Sr also stated he saw no sign of injury or attack on Ms Thoroughgood when he arrived. Det Sgt Hunt was unable to find evidence of a long phone call to the Coulson family on the date of the alleged attack.
90. Detective Hunt confirmed in his evidence that Ms Thoroughgood had no knowledge of the fine details of Kate's relationship with Coulson nor of the events leading up to her death. Yet her account is in many respects strikingly similar to what is known about the circumstances leading to the death of Kate Malonyay. This includes details that, despite the extensive reporting of the case, were not publically known. For this reason, it remains significant.
91. Detective Hunt notes a number of features of the account which are important to this case, if the account is accepted:
- Coulson demonstrated not just a propensity for violence but threatened to kill Anne Thoroughgood. He may have succeeded if she had not managed to escape;
  - Like Anne, Kate had injuries to her face which might be consistent with being pushed against a wall or an edged blunt object like a door;
  - Like Anne, Kate had injuries to her neck that were probably caused by manual neck compression;
  - Extraordinarily, like Coulson during the fight with Anne Thoroughgood, it appears that Kate's attacker also sent a text message impersonating her to mollify the concerns of her friends;

- Like Anne, Kate had complained of possible stalking and her email accounts being accessed (again because Coulson seemed aware of details of past boyfriends she had never mentioned).
92. Ms Thoroughgood did not, however, give oral evidence at this inquest and nor did the Coulson family. Their respective accounts have not been forensically tested. It is unnecessary to form a judgment about the comparative reliability of the competing versions of events to decide whether or not it is probable that Coulson was responsible for Kate's death. There is an abundance of other evidence that, taken as a whole, comfortably proves this on the balance of probabilities.

### In summary

93. In submissions made to the court, Mr Coulson Sr argued that for his son to have killed Kate would have been very much out of character and that the evidence against him is insufficient for me to find that he was responsible for her death. It is, indeed, difficult to reconcile the brutality of the crime with the very strong evidence about his gentle and caring character from numerous friends, colleagues and his family.
94. In a criminal trial, good character would be taken into account in two ways: to assist in assessing the likelihood that an accused person has committed the alleged offence and, if he or she gives evidence, the credibility of that evidence.
95. That said, homicides are very frequently committed in domestic relationships by persons (usually men) who have little or no past criminal histories and who are not known for their tendencies to extreme violence. Most people are not murderers and most people who kill others only do so once in their lives. People who commit domestic homicides are very frequently acting 'out of character'. The crimes that they commit are usually not premeditated. In this case, there is insufficient evidence to enable me to draw any conclusions about Elliott Coulson's state of mind at the time of Kate's death.
96. It is sometimes thought that circumstantial evidence is weak or inconclusive or always leaves open a reasonable doubt. Experienced lawyers and thoughtful laypeople, however, recognise that circumstantial evidence is like the strands of a cable – the more strands there are the stronger the cable. In her closing address, Ms Edwards referred to the case of *Burrell v The Queen* [2007] NSWCCA 65 in which the Court of Criminal Appeal, when rejecting the appeal of the convicted person, held that "although there is no one piece of evidence which inevitably leads to a conclusion of the appellant's guilt, the combination of circumstances ... is compelling."<sup>3</sup>

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<sup>3</sup> Per McClellan CJ at C Lat [319].

97. In *R v Hillier* (2007) 228 CLR 618 at [48] the High Court discussed how circumstantial evidence may be used to prove a criminal case beyond a reasonable doubt.

Often enough, in a circumstantial case, there will be evidence of matters which, looked at in isolation from other evidence, would yield an inference compatible with the innocence of the accused. But neither at trial, nor on appeal, is a circumstantial case to be considered piecemeal. As Gibbs CJ and Mason J said in *Chamberlain [No 2]*:

*At the end of the trial the jury must consider all the evidence, and in doing so they may find that one piece of evidence resolves their doubts as to another. For example, the jury, considering the evidence of one witness by itself, may doubt whether it is truthful, but other evidence may provide corroboration, and when the jury considers the evidence as a whole they may decide that the witness should be believed. Again, the quality of evidence of identification may be poor, but other evidence may support its correctness; in such a case the jury should not be told to look at the evidence of each witness 'separately in, so to speak, a hermetically sealed compartment'; they should consider the accumulation of the evidence...*

*Similarly, in a case depending on circumstantial evidence, the jury should not reject one circumstance because, considered alone, no inference of guilt can be drawn from it. It is well established that the jury must consider 'the weight which is to be given to the united force of all the circumstances put together'...*

98. In her closing address, Counsel Assisting, Ms Edwards submitted that in this case, as in the *Burrell* case, there is powerful circumstantial evidence that Elliott Coulson caused the injuries which killed Kate Malonyay. I agree with her assessment.
99. If Elliott Coulson killed Kate he may well have been acting 'out of character' but, in the face of other evidence, that does not necessarily raise a significant doubt that he was responsible. When viewed in totality, it is very difficult to conceive of any rational explanation for Kate's injuries and death other than that they were inflicted by Elliott Coulson. The strands of the cable are tightly woven together and point only to Mr Coulson. Among the most significant of them are:
- DNA evidence found in the intimate swabs taken from Ms Malonyay;
  - the unhappy end of the relationship between Mr Coulson and Ms Malonyay;



- the DNA and fingerprint evidence found at the flat;
  - Mr Coulson's possession and use of Ms Malonyay's credit card;
  - Mr Coulson's possession and use of Ms Malonyay's mobile phone after her death;
  - the impersonation of Kate Malonyay on that phone to her friends during the period following her failure to turn up at work and the discovery of her body;
  - his flight to Queensland;
  - his Absence Without Leave from the Navy;
  - the strange impersonation of Kate in text messages to his sister while on the Gold Coast; and
  - ultimately, his suicide when police entered his hotel room.
100. Anne Thoroughgood's evidence, though partly disputed and largely uncorroborated, may nevertheless be powerful tendency and coincidence evidence in relation to Mr Coulson and his tendencies. But I do not rely on this evidence to reach my conclusion.
101. If the photograph on Mr Coulson's phone of Kate lying in bed under a doona was taken after Kate was killed, it would be very difficult to explain other than as evidence that Mr Coulson was responsible for her death.
102. In any event, in light of all the other evidence, it is unnecessary to rely on either of those pieces of evidence to conclude that Elliott Coulson was responsible for Kate's fatal injuries.

## Conclusion

103. When Wendy Malonyay spoke about Kate in court, she spoke with extraordinary grace and dignity not only of her daughter but for so many women in our society and, indeed, the world who suffer and die due to domestic violence. She said:

*The increase in domestic violence is shocking with one woman under the age of 45 being murdered every week by their current or former partner and, as I have sadly discovered, it can happen to anyone. There needs to be a greater awareness and understanding of domestic violence and abuse possibly by means of establishing an education program for our young men and women before they leave school to enable them to recognise signs in an abusive relationship.*

*The murder of my daughter, Kate, in her Mosman unit in April 2013 has saddened and shocked her immediate family as well as her vast amount of friends and to this day, I still feel haunted by the brutal way in which Kate's life ended.*

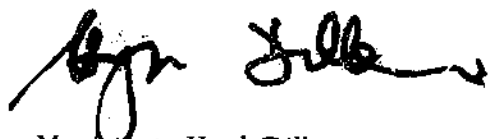
*I feel so very proud of having had Kate as my daughter. She truly was a beautiful girl on the inside and the out. Take a moment each day to reflect on the love you share with your family members. Remember to give them a big hug every day or just tell them you love them. Never take it for granted. Always realise just how precious that bond is...*

104. One further striking similarity between Kate's death and Anne Thoroughgood's experience is that each contemplated seeking an Apprehended Violence Order and neither ultimately did so.
105. It appears that Ms Thoroughgood was deterred from taking action because she thought she would have to disclose her home address to get an AVO and was nervous about confronting Elliott Coulson face to face in court. It is not entirely clear why Kate did not proceed with her AVO application. Like many other women, Kate may have found the process too daunting and stressful or lacked confidence in the AVO system, or she may have decided to postpone taking action hoping that the problem was not as bad as it seemed and that Coulson would leave her alone.
106. Detective Sergeant Hunt expressed the view, based on his lengthy police experience, that if Anne Thoroughgood had been properly advised and had proceeded with the AVO application it might have made a difference in her case and in Kate's. Experience suggests that AVOs have a significant deterrent effect on many perpetrators of domestic violence.
107. The NSW Police Force has a strong commitment to the protection of vulnerable people against domestic violence. It is a major element of daily police operations across the State. Police officers are well-trained in identifying domestic violence and in acting promptly to protect victims and to take action against suspected perpetrators. Police and courts now have systems for protecting victims from having to meet their assailants face-to-face and, where the parties do not live together, can maintain the privacy of a victim's address and contact details.
108. Women and other vulnerable people who are subjected to domestic violence – and the vast majority of victims are women – frequently feel oppressed and powerless and fearful. Yet the experience of many, perhaps most, who seek the protection of the police and courts is positive and liberating. An AVO can, in significant measure, redress the power imbalance in an abusive relationship.
109. While in fairness, it is not possible to identify those to whom Ms Thoroughgood spoke at the police station or the courthouse in Queensland, and there may be a reasonable explanation for action not being taken to protect her, a woman in genuine fear of domestic violence should never be dissuaded from approaching the police and the courts for an AVO.

110. AVOs, police forces and courts are valuable in addressing the symptoms of domestic violence. How can the root causes be addressed, however?
111. Wendy Malonyay suggested that we must start with children in schools. I agree. Attitudes are learned young. This idea came from her unprompted and the Department of Education has not had a chance to consider it or to put submissions to the court.
112. The NSW Education Department's PDHPE curriculum already includes units on racism, bullying and harassment. Rather than making a formal recommendation under the Coroners Act, I propose to write to the Minister for Education suggesting that the Department consider introducing the topic of domestic violence and abusive relationships into its PDHPE curriculum. If such a theme is introduced into the PDHPE curriculum it will be no panacea but may help over time engender respect between boys and girls and increase the self-confidence of young women in seeking the protection of the police and the law courts against domestic abuse.
113. Before closing, may I thank Det Sgt Hunt and his team for the thoroughness of their investigation and the assistance they have provided me. I am also very grateful for assistance and advice provided at short notice and with alacrity and willingness by senior police at the NSW Police Domestic and Family Violence team, particularly A/Senior Sergeant Alissa Parker. The commitment and hard work done on this case by my Counsel Assisting, Ms Edwards, and her instructing solicitor, Ms Lowes was outstanding and I very much appreciate it.
114. I am very conscious that not only has Kate's family and large group of friends taken a close interest in the case, but so too have Elliott Coulson's family. Although he committed a terrible crime, they did not. Elliott's parents bear no responsibility for Kate's death but they have suffered the agony of losing their son and now carry the burden of having him identified as Kate's killer. I am very sorry that they have had this peculiarly wrenching experience and for their own distressing loss of their son.
115. And, finally, may offer my sincere and most respectful condolences to Kate's family for their loss of a fine, good, much-loved young woman. I hope that they have many happy memories of her that over time will ease the heartbreak they must constantly feel.

### Findings s 81 Coroners Act 2009

117. I find that Kate Malonyay died between 17 and 19 April 2013 at McLeod Street, Mosman, New South Wales, as a result of injuries caused by asphyxiation and blunt force trauma to the head inflicted by Elliott Coulson (Jr).



Magistrate Hugh Dillon  
Deputy State Coroner