



WESTMORELAND COUNTY

OFFICE OF THE CORONER

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Kenneth A. Bacha
Coroner

Paul B. Cycak Jr.
Chief Deputy

Jeffrey D. Monzo
Solicitor

Coroner's Inquest into the death of Louis A.J. Farrell

Cause of death:

- a. Gunshot wound of the head
- b. Self-inflicted

Manner of death:

Although it appears that Louis Farrell lacked any motive to harm himself, the only conclusion that I can draw from the physical and forensic evidence is that Lou took his own life. Therefore, I have ruled the death of Louis Farrell a suicide.

Recommendation of criminal charges:

Furthermore, I recommend that no charges be filed for causing Louis Farrell's death. Other offenses such as recklessly endangering another person and firearms violations do not require proof that other person's actions caused death. Therefore, I make no recommendation regarding the propriety of any other charges.

Dated: March 8, 2007

KENNETH A. BACHA
WESTMORELAND COUNTY CORONER

OFFICE OF THE CORONER
WESTMORELAND COUNTY
COMMONWEALTH OF PENNSYLVANIA

IN RE:)
)
 OPEN INQUEST INTO THE)
)
 DEATH OF LOUIS FARRELL)
)

HEARING OFFICER'S REPORT

I. Introduction

On the morning of July 22, 2006, Mr. Douglas Farrell, a Westmoreland County attorney, found his 14 year old son Louis dead from a gunshot wound to the head. Next to Louis lay a Taurus nine millimeter pistol belonging to the Farrells' next door neighbor, State Senator Robert Regola III. Senator Regola had given Louis the key to the Regola house that day to tend to the dogs while all the Regolas were away, the Senator and his wife in Harrisburg, their 16 year old son Robert "Bobby" Regola IV at Idlewild Park with his girlfriend and her family, and the younger two children at the family lake house with Senator Regola's sister and brother-in-law.

On February 22 and 23, 2007, Westmoreland County Coroner Kenneth Bacha held an inquest into the cause and manner of Louis' death and whether sufficient reason exists to believe that the death resulted from the criminal acts or criminal negligence of someone other than Louis. See 16 Pa. Stat. § 1237(b).¹ At Mr. Bacha's request, the undersigned, Thomas J. Farrell (no relation to Louis or his family), presided and heard testimony. Over two days, I heard sworn testimony from 20 witnesses and received 40 exhibits.

¹ Negligently causing a death, though a crime in some jurisdictions, is not a crime in Pennsylvania; therefore, this report does not consider the nonexistent crime of criminally negligent homicide.

Attorney Jon Perry represented the Farrell family at the inquest, and attorneys Charles Porter and Duke George represented Senator Robert Regola III and his son Bobby, respectively. Consistent with established practice, only District Attorney John Peck presented evidence and questioned witnesses, although I asked follow-up questions. Nonetheless, at the start of both days, I encouraged Messrs. Perry, Porter and George to suggest questions and lines of inquiry.

When the hearing ended, I stated my initial thoughts on the record in order to provide a starting point for comments and argument from the attorneys. I refined those comments in a letter to the attorneys dated Monday, February 26, 2007, and invited written submissions by Friday, March 2, 2007. The attorneys were free to introduce additional evidence as well as to make argument. All responded.² Since this is an investigative proceeding and the rules of evidence do not apply, I did consider the factual allegations in those submissions without the need to demand live testimony about those allegations. Both my letter and those submissions will be made part of the record in this case.

I have considered the testimony, exhibits, counsel's submissions and all their attachments. As described more fully below, I find and conclude the following:

- (1) A single gunshot to Louis Farrell's head killed him.
- (2) This was a suicide.
- (3) The finding of suicide does not preclude criminal prosecution for homicide.
- (4) However, there is insufficient evidence to charge anyone with either causing suicide or involuntary manslaughter. My commission and the Coroner's authority do not

² The public should understand that private attorneys do not bear any obligation, aside from the avoidance of criminal or unethical conduct, to anyone but their clients. Their task is not to "solve" the questions behind Louis' death, but to advance the interests of their clients. Messrs. Perry, George and Porter have conducted themselves intelligently and professionally – as did District Attorney Peck and Ms. Flanagan of his office - and for that I am grateful. Mr. Peck's office, Coroner Bacha's office and the State Police also should be commended for their thorough but sensitive investigation of this most distressing case.

extend to recommendations regarding any other charges, such as recklessly endangering another person or firearms violations, nor does it include findings as to civil liability.

II. Cause of Death: Gunshot to the Head.

There is no dispute that, as Dr. Wecht testified, a single bullet caused cranio-cerebral injuries ending Louis' life.

III. Manner of Death: Suicide.

I find that the death of Louis Farrell was a suicide.

The evidence was that Louis was a happy, healthy and well-loved young man with plans for the future. In other words, he lacked any motive to kill himself. The very same evidence indicated that neither Bobby Regola nor anyone else would wish to do Louis harm.

The physical and forensic evidence, however, compels a finding that Louis shot himself in the head. No gunpowder burns were found on Louis' scalp, as there would be were there the slightest distance between his scalp and the gun. The scalp bore the "U" shaped impression of the gun's muzzle, its tilt matching the path of the bullet through Louis' head. Both indicate that the gun was pressed tight against Louis' head, just above his right ear, when he was shot.

The testimony from Sarah Kinneer of the Pennsylvania State Police established that blood spattered from a very close distance onto two nails of Louis' right hand. The exploding gasses from the gun's muzzle forced blood back towards the gun and hand in a conical pattern that widened with distance. Only small spatters of blood would hit items immediately adjacent to the source, while a wider spray would reach more distant objects. Louis' nails and the gun's muzzle bore microscopic spatters. Only Louis' DNA was identified on the gun, on its grip, and there was no evidence that anyone was in the woods with Louis. The trigger required ten to twelve pounds of pressure to discharge the weapon; it could not have fired by accident.

Based on all this, I find that Louis pressed the gun against his head and pulled the trigger with intent to kill.

I heard no evidence at the hearing, and no one has submitted any since, that would undermine my conclusion. Despite their interest in this matter, the Farrells have not submitted any forensic or scientific evidence to prove the shooting happened otherwise. Instead, their attorney spins a number of fanciful hypotheses which strain credulity: for example, the argument that to propel the bullet “slightly forward,” Louis would have had to twist his elbow awkwardly back. Perry Letter at 7. The angle was *slight*; slight movement of the elbow *or* wrist *or* a small turn of the head to the left would account for it. Pressing a gun into the head above the ear, as here, is, to the contrary, the classic pose for suicide by handgun. Similarly, the assertion that Louis could not have carried the cigar, flashlight and gun in his two hands (or pockets and waist band), *id.* at 12, is spurious, as is the implication that he could not have sneaked the gun into his house. The gun’s overall length is about six inches. It easily could be concealed in a waistband or pocket. See http://www.gunblast.com/Taurus_PT111.htm (describing 9 mm Taurus as “easily concealable” and “one of the best designs for concealed carry”).

Mr. Perry also speculates that someone tricked Louis into shooting himself with a gun he believed to be unloaded. Perry Letter at 3. However, the officers found an undischarged round of the same make and markings as those in the gun’s magazine under where Louis’ body had lain. This round evinces a deliberate effort to fire the gun. As Trooper Hagins described, working the slide in an attempt to chamber a round without knowing that one already was in the chamber would extract and eject the chambered live round and would replace it with another, ready for firing. This means that Louis did what he thought was necessary to prepare the gun to fire.

Mr. Perry claims that a reasonable inference from the evidence is that someone, he says Ron Regola, “sanitized” the scene of evidence that Louis was not alone when he died. Perry Letter at 9-10. I find Mr. Perry’s arguments far-fetched.

Most of the arguments are based on the position in which Louis’ body was found and the failure to identify Louis’ DNA anywhere on the gun but the grip. Perry Letter at 7, 11-12. However, it is undisputed that Louis’ body was moved and the scene trampled before the police arrived. Anyone who witnessed Mr. Farrell’s testimony cannot doubt that he became hysterical when he found his son’s body. He concedes he lifted the boy, but he cannot be relied upon to say exactly how or where he moved Louis. According to Trooper Young, Mr. Farrell admitted rolling Louis over. Mr. Farrell says that he touched the gun with his bloody hands, but the police did not find any blood visible on the gun, as is evidenced in Exhibit 19, a close-up photograph of the gun. Moreover, Lauren and Jeffrey Farrell and neighbor George Nickoloff all visited the scene before the police arrived. Mr. Perry’s speculations are unfounded.

The relative position of the body to the gun and to the large pool of blood where Louis “bled out” indicates that Louis was moved, but nothing more. As Trooper Hagins explained when asked if he could state how far the gun would eject a round, the distance and direction objects travel after a gunshot may depend on many variables, such as how tightly the object was held. We have no way of knowing if Louis was standing, sitting or walking when he fired the shot, whether his weight was distributed evenly on flat feet or if he leaned left, right, forward or back; therefore, we cannot draw any conclusions from how or where he or the gun and flashlight landed.

Likewise, the failure to identify Louis’ DNA on the trigger or gun box means that the laboratory could not identify Louis’ DNA on the trigger or gun box and nothing more. The

laboratory did not exclude Louis from touching the trigger, and the swab from the slide contained an insufficient amount of DNA to analyze.

Mr. Perry argues at length that to find suicide, I must identify some reason that Louis had to do himself harm. Perry Letter at 1, 24. This confuses motive with legal intent. The law minimizes the importance of motive as proof of intent to harm, and for good reason. People sometimes do the worst, for reasons dimly understood even by themselves, or for no good reason. See *Commonwealth v. Danz*, 211 Pa. 507, 517-18, 60 A. 1070, 1073-74 (Pa. 1905). Unfortunately, “in this life men who have no apparent motive for it do commit suicide.” *Smith v. John Hancock Mut. Life Ins. Co.*, 254 F.Supp. 622, 626 (W.D.Pa. 1966)(Weber, J.).

The Farrell family places great stock in Professor Berman’s psychological autopsy, attached to Mr. Perry’s letter, which concludes with “100% scientific certainty” that this was not a suicide. As a parent and citizen, I am grateful for the work of Prof. Berman in studying and preventing suicide, but as a lawyer and judge, I must rely more on the wisdom of Judge Weber. Such autopsies, which attempt to reconstruct an individual’s mental state based upon biased sources and without access to the most important source, the decedent, have received a mixed reception in the courts. See, e.g., *State v. Guthrie*, 627 N.W.2d 401, 419 (S.D. 2001)(error under the reliability standard of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993), to permit Prof. Berman to testify that death did not result from suicide). Although Prof. Berman did not testify and I did not have an opportunity to assess his credibility, his statement that he holds his conclusion with “100% scientific certainty” – more certainty than biologists ascribe to the theory of evolution or climatologists to human activity as the cause of global warming – severely undermines his credibility.³

³ Mr. Perry mistakenly describes Prof. Berman as a “preeminent clinical psychiatrist” and his conclusions as held to “100% psychiatric certainty.” Perry Letter at 4. Prof. Berman is a psychologist, not a psychiatrist. Psychiatrists are medical doctors; psychologists are not.

More important, Prof. Berman appears to have lacked complete information. He did not review Louis' AIM profile, his internet postings, the movies he viewed, or the books he read; nor did he interview any but a few of Louis' acquaintances. I place little importance on Louis' taste in music,⁴ but Prof. Berman, had he considered it, might disagree. Perhaps most important, Prof. Berman did not have access to either Louis or his close friend, Bobby Regola.

It is part of the human enterprise to seek explanations which make events appear to be the effect of scientific or at least explicable causes. The effort to understand, explain and predict does empower us to avoid some disasters in the future. Sometimes, however, despite our most conscientious and wisest efforts as parents and human beings, the worst happens.

IV. Insufficient Evidence to Charge Anyone with a Criminal Act Causing Louis Farrell's Death.

A. Causing or Aiding Suicide.

No party argues that the evidence justifies a charge of aiding and abetting suicide, in violation of 18 Pa. C.S. § 2505. I agree.

The offense of causing or aiding suicide requires that the defendant intend that the victim kill himself. Bobby was Louis' friend, and there was no testimony to suggest that Bobby intended to do him harm.

⁴ I have considered the Panic at the Disco song lyrics Mr. Porter proffered, although I view them as having very little probative value. The song title cited in his letter, "The Only Difference Between Martyrdom And Suicide Is Press Coverage," Porter Letter at 2, sounds more like a criticism of martyrdom than praise for suicide. The lyrics do not repeat the title, and the lyrics have nothing to do with suicide or violence. Since Friday, I have listened to a song by Panic at the Disco on my thirteen year-old daughter's iPod, and while some of what I could decipher of the lyrics (not much at that) did sound morbid if taken literally (an erroneous interpretive approach), the tempo and pitch of the tune were very upbeat. The songs of Leonard Cohen are much more conducive to depression, although his songs rarely mention death. See Daniel J. Livitin, *This Is Your Brain on Music* (2006) (commenting that we evaluate music's mood by its pitch and tempo). In other words, taste in music is an unreliable indicator of suicidal tendencies.

So, too, some of the postings on Louis' AIM profile may raise questions, but we cannot begin to understand them without examining the whole context of his life – the books he read, the movies he viewed, all the intimate conversations he had, his most private thoughts – and talking to Louis, and even then, they might have been nothing more than an intelligent teenager's selection of phrases he thought amusing, "deep," or provocative. Or, more likely, it all just might remain a mystery.

There is no evidence that Bobby gave Louis the gun or that Bobby urged Louis to shoot himself or, as I discuss below, that he was present when Louis shot himself. Without any such evidence, there is no legal or factual support for a charge under Section 2505.

The sequence of calls put Bobby almost continuously on the phone or with his uncle from 11:01 p.m. to 11:52 p.m., and again from 12:01 a.m. to 12:40 a.m. on the night of July 21 into July 22. Porter Letter at 5-7.⁵ Louis was alive at least until 11:06; his five-minute call to Bobby at 11:01 proves that. The alarm was activated at 12:05 a.m. and not turned off until 8:28 a.m., Porter Letter at 7, proving that Bobby did not leave the house.

Bobby's statement to Lauren Farrell on July 22 that the tree by which Bobby was found was not freshly fallen does not change this conclusion. As Mr. Peck states, "the tree was the only fallen one in the woods, the tree had been down for some time, and Bobby presumably would have been in or near that area on many occasions." Peck Letter at 3.

Further, the phone records and Trooper Zalich's testimony show that after Mr. Farrell visited him on the morning of July 22 looking for Louis, Bobby attempted to call Louis's phone at 8:36 a.m. and again at 8:42 a.m. If Bobby had been in the woods and knew Louis were dead, he would not have tried to call him. Combine all this with the lack of any evidence putting anyone at the scene of the death but Louis, and I must find that no reasonable fact-finder could find that Bobby was with Louis the night of July 21 into July 22.

B. Involuntary Manslaughter

A finding of suicide does not preclude a prosecution for involuntary manslaughter or any other degree of homicide. Mr. Porter states, "As the evidence appears to reflect that this death was a suicide, there cannot be any finding of involuntary manslaughter, which is a subcomponent of homicide, and not suicide," Porter Letter at 3, but he cites no law for that

⁵ I consulted with both my notes of the testimony and Mr. Peck, and we agreed that Mr. Porter's description is accurate.

proposition. There is no Pennsylvania caselaw on point, but other jurisdictions have reviewed the issue under similar statutes and have decided “a person may be convicted of second degree [i.e., reckless] manslaughter for having engaged in reckless conduct which results in another person's committing suicide.” *People v. Duffy*, 79 N.Y.2d 611, 615, 595 N.E.2d 814 (NY 1992); see also *State v. Marti*, 290 N.W.2d 570, 581 (Iowa 1980); *Lewis v. State*, 474 So.2d 766, 770 (Alab. Crim. App. 1985).

While not squarely on point, the decisions in *Commonwealth v. Feinberg*, 433 Pa. 558, 253 A.2d 636 (1969); *Commonwealth v. McCloskey*, 2003 PA Super. 409, 835 A.2d 801 (2003); and *Commonwealth v. Penn Valley Resorts, Inc.*, 343 Pa. Super. 387, 494 A.2d 1139 (1985) compel the conclusion that under Pennsylvania law, suicide can result from conduct amounting to involuntary manslaughter. In each case, the victims died from their own intentional actions: in *Feinberg*, by drinking sterno; in *Penn Valley* and *McCloskey*, by driving while intoxicated. Nonetheless, each decision affirmed involuntary manslaughter convictions.

Therefore, we must consider the evidence of Senator Regola’s behavior in this case and whether it constitutes chargeable homicide, in particular, involuntary manslaughter.

I find that Senator Regola permitted his son to keep a loaded, unlocked handgun in his room on the day Louis shot himself.⁶ Knowing this, he entrusted 14 year old Louis Farrell with the keys to the empty Regola house. I base these findings largely on the implausibility of his and his brother’s testimony. Trooper Zalich, a very credible witness, testified that Senator Regola told him that the gun had been in Bobby’s bedroom until three months before Louis’ death. Senator Regola flatly denied making that statement. I see no reason for Trooper Zalich to lie or to be mistaken. Likewise, Michael Stunja testified that Bobby displayed the gun to

⁶ No law requires guns to be locked, but the law does require guns to be sold with built-in locks or locking devices. 18 Pa. C.S. § 6142. As this case proves, locks are meant to be used.

him and Louis in Bobby's bedroom, and Meredith Lehman recounted that Bobby told her that he had a gun in his bedroom. I believe these young people instead of the Senator.

The story of moving the gun to the Senator's bedroom because of the concern about "vagrants" in the woods (the story the Senator told Trooper Zalich) or moving the gun from the office to the Senator's home (the story the Senator and his brother told on the witness stand) is incredible. The Senator would have me believe that having seen a bicycle-toting teenager walk out of the woods and through the Farrells' backyard, he was so frightened that he brought a second gun home, even though the "vagrant" never attempted to burglarize or vandalize any dwelling and never harmed, threatened, harassed or even spoke to any person. Yet, despite his fear, he left his son home alone. Despite his fear, he rarely armed his house alarm and did not insist that his son do so on the day he was left alone. Despite his fear, when he heard from his son that an intruder had entered the house and taken a gun, he and his brother left Bobby alone in the house and did not call the police. It is more likely that the Senator and his brother used the vagrant boy to concoct a story and bolster the false statement that he moved the gun into his bedroom.

Trooper Zalich testified that he found the gun case wedged between Senator Regola's bed and night table. This damns the Senator: There is no good reason why, after inspecting the box and finding it empty, he would have returned it to that place except to mislead investigators as to where it was located. Further, the Regolas described the gun case as being nearly invisible where it was located, certainly to someone who did not know where to look for it. It is extremely unlikely that Louis would have found the gun had it been in the place the Senator claimed. The gun had to be in Bobby's room, where he had shown it off to Michael Stunja and Louis.

Senator Regola admitted that the loaded magazine was kept in the same case with the gun, and the undischarged round found under Louis' body indicates that the gun had a round

in the chamber when Louis took it. Thus he violated the laws of this Commonwealth and the manufacturer's safety standards. See 18 Pa.C.S. §6110.1 (prohibiting a minor's unsupervised possession of a firearm); "Children and Firearms: A Safety Guide from Taurus" (WARNING: Never leave a firearm in the possession of a minor. . . . Always make sure to store firearms and ammunition separately." Available at www.taurususa.com/safety/child-safety.cfm).

The crucial issue comes down to whether this evidence provides a legally sufficient causal link between Senator Regola's conduct and Louis Farrell's death. Causation is an essential element of any degree of homicide. *Commonwealth v. Root* 403 Pa. 571, 170 A.2d 310 (1961); *Commonwealth v. Nicotra*, 425 Pa. Super. 600, 608, 625, A.2d 1259, 1263 (1993). The involuntary manslaughter statute explicitly requires it:

A person is guilty of involuntary manslaughter when *as a direct result* of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he *causes the death* of another person.

18 Pa. C.S. § 2504(a) (emphasis added).

To impose criminal culpability, causation must be more direct and substantial than in a civil case. *Root*, 403 Pa. at 575; *Commonwealth v. Rementer*, 410 Pa. Super. 9, 18, 21-22, 598 A.2d 1300, 1304, 1306 (1991). Not only must the conduct be a but-for condition of the death, but "the results of the defendant's actions cannot be so extraordinarily remote or attenuated that it would be unfair to hold the defendant criminally responsible." *Rementer*, 410 Pa. Super. at 19-20.

No doubt, but for Senator Regola leaving the Taurus with his son, Louis Farrell would not have shot himself on July 21, but asking Lou to feed the dogs likewise was a but-for cause of his death. Neither is sufficient. We must look to the remoteness and attenuation prong of the causation test and the full circumstances of this case.

To some extent, this second part of the causation inquiry overlaps with the question of recklessness: "when recklessly... causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware...." 18 Pa. C.S. §303 (c). Where the intervening and independent activity of the victim produces the harm after the defendant's act or omission has been committed, the defendant still may be criminally responsible, if the risk of the victim taking those actions was something which the defendant consciously disregarded or of which he was aware. *See Feinberg*, 433 Pa. at 574 (Roberts, J., concurring)("No causation problem is presented by the allegedly 'intervening' acts of the victims, since those acts are exactly what [defendant] knew would take place when he sold the Sterno to these customers."); *see also Duffy*, 79 N.Y.2d at 616; *Marti*, 293 N. W.2d at 586.

The standard here is not negligence – what a reasonable person should have known or done – but “*conscious* disregard of a substantial and unjustifiable risk that the material element at issue exists or will result from his conduct.” *Commonwealth v. Huggins*, 575 Pa. 395, 400, 836 A.2d 862, 864 (2003). In *Huggins*, the Supreme Court held that an involuntary manslaughter prosecution requires more than civil negligence and even more than the criminal negligence described in 18 Pa.C.S. § 302 (b)(4). The difference between Subsection (b)(3)(recklessness) and Subsection (b)(4)(negligence) is the recklessness subsection's substitution of “consciously disregards” and “disregard” for “should be aware” and “failure to perceive.” “Conscious disregard” is not an objective standard; rather, it requires subjective awareness: “‘Conscious disregard’ of a risk . . . involves first *becoming aware* of the risk, and then *choosing* to proceed in spite of that risk.” *Huggins*, 575 Pa. at 400, 836 A.2d at 865 (emphasis added).

There is ample caselaw from other states upholding reckless manslaughter convictions where the defendant plays Russian Roulette with the victim or, upon hearing that the victim

wishes to kill himself, gives the victim a loaded gun and urges him to do it. *E.g., Duffy*, 79 N.Y.2d 611 (defendant told victim, who had been drinking heavily, that he was tired of victim saying that he wanted to die, so he gave victim rifle and bullets and urged him to “put the gun in his mouth and blow his head off”); *Marti*, 293 N. W.2d 570 (defendant loaded the revolver for his intoxicated and suicidal wife, fired on the empty chambers, and set it down in front of her); *State v. Bier*, 181 Mont. 27, 591 P.2d 1115 (Montana 1979)(during a fight, defendant cocked gun and gave it to his highly intoxicated wife and challenged her to shoot him; she shot herself). Similarly, in this Commonwealth, courts have upheld manslaughter convictions where defendants directly gave deadly substances to the victims, knowing that they would use the substance or item. *E.g., Feinberg*, 433 Pa. 558, 253 A.2d 636 (shopkeeper sold Sterno prominently marked “poisonous” to alcoholics knowing they would drink it); *McCloskey*, 2003 PA Super. 409, 835 A.2d 801 (defendant served excessive amounts of alcohol to minors attending a party in her house, knowing they would drive home).

In contrast, in *Lewis v. State*, 474 So. 2d 766, the adult defendant and fifteen year-old victim, who was upset over a break up with his girl friend, played Russian Roulette without incident with an apparently unloaded gun. After the defendant put away the gun and left, the victim found it and shot himself. The Alabama Court of Criminal Appeals reversed a conviction for criminally negligent homicide with reasoning applicable to this case:

If the victim had shot himself while he and the appellant were playing Russian Roulette, or if the appellant was present when the victim was playing the game by himself, the appellant's conduct of influencing the victim to play would have been the cause-in-fact and the proximate cause of the victim's death. However, the key is the appellant's presence at the time the victim shot himself. . . . However, the evidence in the case at bar indicates the appellant was not present when the victim shot himself.

It also seems clear that the appellant would be responsible for the victim's death if he had left the room while the victim was still playing the game because he should have perceived the result. But, the evidence reveals that the appellant had put the gun away after they finished playing the “game.”

A determination as to whether the conduct of a person caused the suicide of another must necessarily include an examination of the victim's free will. Cases have consistently held that the “free will of the victim is seen as an intervening cause which . . . breaks the chain of causation.” . . . Therefore, the crux of this issue is whether the victim exercised his own free will when he got the gun, loaded it and shot himself. We hold that the victim's conduct was a supervening, intervening cause sufficient to break the chain of causation.

Even though the victim might never have shot himself in this manner if the appellant had not taught him to play Russian Roulette, we cannot say that the appellant should have perceived the risk

that the victim would play the game by himself or that he intended for him to do this.

This case presents a tragic situation and we do not condone the appellant's conduct, in any manner. However, the causal link between the appellant's conduct and the victim's death was severed when the victim exercised his own free will.

474 So.2d at 771.

Likewise, in *Commonwealth v. Root*, 403 Pa. 571, 170 A.2d 310, the defendant and victim were drag-racing. The defendant pulled ahead on a narrow, two-lane bridge, and the victim pulled out from behind him into the lane of oncoming traffic in an effort to pass him. An oncoming truck hit and killed him. Our Supreme Court held that the intervening actions of the victim broke the causal chain and reversed the manslaughter conviction.

Here, Senator Regola did not directly give the gun to Louis, nor is there any evidence that he knew Louis would take the gun. He was not present when Bobby displayed it to Louis, and there is no evidence that he knew that Louis might be enamored with guns or suicidal. While he did not do what he could and should have done to prevent this tragedy, he did not urge Louis to shoot himself.

Senator Regola's conduct in allowing his son to have a loaded, unlocked handgun in the house certainly was irresponsible. However, there is no reason to believe that he "consciously disregarded a known risk" that Louis Farrell would take the gun and shoot himself with it. That he trusted Louis with the keys indicates that the Senator had no reason to suspect that Louis might steal anything, much less a handgun, from the house. The same happy-go-lucky attitude which prevented Louis' parents from learning of any self-destructive intent makes it even more unlikely that Senator Regola would have known of Louis' intentions.

The difference between the causal requirements and *mens rea* for negligence and that for manslaughter is dispositive in this case. Here, we may have a "failure to perceive" the risk when Senator Regola "should [have been] aware" of it, but given Louis' independent and intervening actions in taking the gun and shooting himself, the evidence is insufficient to charge Senator Regola with conscious disregard of a known risk that would result in death.

Of course, a reckless manslaughter charge does not demand that Senator Regola have foreseen exactly how the gun would harm Louis, but it does require “conscious[] disregard[] [of] a substantial and unjustifiable risk that the material element [here, death] exists or will result from his conduct.” 18 Pa.C.S. § 302(b)(3). Mr. Peck argues that Senator Regola should have known that teenagers are curious and accident-prone, but Trooper Hagins testified that the Taurus had a heavy trigger-pull and was very unlikely to discharge by accident. Louis was an intelligent, physically capable teenager, not an infant or toddler and not a blind-drunk driver.

The Regolas’ behavior upon learning that the gun was missing does not supply the missing causal link, as suspicious as that behavior was and as implausible as was its explanation. Some evidence might indicate that Bobby and Senator Regola learned that Louis had taken the gun, perhaps in Louis’ 11:01 p.m. five-minute telephone call to Bobby, but that evidence equally supports the opposite conclusion, that they did not know. Immediately after this call, Bobby made two quick calls to the lake house, one to his aunt and one to his brother’s cell phone, both without reaching anyone. Porter Letter at 6. One might surmise that Louis told Bobby that Louis took the gun, and Bobby called his aunt and brother to attempt to refute Louis’ assertion, but it is just as plausible that Bobby asked Louis about the gun or going upstairs, and Louis denied both, prompting Bobby to turn to his aunt and brother as other candidates who might have it.

With respect to the Senator’s knowledge, he spoke to Bobby from 10:54 p.m. to 11:00 p.m., tried his brother-in-law at the lake house at 11:13 p.m., and spoke again to Bobby after that unsuccessful call, at 11:14 p.m. The 11:14 p.m. call was the first opportunity Bobby would have had to tell his father of Louis’ call.

After the 11:14 p.m. conversation between Bobby and Senator Regola, both stopped trying to reach the lake house. They could have stopped because they tried every number they

had (the aunt, uncle, and John Ross), or perhaps Louis told Bobby something that led Bobby and his father to realize the gun was not at the lake house. Either is possible.

Mr. Porter himself touches on a disturbing aspect of the Regolas' behavior the night of July 21 in his comment, "There would be no reason to call the police to report a gun missing if in fact it had been taken by the family." Porter Letter at 7. To the contrary, all indications were that it had not been: Five calls to everyone at the lake house went unanswered, and, as both Ron and Senator Regola admitted, their sister and brother-in-law never before borrowed a gun without asking permission in advance. The facts told the Regolas that "it had [not] been taken by the family."

More suspicious behavior occurred the next day. Bobby told Anna Bevington at 8:48 a.m. that Louis is dead, before anyone explicitly told him so. Bobby also gave a cryptically abbreviated description of the five-minute call with Louis to Trooper Zalich.

An inference from this behavior may be that Bobby and the Senator learned the night of July 21 that Louis took the gun or harmed himself, but I must conclude that this inference is too speculative. According to Bobby's statement to Trooper Zalich, Louis did not tell Bobby that he took the gun, and no evidence contradicts that. It is difficult to draw any conclusions from the brevity of the description of the 11:01 p.m. call which Bobby gave to Trooper Zalich. While there may have been omissions in Bobby's description, we have no way of determining what they were. As was evident from Doug Farrell's testimony, on the morning of July 22, he was panicked, running from his house to Bobby's, to the trees where he found Louis' dead body, back to Bobby's house, while yelling at neighbor George Nickoloff to stop his wife from going to the woods. Doug Farrell's two visits with Bobby and his questions about Louis and the gun, along with his evident panic, not Louis' 11:01 p.m. call, might have led Bobby to the quite understandable conclusion that something deadly had happened to Louis.

In any event, even a conclusion that the Regolas should have called the police or the Farrells sometime after the 11:01 p.m. call between Bobby and Louis on July 21 does not supply the missing causal link. While they may have known that Louis had the gun, there is no evidence that they knew he meant to harm himself. And the belief that the police or the Farrells would have found Louis alive in the woods before he shot himself is just hope and speculation. We know he did not call Bobby back as he had promised, and we know he never even unwrapped the cigar he took into the woods. He did not linger long enough before his death for it to have been prevented.

After reviewing the evidence and the law, I do not recommend the filing of a manslaughter charge.

C. *Other Charges*

Both Mr. Peck and Mr. Perry suggest that Senator Regola should be prosecuted for other offenses, such as recklessly endangering another person, 18 Pa. C.S. § 2705, and a firearms violation for entrusting the gun to his unsupervised minor son, 18 Pa. C.S. §§6110.1(a) and (c). A reckless endangerment charge does not require proof that the Senator's actions caused Louis' death. This, not manslaughter, is the charge on which Mr. Peck prosecuted in *Commonwealth v. Robert Lewis and Lori Wareham*, Nos. 1247 & 1249 C 2001 (attached to Mr. Perry's letter). The Coroner's commission extends only to making recommendations on criminal acts that caused death. 16 Pa. Stat. § 1237(b). Therefore, I make no recommendation regarding the propriety of those other charges.

V. Conclusion

In Pennsylvania, a coroner's report is advisory and unreviewable. Much like a preliminary hearing or grand jury finding, it has no preclusive effect in either civil or criminal litigation. *See Nader v. Hughes*, 164 Pa. Cwlth. 434, 643 A.2d 747, 752 (1994). The Westmoreland County District Attorney has the ability and obligation to reach an independent decision as to whether and whom to prosecute and for what. This report is intended to assist him in reaching that decision, but the decision is his.

THOMAS J. FARRELL, ESQUIRE
HEARING OFFICER

Dated: March 8, 2007