

**FMA****Forensic Medicine Associates****Professor Johan DUFLOU**

MBChB MMed FRCPA FFFLM DAvMed

**Consulting Forensic Pathologist****EXPERT OPINION – DEATH OF JOHN RUSSELL**

1. My name is Johan DUFLOU.

2. **TRAINING, STUDY AND EXPERIENCE:** I am a specialist forensic pathologist. My professional qualifications are:

- Bachelor of Medicine, Bachelor of Surgery.
- Master of Medicine in Forensic Pathology.
- Fellow of the Royal College of Pathologists of Australasia.
- Fellow of the Faculty of Forensic & Legal Medicine of the Royal College of Physicians (London).
- Diploma in Aviation Medicine.

I hold a number of professional appointments, including consulting forensic pathologist, senior forensic pathologist at the Forensic Medicine Centre in Canberra ACT, Clinical Professor in the Central Clinical School of the University of Sydney, and Conjoint Associate Professor at the National Drug & Alcohol Research Centre of the University of NSW. I was employed as a staff specialist at the Division of Forensic Medicine at the time the autopsy was done on the deceased in this matter.

As a forensic pathologist I have personally investigated injuries sustained by in a large number of circumstances, including falls, assaults and other events over a period of 35 years. These injuries extend from those which could be considered trivial from a medical perspective to those which have caused the death of the person.

Since the mid 1980's I have presented expert evidence on numerous topics in forensic pathology before Courts and other Tribunals in many jurisdictions in Australia and internationally, and I am routinely asked to provide opinions on injuries and the mechanisms whereby they have been sustained during such court hearings.

As part of my academic appointments, I teach undergraduate and postgraduate students and other professional groups in the areas of forensic medicine and forensic science, including

**Forensic Medicine Associates**
 PO Box 331 Manly PO NSW 1655

 [REDACTED]

 [inquiries@forensicmedicine.com.au](mailto:inquiries@forensicmedicine.com.au)
 ABN 53 680 628 677

specifically on the topic of injuries and their mechanisms. I have also had published in excess of 120 peer reviewed scientific articles in many scientific and medical journals, including the results of research into injuries, their documentation, and mechanisms whereby they were sustained.

I enclose a copy of my resume.

3. **ACKNOWLEDGEMENT:** I acknowledge that I have read the Expert Witness Code of Conduct set out in schedule 7 of the NSW Uniform Civil Procedures Rules 2005, and I agree to be bound by it. I have made all inquiries which I believe are desirable and appropriate (save for any matters identified explicitly in the report), and no matters of significance which I regard as relevant have, to my knowledge, been withheld from the court.
  
4. **PURPOSE OF REPORT:** I understand that Mr Russell was a 31 year old male found dead at the base of cliffs in South Bondi, Sydney. I have been told that an inquest in 1990 concluded that the deceased *"died from the effects of multiple injuries sustained then and there when he fell from a cliff to the rocks below, but whether he fell accidentally or otherwise the evidence does not enable me to say."* At a second inquest in 2005, the Coroner concluded that *"The cause of death is multiple injuries sustained when was thrown from the cliff onto rocks, by a person or persons unknown."* I have been informed that the Unsolved Homicide Team of the NSW Police Force is investigating this death, and as part of that investigation I have been asked to provide an expert report examining aspects of the injuries sustained by Mr Russell as detailed in a letter written to me by DSC Katherine Tierney dated 1 August 2017. My review of the provided material commences at paragraph 7 of this report. My opinions, which are wholly based upon my specialised knowledge, commence at paragraph 12 of this report.
  
5. **MATERIAL RECEIVED:** I have been provided with and considered the following material, which I have used to formulate my opinions:
  - Letter of DSC Katherine Tierney dated 1 August 2017.
  - Report of Death to the Coroner (Form P79A), dated 24 November 1989.
  - Interim post mortem report by Dr Sylvia Hollinger, dated 29 November 1989.
  - Final post mortem report by Dr Hollinger, dated 29 January 1990.
  - Viral screening results, dated 27 November 1989.
  - Statement of Dr Anthony Moynham, dated 20 July 2001.
  - Report of Dr Allan Cala, dated 14 August 2001.
  - Statement of Mr Carlton Cameron, dated 29 May 2002.

- Crime scene notes of Mr Cameron, without and with translation.
  - Statement of DSC Manuel Rivera, dated 5 March 2002.
  - DVD of various crime scene photographs, photographs of Mr Russell's clothing and aerial photography.
6. I was a staff specialist forensic pathologist at the then Division of Forensic Medicine at the time this autopsy was performed. It is entirely possible that I may have seen the body of the deceased either before, during or after the autopsy, and it is also possible I may have had discussions with the autopsy pathologist, Dr Hollinger and other persons in relation to the case around that time. If so, I do not recall any of these events and conversations.
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## REVIEW OF PROVIDED MATERIAL

7. **RELEVANT CIRCUMSTANCES:** According to information extracted from the provided documents, Mr Russell died between 11 pm on 22 November 1989 and 10 am on 23 November 1989. His body was found by a passer-by on a rock shelf at the bottom of the Bondi to Tamarama coastal walk, approximately 227 metres south of the Bondi Icebergs Pool. Mr Russell was last seen by a witness who had been drinking alcohol with him at the Bondi Hotel. The witness left Mr Russell at the hotel at about 11 pm on the night of 22 November 1989. It is likely that Mr Russell consumed about 12 to 15 middies of beer throughout the night and was still drinking when the witness left him. There is reportedly no indication that Mr Russell was suicidal; the witness in fact indicated that Mr Russell was in high spirits as he was due to inherit some money.
8. **THE AUTOPSY:** Dr Hollinger performed an autopsy on 29 November 1989. She made the following pertinent observations:
- External examination:
    - A 6 x 1.4 cm laceration on the left side of the forehead.
    - A 7.5 x 1.5 cm laceration on the left occipital region.
    - Bruising on the right and left sides of the abdomen.
    - Abrasion on the right side of the abdomen.
    - Abrasion on the left shoulder.
    - A laceration on the left elbow 2 cm in size, with an area of surrounding abrasion.

- Internal examination:
  - Head and neck:
    - Comminuted fracturing of the skull involving the right frontal, parietal and occipital bones, and the left occipital, petrous temporal and frontal bones.
    - A hinge fracture of the base of the skull.
    - Laceration of the dura mater.
    - Pulping of the inferior surface of the frontal lobes of the brain.
  - Trunk:
    - Laceration of the pericardial sac.
    - Transection of the thoracic aorta at the isthmus.
    - Laceration of the lower lobe of the left lung.
    - Haemothorax on the right.
    - Fractures of ribs 3 to 5 on the right anteriorly.
    - A fracture of the left clavicle.
    - Right sided peri-adrenal haemorrhage.
  - Limbs:
    - A closed fracture of the lower end of the left humerus.
    - Closed fractures of the lower ends of the right radius and ulna.
- Natural disease processes:
  - Moderate coronary artery atherosclerosis.
- Cause of death: MULTIPLE INJURIES.

9. **CRIME SCENE OFFICERS OBSERVATIONS:** According to the statements of Mr Cameron and DSC Rivera and the crime scene notes of Mr Cameron, the deceased was found on a rock shelf some 11.6 metres below a walkway. The deceased was lying face down on the rock surface. There was limited water and blood on and around the deceased, and injuries were observed consistent with those expected from a fall. Injuries identified at the scene included a laceration of the left temple, grazes on both hands, and a broken left elbow and right wrist. Strands of hair were adherent to one of the deceased's hands. Reportedly, nothing unusual was found along the walkway. Specifically, there were no scratch marks, shoe sole marks or scuff marks on the concrete walkway or the exposed rock surfaces above where the deceased was found, although there was some damage to the vegetation on the seaward side of the path above the deceased's location. Mr Cameron formed the view that the deceased could have walked or run off the walkway in the dark, or he may have been "skylarking" and fallen as a result.

10. **STATEMENT OF Dr MOYNHAM:** Dr Moynham commented in relation to the alcohol level in an autopsy blood specimen. The level of alcohol in blood was 0.255 g/100mL. He opined that if there was no putrefaction of the body, the blood level at autopsy would have been that found in the deceased at the time of death. A person would be expected to show marked signs of intoxication at such a level, and would have had impaired balance, impaired coordination and impaired spatial orientation. He would have had diminished vision and hearing, and poor judgement of speed and distance. Probably, he would also have had personality and mood changes and a diminished ability to protect himself from danger.

11. **REPORT OF Dr CALA:** Dr Cala expressed the following opinions in his report:

- The primary impact appeared to be on the left side of the body, suggesting this part of the body impacted first.
  - Injuries to the face may have been assault related.
  - The injuries observed to the body were non-survivable and it is unlikely the deceased would have been able to move or speak for a significant period following the fall. He would have been immediately unconscious.
  - The deceased was alive when he fell off the cliff, but it is not possible to state whether he was conscious or unconscious prior to the fall.
  - The position of the body is unusual because it is facing towards the base of the cliff.
  - The red jersey appears to have been pulled up prior to the fall.
  - The finding of hair on the left hand is unusual for a person who has jumped. It is possible that the hair belongs to another person/s and may have been pulled from the head of that other person/s at the time of the fall.
  - The injuries inflicted are the result of a fall, but the fall remains unexplained.
  - The injuries to the hands are fairly non-specific and may have been occasioned in a number of ways; they are not obviously assault related.
  - There are some injuries to the face and hands which are suggestive of an assault.
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## OPINIONS

12. I have been asked a series of questions, which I transcribe and answer as follows:

a) **An opinion as to what the injuries and position of body suggest was the manner of death.**

ANSWER: The injuries observed on the body are in my opinion indicative of a person having struck the ground following a fall from a height. The pattern and distribution of the injuries, in my opinion, do not allow one to differentiate between an accidental fall, an intentional fall on the part of the deceased (i.e. with self-harm or suicidal intent) or a fall assisted in some way by one or more other persons. The position of the body is somewhat unusual for an accidental or suicidal fall, in that the deceased likely faced towards the walkway when he commenced his fall. Much more commonly, in my experience, a person accidentally or suicidally falling would have been facing in the direction of the fall. However, I cannot exclude as entirely reasonable the possibility that the deceased was walking backwards at the time he fell (for example as a result of trying to move away from a person), or the possibility of the deceased having been pushed over the cliff face and falling backwards but landing face down as a result.

I note the comments of Dr Cala in relation to the likelihood of the deceased moving after the impact and the position of the red jersey. I agree with Dr Cala that it is highly unlikely that the deceased would have moved following the fall, with the possible exception of some limited movement of his arms and legs in the time immediately after the impact. With reference to the jersey, I agree it appears to have been slightly pulled up and assuming the rock shelf on which the deceased impacted is roughly horizontal it would be unlikely that sliding of the deceased post-impact would have resulted in the jersey being pulled up. This leaves the possibility that either the deceased's jersey was pulled up for some reason prior to the fall, or that the jersey was pulled up during the fall for example by coming in contact with the vegetation or cliff face on the way down.

In conclusion, I am unable to provide an opinion, on the basis of the body location and the injuries, whether the deceased died of an accident, or as a result of suicide or the result of the action of another person or persons.

- b) **An opinion as to whether the injuries sustained by the deceased indicate any sign of assault.** ANSWER: I agree with Dr Cala that there appears to be an area of discoloured bruising below the right eye. This is not described in the autopsy report. Such discolouration of a bruise is typical of an injury having been sustained some 18 or more hours prior to death. However, I have also seen such brown discoloured bruises in persons who have sustained immediately fatal self-inflicted gunshot wounds as a result of skull fracturing, and am therefore of the view it is reasonably possible this bruise could be the result of an assault which took place well before the death, or in the time preceding death, or at the time of death. If the bruise was not related directly to the fall the most likely reason for the bruise would be a blow to the face, typically the result of an assault with a blunt object such as a fist. Injuries to the hands, not described in the autopsy report but visible in photographs of the deceased at the scene could be the result of interpersonal violence, or the result of falling or the result of impact with the rock surface.

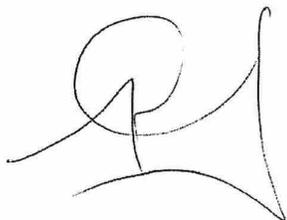
In summary, all injuries could reasonably be explained by the fall, although there could be other reasons for both the bruising below the right eye and on the hands.

- c) **An opinion as to whether the injuries sustained by the deceased could all be attributable to a fall from the top of the cliff.** ANSWER: Yes. Please see my responses to questions (a) and (b) above, and my response to question (d) below. There is in my opinion no doubt that the fatal injuries, namely blunt force injury to the head and organs of the chest, are the result of a fall from a height and would not be expected from direct blunt force interpersonal violence.
- d) **In the post mortem report there is a pattern of injuries list. One item described as "A laceration was present on the left side of the occipital region measuring 7.5 x 1.5 cm" is a point we seek clarification on. If the injuries are a result of the impact of the fall, why does the deceased have an injury to the back of his head when the position of the body was located face down? Is it possible the injury is the result of a corresponding injury to the left side of the forehead? Or could it be an injury resulting from an assault? Or another possibility?** ANSWER: The deceased was found face down, and all the injuries observed on the front of the body can readily be explained on the basis of impact face down. The injury to the back of the head (left occipital region) could be the result of an impact prior to the fall or an impact during the fall (assuming the back of the head could come in contact with the

rock face, for example). The edges of the injury are not described in any detail, and there are no photographs which depict this injury. However, it is also entirely possible for the laceration to be the result of fractured skull edges to penetrate the scalp from the inside outwards causing laceration of the scalp on the back of the head. There is fracturing in the region of that laceration, and the forces involved could certainly cause such laceration from the inside out, as opposed to the more usual type of laceration which is seen from force directly to that part of the body. An analogous situation is where there is a fracture of a limb bone with protrusion then retraction of the fractured bone end through the skin causing a laceration of the skin and a resultant compound fracture of the limb bone.

- e) **In your opinion, does the position the body was found give an indication as to how the deceased left the cliff? Is it possible he could have fallen from the cliff (either forwards or backwards) and landed this way? Or is it more likely he was pushed or thrown forcibly from the cliff? Or another possibility?** ANSWER: My answer to question (a) applies. In summary, I am of the opinion it is possible for the deceased to have fallen backwards i.e. facing towards land, or to have been pushed backwards while facing towards land. I am of the view that it is less likely that the deceased's body rotated during the fall to land in the way depicted in the photographs. I agree with Dr Cala that it would be most unlikely that the deceased would have moved significantly after sustaining the injuries from the fall, and that rolling over after the fall can largely be ruled out as a reasonable possibility.
- f) **In your opinion are the injuries on the knuckles of the deceased defensive injuries perhaps sustained during an assault? Or could these have occurred during/on impact after the fall or another possibility?** ANSWER: It is possible for some of those injuries to have been caused during an assault, or during a fall or as a result of impact with the ground. It is also possible that there may have been some limited faunal post mortem predation (for example by crabs) to cause the abrasive injury to the base of the right thumb.
- g) **Photograph 11 on the DVD (located at DCIM/100NORIT/0070011) is an image of Russell face down with a close up of his left hand showing a clump of hair sitting on top of the hand. This clump of hair was seized by Crime Scene examiners from the body in 11989 however it is now missing and has not been analysed. Is it possible the hair is either Russell's own hair or another person's who may have had some involvement in his death? I seek to clarify whether it is possible the hair could have fallen out of Russell's own head**

**upon his death, either due to trauma to the head or because of a bodily function that occurs upon death, or another possibility altogether.** ANSWER: I am of the opinion it is relatively unlikely to have originated from the head of the deceased although I do not absolutely exclude this as a possibility given there was laceration of the back of the scalp which may have dislodged hair as part of the action which caused the laceration. Taking into account that the deceased likely moved very little if at all following impact with the ground, it would follow that it is unlikely that the deceased would have been able to touch his head with his left arm given the position of that arm under his trunk.

A handwritten signature in black ink, appearing to be 'JD', written in a cursive style.

Johan Duflou MBChB MMedPath(Forens) FRCPA FFFLM DAvMed  
**Consulting Forensic Pathologist**

16 August 2017