



**CORONERS COURT  
OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the death of Faithe Baxter
<b>Hearing dates:</b>	23 May 2022 and 1 August 2022 at Newcastle Local Court
<b>Date of findings:</b>	26 September 2022
<b>Place of findings:</b>	Newcastle Local Court
<b>Findings of:</b>	Magistrate R G Stone, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – manner of death – whether earlier medical assistance would have changed prospects of survival – whether the available evidence establishes that there was any delay by a person or persons in seeking medical assistance and the extent of the delay – accidental overdose of drugs
<b>File number:</b>	2018/341510
<b>Representation:</b>	<b>Counsel Assisting the Coroner</b> Jennifer Single SC instructed by Clara Potocki, NSW Crown Solicitor's Office  <b>The Baxter family</b> Paul Crean  <b>Sam Smith</b> Mark Preece instructed by Andrew Filby, Evans Law

<p><b>Findings:</b></p>	<p><b>Identity of deceased:</b> The person who died is Faithe Baxter.</p> <p><b>Date of death:</b> Faithe Baxter died at 9:15 pm on 6 November 2018.</p> <p><b>Place of death:</b> Faithe Baxter died at Calvary Mater Hospital at Waratah, NSW.</p> <p><b>Cause of death:</b> Faithe Baxter died as a result of cardiac arrest of uncertain cause noting the existence of drug toxicity. The drug toxicity on balance was most likely methamphetamine toxicity.</p> <p><b>Manner of death:</b> Faithe Baxter died from an accidental overdose of drugs.</p>
<p><b>Non-publication orders</b></p>	<p>Orders for non-publication of certain evidence have been made in this inquest.</p> <p>Copies of the orders may be found on the Registry file.</p>

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## **Introduction**

### **The role of the Coroner**

1. Section 81(1) of the *Coroners Act 2009* (NSW) [the Act] requires that when an Inquest is held, the Coroner must record in writing his or her findings as to:
  - the identity of the deceased;
  - the date and place of the death; and
  - the manner and cause of the death.
2. In addition, under s.82 of the Act a Coroner may make recommendations that are considered necessary or desirable in relation to any matter connected with the death, including in relation to public health and safety.

### **The inquest**

3. This Inquest concerns the death of Ms Faithe Baxter who was 22 years old when she died on 6 November 2018 at Calvary Mater Hospital, Waratah of cardiac arrest of uncertain cause with secondary refractory shock and hypoxic brain injury.
4. In this matter the findings as to identity, date, place, and cause of death are not contentious. This Inquest focused on the manner of death which refers to the circumstances surrounding the events leading up to it.
5. A thorough investigation up to the hearing of this Inquest was facilitated by Officers in Charge, Detective Senior Constable Mitchell Harvey and Detective Senior Constable Matthew Delforce with the assistance of Detective Senior Constable Adam Waite, Counsel Assisting and the Crown Solicitor's Office.
6. It is not in issue that by reason of the factual background the Court has jurisdiction to hear this Inquest pursuant to s.23 and 27 of the Act by reason of Ms Baxter's death occurring under unusual circumstances.
7. With no disrespect intended and with the consent of the parents of Ms Baxter, I intend to refer to the deceased as "Faithe".

### **The agreed issues**

8. To assist in the hearing of the Inquest a number of matters were agreed to with the approval of all parties. There was an agreed issues list which allowed the

parties to focus on the important matters at the hearing. The issues explored at Inquest are as follows:

1. The cause of death.
2. The manner of death including:
  - a. what drugs Faithe had taken in the time leading up to her death and who provided her with those drugs;
  - b. whether it can be established who provided Faithe with the drugs that contributed to her death;
  - c. whether the available evidence establishes that there was any delay by a person or persons in seeking medical assistance for Faithe and the extent of the delay, if any;
  - d. the circumstances preceding the '000' made call made by Sam Smith on the morning of Tuesday, 6 November 2018;
  - e. what medical assistance Faithe received and who provided her with medical assistance;
  - f. whether earlier medical assistance would have changed Faithe's prospects of survival; and
  - g. whether there is sufficient evidence against any person or persons, to require referral of a known person or persons to the Director of Public Prosecutions pursuant to s.78 of the *Coroners Act 2009*.
3. Any recommendations considered necessary or desirable to make in relation to any matter connected with Faithe's death, pursuant to s.82 of the *Coroners Act 2009*.
4. Any other relevant matter.

## **Background and Chronology**

9. With the assistance of friends and family and by thorough investigation from the Offices in Charge, Faithe's movements from 27 October 2018 up to her death were able to be determined. Importantly, events that occurred from 1 November 2018 through to the evening of 5 November 2018 have been put together in a chronology which became Exhibit 1 in the hearing. I acknowledge not only the assistance of the police but also the great efforts of the Crown Solicitor's Office

representative and Counsel Assisting. It is not intended that I repeat in any detail the events that are set out in that chronology.

10. The Brief of Evidence (Exhibit 2) comprised two folders and contained written statements from friends of Faithe who were with her or were in contact with her in the period from 1 November 2018 until 5 November 2018 as well as professional and other witnesses, including Faithe's mother and father, Mr and Mrs Baxter.
11. In addition to the written statements, and other documentary evidence including expert opinions, the Court heard oral evidence from:
  - a. Jesse Phillips, Paramedic;
  - b. Timothy Kirkpatrick, Paramedic;
  - c. Matthew Clark, Intensive Care Paramedic;
  - d. Paul Smith;
  - e. Sam Smith; and
  - f. Professor Anne-Maree Kelly, Emergency Physician.
12. The evidence indicates that Faithe was a regular drug user on weekends when she did not have custody of her son. Faithe's close friends reported a history of social drug use including cocaine, MDMA "caps", ketamine, "pills" including prescription medications (such as Valium) and that she had been known to smoke "ice".
13. Counsel Assisting prepared and distributed to the interested parties detailed written submissions at the conclusion of the hearing. Within the submissions were suggested findings. The interested parties have had an opportunity to respond to the submissions and have indicated they do not intend to respond. On that basis, I have effectively adopted the closing submissions of Counsel Assisting. I acknowledge that she has been the major contributor to the decision that follows.

## **Issue 1: Cause of Death**

14. From Hospital records I find that Faithe was formally declared life extinct at 9:15 pm on 6 November 2018.

15. An autopsy was performed on 12 November 2018 by Forensic Pathologist Dr Leah Clifton. The autopsy report dated 16 October 2019, and accompanying certificate of analysis, notes that Faithe had a variety of drugs in her system at the time of her death, but that the stimulant drugs MDMA and Methamphetamine most likely produced a type of toxic effect in her body: *“resulting in multi-organ injury and ultimate cardiac arrest”*.
16. Associate Professor Narendra Gunja, forensic toxicologist, was engaged to provide an expert opinion and he provided a report dated 15 May 2021 and a supplementary report dated 29 May 2022. After reviewing the autopsy findings, toxicology results, and medical records the Associate Professor was of the view that Faithe died from cardiorespiratory failure as a result of methamphetamine use, with the most likely scenario being an acute deterioration, possibly from a cardiac arrhythmia which led to acute heart failure and aspiration, precipitating hypoxic brain injury.
17. Professor Anne-Maree Kelly, an emergency physician was also engaged to provide an expert opinion and her report to the Coroner is dated 23 August 2021 and a supplementary report dated 29 July 2022. Professor Kelly opined that the most likely cause of Faithe’s death was methamphetamine toxicity.
18. I find that Faithe Baxter died on 6 November 2018. The cause of death was cardiac arrest of uncertain cause noting the existence of drug toxicity. The drug toxicity on balance was most likely methamphetamine toxicity. There is no evidence to suggest that Faithe intentionally took her own life.

## **Issue 2: Manner of death**

### **a. What drugs Faithe had taken in the time leading up to her death and who provided her with those drugs**

19. There was a toxicological analysis of blood taken from Faithe which detected the following substances at the time of death:
  - a. MDA and MDMA detected at a low level.
  - b. methamphetamine detected at a moderate level – however, post-mortem interval and redistribution may have artificially increased the actual concentration just prior to death.
  - c. amphetamine was detected at a moderate level – again it may have likely increased artificially in view of post-mortem interval.



- d. 7 – aminoclonazepam detected at a low level; it is a metabolite of clonazepam. Ingestion of clonazepam tablets or crushed and injected IV.
  - e. diazepam and its metabolite nordiazepam are detected at low levels, confirming exposure to diazepam, either as oral ingestion or crushed and injected IV.
  - f. codeine and morphine metabolites were detected at low levels. Again this suggests codeine was ingested as a tablet, or crushed and injected IV.
  - g. the fact that cannabinoids were not detected indicates no exposure to marijuana in the 24-hour is prior to death.
20. Faithe had been up for a few days prior to her death with little sleep. She had attended a music concert in Newcastle on 2 November 2018. In addition, Faithe was also using “gas” which are also referred to as “toppers” or “nangs” on the evening of 5 November 2018. They contain amyl nitrate and are inhaled from canisters of nitrous oxide. Once inhaled the nitrous oxide enters the bloodstream and into the brain causing cerebral hypoxia which is usually transient and of short duration. In chronic use or if the person has comorbidities such as heart disease or asthma it can cause acute asphyxiation, cardiac arrhythmia, and sudden death. Associate Professor Gunja noted that if Faithe had been inhaling nitrous oxide at the same time as using methamphetamine this may have had additive effects contributing to death.
21. The evidence contained within the Brief makes it clear that Faithe used drugs on a regular basis on weekends when she did not have custody of her son. There is sufficient evidence not only in the witness statements but also contained on her mobile telephone from text messages and video recordings.
22. Faithe told Brontee McDonald-Fitzgerald and Taylah Phillips that she had cocaine on the evening of 1 November 2018. On the evening of 2 November 2018 Faithe was seen drinking alcohol and Jarred Cramp stated Faithe asked him if he could get her MDMA.
23. On 3 November 2018 Faithe started drinking alcohol early in the day as she was getting ready for the This That Festival and was very affected by alcohol when she arrived at the festival. A few hours after arriving at the festival Faithe showed one of her friends a plastic bag which contained what appeared to be two or three black capsules which Faithe told the friend was MDMA caps.
24. A friend, Shelley Dodds, was of the opinion that Faithe was affected by drugs.

25. From police investigations they were able to confirm that Faithe did have a number of MDMA capsules in her possession at the music festival, however police enquiries were unable to identify any witness that saw her take the tablets at the festival or who supplied the capsules to her. If she did take MDMA at the festival, it was some three days before her death.
26. There was some evidence to suggest that Faithe paid Sam Smith \$50 for drugs on the early morning of 4 November 2018. Mr Smith denied that there was a discussion about drugs but rather it was a discussion about him picking her up and driving her for \$50. That appears to be confirmed in an exchange in text messages with Brontee McDonald-Fitzgerald that Faithe had paid Sam Smith to pick her up and failed to do so. Faithe arranged for Madison Morris to drive her back to Tea Gardens where she arrived at about 10 am on 4 November 2018.
27. Taylah Phillips gave an account that at some point during the day of 4 November 2018 Sam Smith handed Faithe a small yellow tablet. Although initially not wanting the tablet, ultimately, she agreed that she would have half of the tablet yet Mr Smith, it was said, indicated to her that it would be a waste and Faithe just ended up swallowing the tablet. Kasey Portus gave a similar account of seeing Faithe take the contents of a capsule handed to her by Mr Smith.
28. Mr Smith in his evidence denied that he gave a yellow pill to Faithe and that if it had been Valium, he would have taken the pill himself and not given it to Faithe. I prefer the evidence of Ms Phillips and Ms Portus to that of Mr Smith. The reasons for that will be outlined shortly in this decision.
29. There is other evidence that Faithe was taking Valium. There is an exchange of a text message with Brontee McDonald Fitzgerald at 8:30 pm – asking: “*do you have any vals*” and Faithe replying: “*I ate my last two today*”. There is no evidence to conclude where the Valium’s were sourced from, whether Faithe sourced them herself, or was given them by someone.
30. On Monday, 5 November 2018 Faithe arrived at Ms Phillips house at about 6 am having been dropped off by Mr Smith. She fell asleep on the lounge but was woken up by Ms Phillips at about 8 am with Ms Phillips noticing that Faithe: “*was not in good shape and was coming down from something*”. There is no evidence as to what drugs Faithe had consumed.
31. That afternoon Faithe was dropped off by Mr Smith to Ms McDonald Fitzgerald’s home and according to her Faithe was: “*off her head on drugs*”.
32. Ms McDonald Fitzgerald attacked Mr Smith by punching him through the side window and calling him a junkie and to stay away from Faithe. In any event after about 10 minutes Faithe left with Sam Smith and her packed suitcase but left her

make up bag behind. She said she was going to collect her son from Port Macquarie and return to Sydney the next day.

33. That evening Faithe, Sam Smith, Joel Shelley and Jarred Cramp travelled to Zac Bagley's house in Sam Smith's car to ask him for a "cream whipper" which Mr Cramp stated they use with: "*nitrous oxide canisters and it gives you a high for about 30 seconds*".
34. Although it is not possible to place an exact time it appears that the group went to Jimmy's Beach at about 7 pm. There are some differences about the timing of arrival and who was at the beach and when different people arrived. On balance, I am prepared to find that Faithe and Sam Smith arrived at the beach in Sam Smith's car with another man by the name of "John West" who was from Newcastle.
35. On balance it appears that Faithe had one or two canisters while at the beach. This was the evidence of Jarred Cramp and Ben Jacobson. There is evidence of a balloon being found on the back seat of Sam Smith's car the following day, which on examination, had Faithe's DNA on the mouth of the balloon. Apparently, gas is pumped from a cream cylinder into a balloon then you suck the gas down. Doing this gives you a high for about 2 to 3 minutes.
36. Overall, what occurred at Jimmy's Beach and what time Faithe arrived and left is very uncertain due to the drug use of witnesses and the general lack of witnesses needing to know what time it was. No one, it appears, was exactly too sure of times. While it is difficult, the evidence appears to establish that Faithe and Sam Smith left the beach sometime between 7 pm and 11 pm, that is more likely they stayed some time and it was probably around 9 pm that they left the beach together. There is no evidence what other drugs, if any, Faithe took at the beach.
37. While some witnesses indicated that Faithe had smoked marijuana at the beach, the toxicology report indicates that she did not smoke marijuana.
38. Once Faithe left Jimmy's Beach the only person she was with was Sam Smith.
39. On the morning of 6 November 2018 Sam Smith informed paramedic Timothy Kirkpatrick that Faithe had used "gas" and handed him a small plastic bag. Mr Smith told the paramedic that there were crystals in the bag and Faithe had added fluid to it and drank it the previous evening. Mr Smith could not remember where the bag came from other than it: "*would have been*" in his car. The bag was taken by the paramedic given to Hospital staff and ultimately to the police. On examination the bag was found to contain traces of methylamphetamine.

40. Mr Smith gave evidence that he had seen John West in the preceding days with a bag of a similar size which, in his opinion, contained methamphetamine. He did not see John West give this to anyone.
41. On the morning of 6 November 2018, police attended the Lookout at Tea Gardens at a time when Faithe was inside the ambulance but before it left. Senior Constable Wiley took photographs of the cars. He conducted a cursory search of the vehicles to attempt to locate any substance that may have been able to provide information to assist in the treatment of Faithe.
42. On 7 November 2018, Ms McDonald-Fitzgerald with Aaron and Jason Baxter attended Viney Creek Road. Mr Smith's car was still there. She removed Faithe's white adidas slide shoes out of the back of the car. She found a sock in the front grill that had a syringe wrapped in it. On 9 November 2018, Mr Baxter provided to Detective Senior Constable Harvey a used syringe wrapped in a black sock with white dots on it which he had located in the grill area of Sam Smith's vehicle. Mr Baxter also located near the cars an empty bottle of "Black label jungle juice". Apparently, this contains amyl nitrate and is sold online as a leather cleaner, incense or odouriser. By inhaling fumes, it can give the person a "head rush". A forensic examination was conducted on the bottle however, DNA testing was unsuccessful. There is no evidence to link Faithe with the syringe or the bottle of jungle juice.
43. On 9 November 2018, Mr Baxter provided to police a blister pack containing two clonazepam tablets which he located in Faithe's purse after he took possession of this item at the Hospital. There is no evidence as to where Faithe obtained those drugs from.
44. There was an allegation that friends of Sam Smith had gone to the car before the ambulance arrived and had cleaned out drug items at the request of Mr Smith. The source of this information was obtained by the police and fully investigated. As a result of investigations, Detective Senior Constable Harvey concluded there was no evidence to prove or suggest that anyone had attended the car prior to ambulance or police arriving on the scene and removing any incriminating evidence or failing to assist Faithe. Further, Mr Paul Smith, the father of Sam Smith, was cross examined by the legal representative of Mr and Mrs Baxter as to whether he had removed anything from the cars. Mr Smith senior denied he took anything from the cars. The timing of calls between Sam Smith and his father on the morning and the location of Mr Smith senior that morning at Charlestown meant that he could not have reached the cars before the ambulance and police arrived. On that basis, I am satisfied and find that neither Sam Smith or anyone else removed or tampered with any evidence at the scene prior to the ambulance arriving.

45. When paramedics arrived at the Lookout, Paramedic Jesse Phillips asked Sam Smith what had happened. Mr Smith told the paramedics that Faithe had used “gas”. He handed to them the small plastic bag referred to above which on investigation contained traces of methyl amphetamine.
46. Sam Smith told paramedics that Faithe had told him she had not eaten for days and had consumed large amounts of alcohol in the past few days. He also said that Faithe had taken the drug “ice” on the previous day and had used gas for the first time the night before and: “*she was fine*”. He told the paramedics that Faithe: “*would probably have some endone and oxycodone on her person*”. Mr Smith in his oral evidence said that he did not see Faithe take these drugs, nor could he recall speaking to the paramedics about this topic.
47. At the Hospital Mr Smith gave an account to nurses which was recorded as:<sup>1</sup>

*“spoke at length with friend [Sam] stated had been with Faithe the past 24 hours. Attempted to drop her at cousins house but cousin refused to let her in. Slept in car overnight. Had been agitated yesterday afternoon. Seeing people and animals. Took 2 x clonazepam: and endone, to help sleep. Slept overnight”.*

48. Another Hospital record by Dr Enderby records:<sup>2</sup>

*“Friend reports she is a smoker+ occasional IVDU*

*Presentation*

*(collateral history from friend Sam who seems drug affected and distressed++)*

*Faithe has reportedly been on a bender using Ice+ gas over the last~5/7. She attended a music festival over the weekend. Sam came into contact with her yesterday where she took*

- endone*
- clonazepam*
- Temazepam*
- Ice+ speed*
- ETON”*

49. There is also a Hospital record that describes a long history of methamphetamine use however it is unclear who provided that information.

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<sup>1</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p.15.

<sup>2</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p.18-19.

50. When Detective Senior Constable Harvey attended the Hospital at 11:10 am on 6 November 2018 he saw Sam Smith in a room of the casualty section. At that time he was with his parents and a staff member from the Mental Health Service. Detective Senior Constable Harvey's observation being that Mr Smith was: "*quite emotional and upset*".
51. Sam Smith gave an explanation of what occurred to Detective Senior Constable Harvey stating that:
- he was aware that Faithe had taken drugs at the This That music festival in Newcastle on 3 November 2018;
  - they had both smoked cannabis on 5 November 2018;
  - he had taken DMT (trips) on 5 November 2018;
  - Faithe was upset and had not slept since Wednesday 31 October 2018; and
  - he saw Faithe with a bag of "gas" but he didn't see Faithe take it.

Faithe was hallucinating at the time, and Sam Smith found a plastic bag (washout bag) in the door of his vehicle which he handed to a paramedic. He denied supplying prohibited drugs to Faithe.

52. As Associate Professor Gunja noted in his report, during the evening of 5 November 2018 overnight or on the morning of 6 November 2018 Faithe had the following drug exposure:
- Diazepam;
  - Clonazepam;
  - Codeine;
  - Ecstasy (MDMA) pills; and
  - Methamphetamine.

In addition, the evidence indicates that Faithe had ingested nitrous oxide.

53. There is no evidence to suggest that anyone forced Faithe to take the drugs and I find that she took the drugs voluntarily.

**b. Whether it can be established who provided Faithe with the drugs that contributed to her death**

54. Overall while various witnesses made the observation that they thought Faithe was drug affected at various times in the period 31 October 2018 to 5 November 2018 there is little evidence of anyone seeing Faithe take any drugs.
55. Faithe attempted to purchase MDMA caps from Mr Allyn Buck on the early morning of 4 November 2018 however she did not ultimately end up meeting up with Mr Buck. While Faithe had MDMA in her system there is no evidence as to where she obtained it from.
56. There are two people who saw Faithe take a capsule that was provided by Sam Smith. This was on the afternoon of 4 November 2018, around 36 hours before Faithe's death placing this drug consumption outside the window of substances which contributed to Faithe's death. There is evidence that demonstrates that Faithe had at some stage, on the weekend consumed Valium but there is no evidence as to where she sourced the Valium from.
57. There was some evidence to suggest that Faithe may have consumed marijuana in the days preceding her death including at Jimmy's beach. The toxicology report indicates that Faithe had not consumed marijuana as cannabinoids were not detected in the toxicology testing of Faithe's blood. If Faithe consumed marijuana in the days preceding her death, in no way, can it be said to have contributed to her death.
58. Brontee McDonald-Fitzgerald made an observation that on Monday afternoon between 3:30 pm and 6 pm she observed Faithe who appeared to be: "*off her head*" and: "*it looked like she had been using meth*". This opinion is based purely on her observation of Faithe, and is not founded in any knowledge of whether Faithe took methamphetamine, when she took it, or who gave it to her.
59. Sam Smith provided the paramedics with the washout bag which contained traces of methylamphetamine. Mr Smith gave evidence that in the days prior he had seen a man by the name of John West with a similar bag which contained ice or methamphetamine, however he did not see John West give this to Faithe. In the ambulance and Hospital records it is noted that Mr Smith informed them that Faithe had taken "ice" yet in his oral evidence Mr Smith stated he did not see Faithe take "ice" or any other drugs and that it was just an assumption.
60. Sam Smith denied he provided any drugs to Faithe. It has to be remembered that Faithe had been a previous user of "ice" in the absence of Mr Smith. The toxicology results indicate that in the prior 24 hours Faithe had taken

methamphetamine. There is no evidence as to who provided Faithe with the methamphetamine.

61. On balance, I am satisfied that Faithe inhaled nitrous oxide from a balloon more likely than not at Jimmy's beach. The evidence establishes that Jarred Cramp and Joel Shelley obtained a cream canister from Zac Bagley on the evening of 5 November 2018.

**c. Whether the available evidence establishes that there was any delay by a person or persons in seeking medical assistance for Faithe and the extent of the delay, if any?**

62. The triple-0 call was made at 8:29 am. The paramedics arrived at 8:38 am. After about eight minutes of CPR the paramedics were able to obtain spontaneous circulation, this would have been at about 8:46 am. Professor Kelly in her oral evidence noted that this was not stable for upon arrival at the emergency department there was no palpable blood pressure such that circulation was being maintained as a result of drugs.
63. Spontaneous circulation was obtained 17 minutes after the triple-0 call was made. Applying the opinion of Professor Kelly, as spontaneous circulation was obtained it is more likely than not that cardiac arrest occurred about 30 minutes before CPR was started. She noted in her first report and in oral evidence that the survival from cardiac arrest is influenced by its cause, the initial cardiac rhythm, and the time from cardiac arrest to treatment.
64. The global all-cause survival rate to hospital discharge for out of hospital cardiac arrest patients is approximately 10%. The research has reported that a period from cardiac arrest to CPR of greater than 12 minutes and an elapsed time from start of CPR to the end of resuscitation of greater than 33 minutes yields a probability of 30 day survival of less than 1%. Further, the outcome is worse for patients, like Faithe, with the asystole ECG pattern on arrival of paramedics. The research indicates that for there to have been a greater than 50% chance of survival with good neurological outcome Faithe would have needed to achieve return of spontaneous circulation within about 20 minutes of her cardiac arrest.<sup>3</sup> This is consistent with the opinion expressed by Associate Professor Gunja.<sup>4</sup>
65. Sam Smith did not commence CPR immediately, he did so once he managed to remove Faithe from the car. He commenced CPR not long before the paramedics arrived at 8:38 am – likely at about 8:35 am and this would place the cardiac arrest at about 8:05 am.

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<sup>3</sup> Professor Kelly report, 23 August 2021, Tab 56 (V2), p.16.

<sup>4</sup> A/Professor Gunja report, 15 May 2021, Tab 55 (V2), p.9.



66. The submissions from Counsel Assisting are logical and persuasive and I adopt them. Accepting the opinion of the Professor, that given Faithe's body temperature, she fell into an unconscious state some hours before 8:30 am and given the ability of paramedics to obtain spontaneous circulation, it is more likely than not that Faithe had a cardiac arrest no more than about 30 minutes to an hour before CPR commenced.
67. Given this evidence, it is more likely than not that Sam Smith did not check on Faithe until after he returned from the Bi-Lo to purchase himself a drink. At this stage, he realised something was wrong and called triple-0.
68. Mr and Mrs Baxter felt that Mr Smith was callous in that he did not check on Faithe and did not identify that Faithe needed medical assistance choosing to drive into the shops and then back again before obtaining medical assistance. As a layperson, Mr Smith was not aware at the time of going to the shops that Faithe was in trouble. She appeared to be asleep with no other symptoms and he did not know or appreciate she needed assistance. I accept this evidence from him. He did, on being told by the triple-0 operator, provide assistance to Faithe, and he commenced CPR before the ambulance arrived. He accompanied Faithe to the Hospital and was seen by Hospital staff as genuinely being in distress as to the state of Faithe.
69. To add weight to this finding, Professor Kelly noted in oral evidence that it is very difficult to tell the difference between a person who is sleeping and a person who is unconscious until you try to wake them up. Further, if a person is unconscious there would be no visible signs that they have had a cardiac arrest apart from potentially their skin becoming pale and lips turning blue. In this case, with the drop in body temperature it is possible that Faithe's skin would have appeared pale for a period of time in any event.
70. There is no evidence on which to make a finding that Sam Smith delayed in calling triple-0. It is possible, that even if there had been a delay, the damage to Faithe's heart was such that she would not have survived in any event. That is also the opinion of Professor Kelly.

**d. The circumstances preceding the “000” call made by Sam Smith on the morning of Tuesday, 6 November 2018**

**Medical Evidence**

71. Upon arrival, paramedics found Faithe pulseless and unresponsive. Her cardiac rhythm was asystole, which is more commonly known as a “flat line”. There was 8 minutes of CPR by the paramedics before return of spontaneous circulation.<sup>5</sup>
72. Paramedics recorded Faithe’s body temperature as 34 degrees at 9:02 am and 33.6 degrees at 9:30 am.<sup>6</sup>
73. On arrival at the emergency department Faithe had a heart rate of 130 (high) but no palpable blood pressure. Dr Enderby recorded a temperature of 33 degrees and noted that Faithe was hypothermic.<sup>7</sup> When Dr Enderby intubated Faithe there was blood and vomit in her airways consistent with aspiration.<sup>8</sup>
74. Professor Kelly opined in her first report:<sup>9</sup>

*“Usually, the body controls temperature within a fairly narrow range by a combination of changes to metabolic functions, increasing heart rate, cardiac output and ventilation, constricting and dilating blood vessels and increasing or decreasing heat production, for example by inducing shivering. When cardiac function and brain blood flow ceases, the activities which regulate the normal body temperature cease and the body starts to cool. ...*

*Stimulants such as MDMS and methamphetamine typically raise body temperature. Sedatives can dampen the body’s response to cold and contribute to hypothermia.”*

75. Professor Kelly’s initial opinion was:<sup>10</sup>

*“In the circumstances of this case, in my opinion, the most likely cause of Faithe’s low body temperature was a delay between the cardiac arrest and activation of emergency services. I agree with A/Prof Gunja that this delay could have been for a significant time – up to hours.”*

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<sup>5</sup> Ambulance Electronic Medical Record, Tab 40 (V2).

<sup>6</sup> Ambulance Electronic Medical Record, Tab 40 (V2).

<sup>7</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p. 20.

<sup>8</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), pp. 17-21.

<sup>9</sup> Report of Professor Kelly, 23 August 2021, Tab 56 (V2), p. 15.

<sup>10</sup> Report of Professor Kelly, 23 August 2021, Tab 56 (V2), p. 15.

76. Upon further consideration of the evidence and current knowledge of the physiology and outcomes of cardiac arrest, Professor Kelly changed her opinion as outlined in her Supplementary Report. Professor Kelly opines:<sup>11</sup>

*“In the circumstances of this case, in my opinion, the most likely cause of Faithe’s low body temperature was a prolonged period of deep sedation or unconsciousness, most likely due to the effects of drugs.”*

77. Professor Kelly repeats the explanation as to how the body controls its temperature and notes that there are two plausible ways Faithe could have failed to maintain body temperature being a cardiac arrest or deep sedation or unconsciousness. Professor Kelly notes the issue is complicated by the presence of drugs as sedatives which can dampen the body’s response to cold and contribute to hypothermia. Professor Kelly then expresses the opinion:<sup>12</sup>

*“In my opinion, and based on research data, it is more likely than not that Faithe’s cardiac arrest occurred about 30 minutes before CPR was started. My rationale is that achieving return of circulation with treatment becomes increasingly less likely with the time elapsed from cardiac arrest .... For patients with no cardiac output (as in cardiac arrest) for more than 35 minutes, the likelihood of return of circulation is extremely low and improves with shorter so-called ‘no flow’ durations. While Faithe’s young and otherwise healthy heart may have tended to increase this time window somewhat, a period of hours between cardiac arrest and return of circulation is, in my opinion, very unlikely.*

*In my opinion, this makes it more likely than not that Faithe’s hypothermia was due to drug effects causing deep sedation or unconsciousness that inhibited usual responses to hypothermia rather than to a cardiac arrest having occurred hours earlier.”*

### **Taylah Phillips, Kasey Portus, Brontee McDonald-Fitzgerald**

78. Taylah Phillips and Kasey Portus had noticed Faithe: *“was not in good shape”* earlier on the evening of 5 November 2018.<sup>13</sup> Brontee McDonald-Fitzgerald also saw Faithe on 5 November 2018 and spoke with her but expressed no intention to get Faithe urgent or short-term medical attention.<sup>14</sup> Faithe’s partner, Aleki Fangupo, also did not think that Faithe was unwell enough to require medical

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<sup>11</sup> Supplementary report of Professor Kelly, 29 July 2021, Exhibit 6.

<sup>12</sup> Supplementary report of Professor Kelly, 29 July 2021, Exhibit 6.

<sup>13</sup> Statement of Kasey Portus, 13 November 2018, Tab 24 (V1), p. 172 at [17]; Statement of Taylah Phillips, 13 November 2018, Tab 16 (V1), p. 132 at [16]-[17].

<sup>14</sup> Statement of Brontee McDonald-Fitzgerald, 13 November 2018, Tab 15 (V1), pp. 125-126 at [10]-[13].

attention when speaking with her on the phone between 6 pm and 8 pm on 5 November 2018.<sup>15</sup>

79. The level of concern of each of Taylah Phillips, Kasey Portus and Brontee McDonald-Fitzgerald did not rise to the level where they thought Faithe needed medical attention, although clearly from this early stage of the evening Faithe was affected by substances.

### **Jarred Cramp and Joel Shelley**

80. The last two individuals to see Sam Smith and Faithe at Jimmy's Beach on 5 November 2018 were Jarred Cramp and Joel Shelly who did not express any intention to obtain medical assistance for Faithe who was still able to walk and talk.
81. Mr Cramp thought Sam Smith and Faithe were generally ok when they were at Jimmy's Beach.<sup>16</sup> Mr Cramp described Faithe as responsive: "*still capable of making decisions*" and not: "*too far gone*" while at the beach.<sup>17</sup> The evidence establishes that Faithe did not require urgent medical attention at the point of leaving Jimmy's Beach.

### **Sam Smith Account**

82. Sam Smith gave the following explanation of what occurred to Detective Senior Constable Harvey:<sup>18</sup>
- a. He met up with Faithe on the Monday at Hawks Nest.
  - b. Sam drove Faithe to her cousin (Bronte McDonald-Fitzgerald) house. When they arrived Bronte went off at Sam. Faithe had been kicked out of Bronte McDonald-Fitzgerald house at Hawks Nest over the weekend.
  - c. Faithe drove her car to the lookout at Tea Gardens.
  - d. Sam drove to the same lookout and met up with Faithe.
  - e. Faithe was upset and had not slept since Wednesday 31 October 2018.
  - f. Faithe wanted to drive to Coffs Harbour but Sam would not let her. Sam saw the deceased with a bag of 'gas' but he didn't see Faithe take it. Faithe was hallucinating at the time.

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<sup>15</sup> Statement of Aleki Fangupo, 23 November 2018, Tab 14 (V1), pp. 121-122 at [14].

<sup>16</sup> Statement of Jarred Cramp, 12 November 2018, Tab 21 (V1) p. 160 at [11]-[13].

<sup>17</sup> Statement of Joel Shelly, 14 November 2018, Tab 22 (V1), pp. 163-164 at [6]-[12].

<sup>18</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V1), [6].

- g. Faithe and Sam went to sleep in Sam's car. Faithe was asleep on the back seat.
  - h. Later Sam tried to wake Faithe up by tipping water on her face. She was bleeding from her nose. Faithe was still breathing but snoring.
  - i. Sam then drove to the Medical Centre at Tea Gardens to get help but they were closed.
  - j. Sam then drove with Faithe back to the lookout on Viney Creek Road whilst on the phone to 000. Sam then commenced CPR on Faithe until assistance arrived.
83. When asked by the paramedics, Sam Smith said that the last time he saw Faithe conscious was the night before just before he went to sleep.<sup>19</sup>
84. At the Hospital Mr Smith spoke to the Hospital pastoral care person. He was with his father and mother. It is recorded:<sup>20</sup>

*"Finding Faithe unconscious when he woke & needing to respond by contact ambulance has been traumatic for him.*

*According to Sam Faithe had no where to stay as she had been "kicked out of home" and so he stayed with her ? in a car overnight last night. Sam states he does not know Faith well but felt he needed to help her. In attempting to help he has been left traumatised. This is reflected in his stating that he wanted to kill himself after this experience."*

85. The Hospital Records in a Nursing record state:<sup>21</sup>

*"Spoke at length with friend [Sam] stated had been with Faithe for past 24 hrs. Attempted to drop her at cousins house but cousin refused to let her in. Slept in car overnight. Had been agitated yesterday afternoon. Seeing people & Animals. Took 2 x Clonazepam & ? Endone, to help sleep. Slept overnight.*

*This am at approx. 6.30 Sam went to Bilo to get a drink. On his return Faith had "funny breathing" & wouldn't wake up, Called NSWSA advised to start CPR".*

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<sup>19</sup> Statement of Timothy Kirkpatrick, 14 November 2018, Tab 37 (V2), [8].

<sup>20</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41(V2), p.11.

<sup>21</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p.15.

86. Another Hospital record made by Dr Enderby records:<sup>22</sup>

*“He left her in his car ~ 0530/0600 to go to shops – on his return ~ 0630 he found her apnoeic breathing & with brown fluid & blood coming from her nose & mouth.*

*He called 000 at this time. He reported she had a carotid pulse but not good respiratory”.*

87. None of these records purport to be a record of words spoken by Sam Smith but rather all appear to be a summary of a conversation. What is relevant, prior to being provided with the Brief of Evidence in this matter, is that Mr Smith was never shown any of the notes and has never adopted any of the notes.

88. Mr Smith informed the Court:

a. He drove himself and Faithe to Tea Gardens to the Lions lookout.<sup>23</sup>

b. *“Faithe wanted to drive to Coffs Harbour and she was hallucinating, seeing things, so I had advised her not to drive. And she, first she wanted to come to my house but I couldn’t get there so we just went, I had felt obliged to not just let her drive to Coffs Harbour and stay with her ... She explained to me like she was seeing lizards or snakes on the road and that.”*<sup>24</sup>

c. They were sitting in his car talking. He was sitting in the driver’s seat and Faithe was sitting in the rear seat behind the front passenger seat.<sup>25</sup>

d. *“Just parked the car and I, last thing I remember is I smoked a bit of DMT and that’s when I fell asleep, that’s the last thing I can remember from being up there.”*<sup>26</sup>

e. *“I remember waking up and I was in a, like I was in a confused state, I wasn’t sure what time it was or anything. I remember I woke up, hopped out of the car, done a quick wee, had such a dry mouth cause obviously drugs will give you a dry mouth.”*<sup>27</sup>

f. He can’t recall exactly what time he woke up.

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<sup>22</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p.18-19.

<sup>23</sup> Transcript 23/5/2022 T83.11.

<sup>24</sup> Transcript 23/5/2022 T83.21-29.

<sup>25</sup> Transcript 23/5/2022 T85.12-20.

<sup>26</sup> Transcript 23/5/2022 T84.46-48.

<sup>27</sup> Transcript 23/5/2022 T87.6-11.

- g. *"I looked in the back, saw Faithe was, it just looked like she was sleeping. I didn't think anything of it, like I just thought it was early, she's still sleeping."*<sup>28</sup> *"Just sleeping like if you go on a long drive and you're asleep in the back of the car ... just sitting up, just, you know, just sleeping on the side of the car."*<sup>29</sup> Her head was: *"just against the windows, leaning up, leaning, sleeping, just normal, that's what I thought"*.<sup>30</sup>
- h. Faithe was at the back left hand side of the car with her head upright leaning against the window.
- i. He: *"drove down to get a drink at Bi-Lo or I ended up, I got a drink from the newsagent which is connected to Bi-Lo right next to Bi-Lo. From what I remember I got, I would have got a bottle of water and an orange juice cause that's what, they're the other drinks I drunk."*<sup>31</sup>
- j. *"Driven straight back up to the hill, hopped out of the car and went to wake her up just because daylight, we both had things to do."*<sup>32</sup>
- k. He tapped Faithe and spoke to her to try and rouse her: *"and then I heard a, like a funny breathing as such like in – in her nose so and then straight away I knew there was something wrong and I called Triple-0 and that's when that all started"*<sup>33</sup> *...it was like a snorty, snorting, like blocked nose sort of sound"*.<sup>34</sup> He said then that: *"as soon as I saw the blood come out of her nose because that's not a normal thing ... just a drop of blood running out her nose"*.<sup>35</sup>
- l. He recalls that he may have poured water on Faithe's face to try and wake her up before the paramedics attended.

### ***Inconsistencies in Sam Smith's Accounts***

89. There are inconsistencies between the accounts recorded on 6 November 2018 and the evidence given before the Court.

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<sup>28</sup> Transcript 23/5/2022 T87.6-12.

<sup>29</sup> Transcript 23/5/2022 T88.44-48

<sup>30</sup> Transcript 23/5/2022 T89.1-2

<sup>31</sup> Transcript 23/5/2022 T87.44-47.

<sup>32</sup> Transcript 23/5/2022 T87.48-49.

<sup>33</sup> Transcript 23/5/2022 T87.50-88.3.

<sup>34</sup> Transcript 23/5/2022 T89.45.

<sup>35</sup> Transcript 23/5/2022 T89.50-90.14.

### **Is it 6 am or 8 am?**

90. The Hospital records record that Sam Smith woke up variously at 5:30/6 am or approximately 6:30 am. Mr Smith informed the Court that it would not have been long before calling triple-0, about 10 minutes to 30 minutes. He woke up, did a wee, went to Bi-Lo and at some point, checked his phone then went to wake Faithe.<sup>36</sup>
91. The Mobile Internet Record of Mr Smith's phone indicates that his mobile phone was last recorded on a mobile tower at 10:04 pm and was recorded again on a mobile tower at 5:48 am.<sup>37</sup> Something had to have occurred to Mr Smith's mobile phone for it to reactivate on the mobile tower at 5:48 am. This is not a case where he was moving around and so was out of range and suddenly was picked up by a tower, the phone was in the same location between 10:04 pm and 5:48 am.
92. Mr Smith explained that he kept his background services off to save on battery and data and that perhaps something reactivated on his phone. He denied physically doing anything to his phone.
93. It is unclear what happened to the phone to make it reconnect to the tower at 5:48 am. What is known is there is no evidence that Sam Smith actively used his phone until the triple-0 call. That is, he did not send an SMS nor make a phone call on the morning before making the triple-0 call.
94. What is the significance of this evidence? An argument could be mounted that Mr Smith noticed Faithe had trouble breathing at about 5:48 am consistently with what he told the Hospital and that he ignored this until he called triple-0 at 8:30:12 am. There is insufficient evidence for the Court to be satisfied on the balance of probabilities that this in fact occurred. On balance, I find that he first detected a problem with Faithe just before telephoning the triple-0 operator.
95. In any event, given the evidence of Professor Kelly that Faithe's cardiac arrest occurred about 30 minutes before CPR was started due to the paramedics being able to achieve a return of circulation which becomes increasingly less likely with the time elapsed from cardiac arrest. It is more likely than not that by 5:48 am Faithe had fallen unconscious and had been unconscious for a while. An unconscious state appears no different to a sleeping state until you try and wake the person. Further, if unconscious and slumped upright against a door there would have been no visible signs that Faithe was having a cardiac arrest. Finally

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<sup>36</sup> Transcript 23/5/2022 T88.11-14; T89.7-10.

<sup>37</sup> MIR spreadsheet (0481713072) 04/11/2016 – 06/11/2018, Tab 10B (V1), p.15.



given the damage to Faithe's heart a cardiac arrest may not have been survivable in any event.<sup>38</sup>

### **If checked breathing before or after left the Lookout**

96. Sam Smith's account seemed somewhat confused as to when he first checked Faithe's breathing whether it was before or after he left the lookout to go to Bi-Lo. He did clarify that it was when he returned to the lookout as that is when he went to wake Faithe up. Mr Smith's evidence is very confusing in this regard and unclear as his recollection is vague.

### **If he drove to Bi Lo or the Medical Centre**

97. Detective Senior Constable Harvey recorded that: "*Sam then drove to the Medical Centre at Tea Gardens to get help but they were closed. ... Sam then drove the deceased back to the lookout on Viney Creek Road whilst on the phone to 000.*"<sup>39</sup>

98. Mr Smith in this Court maintained that he went to the Bi-Lo to get a drink and denied he went to go to the Medical Centre to get help. The account that he went to the Bi-Lo to get a drink is consistent with what he told nursing staff at the Hospital. The nursing records state: "*This am at approx. 6.30 Sam went to Bilo to get a drink*".<sup>40</sup> Dr Enderby recorded: "*He left her in his car ~ 0530/0600 to go to shops – on his return ~ 0630 he found her*".<sup>41</sup>

99. It is noted that the Bi-Lo and the Medical Centre were in the same small shopping complex.

100. Detective Senior Constable Harvey made attempts to obtain evidence to establish whether Mr Smith did or did not drive to the Medical Centre at Tea Gardens and at what time he was at the shops. The small shopping centre (Myall Keys Shopping Centre) is on the edge of town and next to the shopping centre is rural with no CCTV cameras in the area. The Ochre Health Medical Centre at Tea Gardens did not have any CCTV covering the outside of the business or the entry area.<sup>42</sup>

101. In 2018 Police attended the Puma Service Station, which is opposite the Shopping Centre, however, it only stored CCTV footage for 4 days and the police

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<sup>38</sup> Supplementary report of Professor Kelly, 29 July 2022, Exhibit 6.

<sup>39</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V1), [6].

<sup>40</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p. 15.

<sup>41</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), pp. 18-19.

<sup>42</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V1), [16].

attended just outside the 4 day period. Detective Senior Constable Harvey notes that a CCTV system that only stores footage for 4 days is very rare, the vast majority store footage for at least 7 days. Home Hardware which is next to the Puma Service Station did not have any CCTV. The shopping centre carpark outside the Medical Centre was not covered by CCTV.<sup>43</sup>

102. There was a Bi-Lo supermarket in the complex (it is now rebranded as Coles). In November 2018 its operating hours were 7 am to 9 pm.<sup>44</sup>

103. The notes made by Detective Senior Constable Harvey were not shown to Mr Smith and were not adopted by him. It is possible that he told Detective Senior Constable Harvey he went to the shop near the medical centre. There is also a discrepancy in the notes taken by Detective Senior Constable Harvey when he notes: "*Sam then drove the deceased back to the lookout on Viney Creek Road whilst on the phone to 000*". It is clear from the recording of the triple-0 call that Mr Smith was not driving at any stage during the call. It is unknown if Mr Smith said this to Detective Senior Constable Harvey or if Detective Senior Constable Harvey incorrectly recorded it.

104. The remainder of the contemporaneous notes and evidence in this Court is that he went to Bi-Lo to get a drink. There is no reliable evidence on which to make a finding that this account was not true.

### ***Consistencies in Sam Smith's Accounts***

105. There are also a number of consistencies in the accounts of Sam Smith such as the following:

a. Fight at Brontee McDonald-Fitzgerald's house:

- i. Mr Smith told Detective Senior Constable Harvey that he drove Faithe to her cousin (Brontee McDonald-Fitzgerald) house. When they arrived Bronte went off at Mr Smith. Faithe had been kicked out of Bronte McDonald-Fitzgerald house at Hawks Nest over the weekend.<sup>45</sup>
- ii. Mr Smith told the pastoral care person at the Hospital: "*Faithe had nowhere to stay as she had been "kicked out of home" and so he stayed with her ? in a car overnight last night.*"<sup>46</sup>

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<sup>43</sup> Statement of DSC Harvey, 26 April 2021, Tab 11 (V1), [9-12].

<sup>44</sup> Statement of DSC Harvey, 26 April 2021, Tab 11 (V2), [13].

<sup>45</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V1),[6].

<sup>46</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p.11.

- iii. The nursing records record as follows: *“Attempted to drop her at cousins house but cousin refused to let her in.”*<sup>47</sup>

Mr Smith’s evidence was consistent with this account. An altercation with Brontee is corroborated by Exhibit 1 [212-215].

b. Faithe hallucinating:

- i. Mr Smith told Detective Senior Constable Harvey that: *“Faithe wanted to drive to Coffs Harbour but Sam would not let her.”*<sup>48</sup>
- ii. The nursing records record, in relation to Faithe, that: *“Had been agitated yesterday afternoon. Seeing people & animals.”*<sup>49</sup>
- iii. Paul Smith gave evidence that Mr Smith had said to him at the Hospital: *“Faithe was wanting to drive to Coffs Harbour. He’d stopped her because she was seeing, I don’t know whether it was lizards or something on the road.”*<sup>50</sup>

This is consistent with Mr Smith’s account in this Court.

c. They slept in his car - Mr Smith in the front driver’s seat and Faithe in the back left hand passenger seat:

- i. The photos of the car at Tab 51 p.25 and p.30 of Exhibit 2 show the driver’s seat reclined which would then be consistent with Faithe being on the left-hand side of the car.
- ii. Faithe’s blood was found on the back seat<sup>51</sup> and the balloon with her DNA was found on the back left hand seat<sup>52</sup>.
- iii. Mr Smith told Detective Senior Constable Harvey that: *“Faithe and Sam went to sleep in Sam’s car. Faithe was asleep on the back seat.”*<sup>53</sup>

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<sup>47</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p.15.

<sup>48</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V1), [6].

<sup>49</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p. 15.

<sup>50</sup> Transcript 23/5/2022 T55.20-22.

<sup>51</sup> Tab 10C Baxter Forensic Results Summary, Tab 13 Statement of Crime Scene Officer Fiona Gruber and Tab 15 FASS Report

<sup>52</sup> Tab 51 Crime Scene photographs p.30

<sup>53</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V1), [6].

- iv. The nursing records record that they: "*Slept in car overnight.*"<sup>54</sup>

This is consistent with Mr Smith's account in this Court.

d. Mr Smith took DMT:

- i. Mr Smith told Detective Senior Constable Harvey that he took 'DMT' (trips) on the 5/11/18.<sup>55</sup>
- ii. Paul Smith gave evidence that Mr Smith had told him he had taken DMT.<sup>56</sup>

This is consistent with Mr Smith's account in this Court.

e. Faithe had "funny breathing":

- i. Nursing records state that: "*On his return Faith[e] had "funny breathing" & wouldn't wake up*".<sup>57</sup>
- ii. Dr Enderby records that Mr Smith say he: "*found her apnoeic breathing & with brown fluid & blood coming from her nose & mouth*".<sup>58</sup>

This is consistent with Mr Smith's account in this Court.

## **Medical Evidence**

### **Funny breathing**

106. Mr Smith consistently gave evidence that not long before he called triple-0 that Faithe had: "*funny breathing*". Professor Kelly gave evidence that if slumped against a window in the back of the car Faithe's airways could have been restricted.

### **Bleeding from nose**

107. Mr Smith also consistently gave evidence that shortly before calling triple-0 he saw a drop of blood from Faithe's nose. A forensic examination of his car showed

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<sup>54</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p. 15.

<sup>55</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V1), [6].

<sup>56</sup> Transcript 23/5/2022 T56.12.

<sup>57</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p. 15.

<sup>58</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), pp. 18-19.

that Faithe's blood was found on the backseat offside of the car.<sup>59</sup> This is consistent with Faithe at some stage bleeding from the nose. Professor Kelly could provide no medical explanation to explain the drop of blood from Faithe's nose.

108. None of the paramedics recorded blood on Faithe's face, this however is probably unsurprising given Mr Smith's evidence that he poured water on Faithe's face to try and wake her and that he had moved Faithe out of the car onto the road and had commenced CPR.
109. Whilst there is clear evidence that Faithe did bleed at some stage whilst in the back seat of Mr Smith's car there is no medical explanation for why Mr Smith saw a drop of blood on Faithe's nose.

### ***Sam Smith's mental state***

110. Sam Smith consistently informed the Hospital, Detective Senior Constable Harvey, and this Court that whilst in the car with Faithe he smoked DMT. Listening to the triple-0 call, it is clear that Mr Smith's words were slurred.
111. Paul Smith expressed the opinion that when he saw his son in the morning at the Hospital that Mr Smith was fairly distraught and probably coming down from drugs. He told his father he had taken DMT, and his father stated he would have been smoking pot. During this period Paul Smith had often seen his son drug affected.<sup>60</sup>
112. Sam Smith was unable to inform the Court what drugs he had taken other than the DMT. It is unclear whether he was evasive or was in such a drug and emotional state that he genuinely could not recall what he had taken or the precise events of the evening and morning. It does appear, that at this stage of his life, Mr Smith was a chronic user of illicit drugs taking whatever substance he was able to source. Mr Smith was forthcoming with this admission.
113. There is a real issue with Mr Smith's mental state that morning as seen in the following evidence:
  - a. The paramedics reported that upon arrival Mr Smith was doing chest compressions. He was then described as: "*very erratic and distraught and pacing around the place*". He was not initially forthcoming with information

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<sup>59</sup> Forensic Results Summary – E70082673, Tab 10C (V1); Tab 13 Statement of CSO Gruber, 12 February 2019, Tab 13 (V1), [12.8].

<sup>60</sup> Transcript 23/5/2022 T 56-57.

but did once they got him to calm down he started talking to the paramedics and provided them with the washout bag.<sup>61</sup>

- b. Upon arrival at the Hospital Mr Smith at 11:15 am was assessed by the pastoral care team who stated he presented: *“as fragile & vulnerable. Through tears he expressed feelings of fear, worry & regret.”* Further it was noted: *“In attempting to help he has been left traumatised. This is reflected in his stating that he wants to kill himself after this experience.”* His presentation was such that a psychiatric nurse was contacted to provide a consultation.<sup>62</sup>
- c. Detective Senior Constable Harvey formed the opinion that Mr Smith was not in a fit position to supply a formal statement due to his current emotional state. At the time mental health staff were assessing Mr Smith to assess whether they were going to admit him for further treatment.<sup>63</sup>
- d. The Hospital noted that Mr Smith had used DMT and was a regular user of cannabis as well as a user of LSD, opioids and amphetamine and was linked in with the AOD Counsellor in Raymond Terrace.<sup>64</sup>

114. Mr Smith is an unreliable historian of what occurred in the days and hours preceding Faithe’s death. He was drug affected and his mental state was not stable. His recollection of events is blurred, vague and inconsistent which can be attributed to drug use.

### **Rendered Assistance**

115. It must not be overlooked that Sam Smith, even in his drug affected state did render assistance. He called triple-0 and administered CPR until the paramedics arrived. He then suggested he ride in the ambulance to the Hospital to accompany her.

116. Mr Smith could have removed Faithe from his car and abandoned her on the side of the road or moved her back into her car and left the scene without obtaining assistance for her. This is not what occurred. As soon Mr Smith could not wake Faithe up and thought there was something wrong he called triple-0 for assistance.

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<sup>61</sup> Statement of Timothy Kirkpatrick, Tab 37 (V2); Statement of Matthew Clark ,Tab 38 (V2), 6]; Statement of Jesse Phillips, Tab 39 (V2), [5-6].

<sup>62</sup> Medical Records for Faithe Baxter, Calvary Mater Hospital, Tab 41 (V2), p.11; Medical Records for Sam Smith, Calvary Hospital, Tab 43 (V2).

<sup>63</sup> Statement of DSC Harvey, 13 December 2018, Tab 8 (V2), [7].

<sup>64</sup> Medical Records for Sam Smith, Calvary Hospital, Tab 43(V2).

117. It must be found to his credit that he rendered assistance and did not abandon Faithe.
118. Further, Mr Smith did provide paramedics with the washout bag containing traces of methamphetamine. If he was involved in providing this to Faithe it would be unusual behaviour to then bring this to the attention of authorities unless you were genuinely trying to assist the person.

### ***Conclusion re Sam Smith***

119. Mr Smith was an unreliable historian. He has provided numerous inconsistent accounts both in terms of what drugs he took, what drugs he knew Faithe had taken, the order of events on the morning of 6 November 2018, and in particular, his descriptions of Faithe's breathing. Mr Smith was a wholly unreliable and unimpressive witness, however, there is no basis for any adverse comment or criticism to be made with regards to the actions he took or a finding that can be made that his actions contributed to Faithe's death.
120. I accept Counsel's Assisting submissions and adopt them as follows:
1. The only witness to the hours before Faithe's death was Sam Smith who, on his own admission, was himself drug affected.
  2. Faithe was hallucinating and Sam Smith would not allow her to drive to Coffs Harbour. Having driven to the Lions Lookout on Viney Creek Road, Sam Smith smoked DMT and Mr Smith and Faithe fell asleep in his car with Mr Smith in the driver's seat which was reclined and Faithe in the offside rear passenger seat.
  3. At some stage before calling triple-0, Sam Smith woke up and drove to the small shopping strip then returned to the Lookout. The round trip would have taken 10 or so minutes.
  4. Upon returning Sam Smith went to wake up Faithe. At this stage he realised something was wrong and called triple-0.
  5. The exact timing of what occurred is unknown. Sam Smith was by his own account drug affected, in a state of panic and as noted by the paramedics in an agitated state. It is unsurprising that he is incredibly vague as to times and the order in which events occurred.
  6. On the evidence Sam Smith did not delay calling for medical evidence. On realising Faithe's breathing difficulties he rang the triple-0 operator.

**e. What medical assistance Faithe received and who provided her with medical assistance**

121. Sam Smith's triple-0 telephone call was received at 8:30 am. It was classified as a 1A emergency. Paramedics and an intensive care paramedic were dispatched. The paramedics were dispatched at 8:33 am. There is no evidence of any delay in the dispatch of paramedics or the intensive care paramedic.
122. From Ambulance records and from the evidence given at the Inquest I can find that the two paramedics arrived at 8:38 am and immediately provided CPR and advanced airway management. A pulse was obtained at about 8:46 am. Matthew Clark an intensive care paramedic arrived on scene having been dispatched from Bulahdelah which was about 25 minutes away. An adrenaline infusion was commenced at 9:03 am.
123. Professor Kelly explained that having obtained a pulse, the correct course of action was to commence an adrenaline infusion at that time.
124. Faithe was then transported to Calvary Mater Hospital arriving at 10 am.
125. Upon arrival at Calvary Mater Hospital on the morning of 6 November 2018 Faithe presented in cardiac arrest. Following resuscitation and return of spontaneous circulation hemodynamically unstable despite maximal medical management and developed ongoing cardiogenic shock with respiratory failure, secondary mixed acidosis with renal failure and features of hypoxic brain injury. There was the presence of aspiration pneumonia in the right lung, echocardiographic features of Takotsubo's cardiomyopathy consistent with sympathomimetic toxicity and a urine drug screen detected numerous, methylamphetamine, benzodiazepine, opiates and cannabinoids.
126. Despite all efforts Faithe's overall condition continued to deteriorate and she suffered repeated cardiac arrests until her death at Calvary Mater Hospital at 9:15 pm on 6 November 2018.
127. Counsel Assisting submitted that no criticism could be made of the treatment Faithe received by all three paramedics and the treating staff at the Hospital. I accept that submission unreservedly.

**f. Whether earlier medical evidence would have changed faiths prospects of survival?**

128. The opinion expressed by Professor Kelly is accepted by me. She said: "*the degree of dysfunction found on echocardiogram may not have been reversible, irrespective of downtime*". The submission made by Counsel Assisting which I



accept and find that it is possible that the damage to Faithe's heart was, of itself, nonsurvivable and would have caused her death regardless of any delay.

129. There is no evidence on which to form an opinion that earlier medical assistance would have changed Faithe's prospects of survival.

**g. Whether there is sufficient evidence against any person or persons, to require referral of a known person or persons to the Director of Public Prosecutions pursuant to s.78 of the Coroners Act 2009**

130. There is no evidence to form the basis of a referral of a known person or persons to the Director of Public Prosecutions pursuant to s.78 of the Act.

**Issue 3: Recommendations**

131. There are no recommendations that I can suggest in this matter.

**Findings required by s81(1)**

**As a result of considering all of the documentary evidence and the oral evidence heard at the Inquest, I am able to confirm that the death occurred and make the following findings in relation to it.**

**Identity of deceased:**

The person who died is Faithe Baxter.

**Date of death:**

Faithe Baxter died at 9:15 pm on 6 November 2018.

**Place of death:**

Faithe Baxter died at Calvary Mater Hospital at Waratah, NSW.

**Cause of death:**

Faithe Baxter died as a result of cardiac arrest of uncertain cause noting the existence of drug toxicity. The drug toxicity on balance was most likely methamphetamine toxicity.

**Manner of death:**

Faithe Baxter died from an accidental overdose of drugs.

**Final Remarks**

132. At the conclusion of evidence Faithe's parents were invited to express their own feelings about the loss of their child. You could observe that they were still

grieving. They saw their daughter as a young caring mother full of life: “a stunning girl with a big bright smile that would light up any room”.

133. They acknowledged Faithe was a good mother to her young son Abel and watching them together was “a true blessing”.

134. The pain that they feel is expressed in these words taken from their statement:

*“It’s a life we find hard to comprehend, the thought of never seeing our beautiful girl again, she was our universe. To miss her gazing at her son in admiration with love in her eyes, her laughter, silly jokes, no more loud music and running around the house playing nerf games with her son and brother. There are honestly no words that can describe the joy and happiness Faithe brought to our lives, being in her presence of our hearts always felt so swollen with love.”*

135. Mr and Mrs Baxter were not aware that Faithe was taking illicit drugs and so the burden of finding this out and the circumstances of her death are truly heart rendering for them. To have to go through a hearing at an Inquest makes that circumstance more difficult and emotionally draining. My sincerest and deepest condolences are extended to them and to other members of the family.

136. In conclusion I extend my gratitude and thanks to Counsel Assisting, Jennifer Single SC and solicitor instructing, Ms Clara Potocki from the Crown Solicitor’s Office for their hard work and diligence in preparing the matter, help in the hearing and liaising with Mr and Mrs Baxter.

137. I close this Inquest.

**Magistrate R G Stone**

Deputy State Coroner

Newcastle

**Date: 26 September 2022**