VICTORIAN INSTITUTE OF FORENSIC MEDICINE

OPINION REPORT

GRAHAM PAYNTER
CASE NO. A00200/22

My name is Linda Elizabeth ILES and my professional address is the Victorian Institute of Forensic Medicine, 65 Kavanagh Street, Southbank, Victoria 3006.

I am a registered medical practitioner practising as a specialist in forensic pathology.

My qualifications are Bachelor of Medicine (MB), Bachelor of Medical Science (B Med Sci) and Bachelor of Surgery (BS) with Honours, from the University of Tasmania. I am a Fellow of the Royal College of Pathologists of Australasia by examination in anatomical pathology. I hold the Diploma in Medical Jurisprudence in Pathology from the Society of Apothecaries of London (DMJ (Path)), and am a founding fellow of the Faculty of Post Mortem Imaging of the Royal College of Pathologists of Australasia.

I am employed as a Forensic Pathologist at the Victorian Institute of Forensic Medicine.

My practical experience in Forensic Pathology commenced in 2000. I commenced full time professional forensic pathology practice in Victoria in 2005. I was subsequently employed as a Consultant Forensic Pathologist in the Section of Forensic Medicine and Science at the University of Glasgow from March 2007 until January 2009 and received specialised training in Forensic Neuropathology at the University of Edinburgh. I resumed practicing forensic pathology in Victoria in July 2009.

I am head of Forensic Pathology Services at the Victorian Institute of Forensic Medicine and co-ordinate the Institute's neuropathology service.

65 Kavanagh Street
Southbank VIC 3006
Australia
ABN 15 887 032 583

[redacted]
vifm.org

OPINION REPORT

Case No. A00200/22
Re : PAYNTER deceased

I have been requested by Ms Francisca Lilly, solicitor for Crown Solicitor NSW to provide an opinion regarding the death of Graham William Paynter on or around 13 October 1989.

Materials considered in compiling opinion report

- P79A report of death to the coroner
- Identification statement of Russell Longmore
- Medical report upon the examination of the dead body of Graham William Paynter
- Toxicology report
- Statement of John David Roberts
- Statement of Constable Michael Wilhelm Ochs
- Statement of Constable Ian John Castle
- Statement of Plainclothes Constable Michael John Callister
- Statement of Christopher Hamilton Lawrence, pathologist
- Series of 18 coloured crime scene photographs

SYNOPSIS OF MATERIALS

1. Graham William Paynter, aged 36 years, reportedly left the Tathra Hotel at around 12:15 am on 13 October 1989. Mr Paynter had been drinking at the Tathra Hotel with a companion. Witnesses indicated that they both appeared to be well intoxicated. Mr Paynter reportedly left the hotel between 11:30 pm and midnight, by himself, in a very intoxicated state.

2. It appears Mr Paynter was staying in a caravan at the Tathra Motor Village Van Park in Tathra.

3. The Mr Paynter's body was found at Shelly's Beach, at the base of a 50 metre cliff, found 5 pm on 13 October 1989.

4. The deceased's jeans and underwear were variably described as being down around his knees. The top button of the jeans was done up but the fly undone. His jumper was pulled over his head, but the arms still in the sleeves.

5. A pedestrian walkway was located 10 metres of the edge of the cliff. There was reportedly no fencing or signs alerting to same.

6. Constable Callister in his statement described the geography/topography of the area and references photographs (not viewed).

7. An autopsy was performed on the morning of 15 October 1989 by Dr Mark Oakley. A summary of the pertinent findings is as follows:
   a. The body was that of a "grossly obese" man measuring 180 cm in height.
   b. A black jumper was noted around his neck, left arm and right wrist, underpants about the upper thigh and jeans around the ankles.
   c. Post mortem hypostasis was described and rigor mortis noted to be present in the legs.
   d. Dried blood was noted on the face, opined to have come from both nostrils.
   e. Multiple lacerations around 3 mm in size on the forehead.
   f. Linear abrasions to the left and anterior aspects of the trunk, parchment abrasions on the right upper arm, right lateral thorax, right lumbar back, left knee, anterior thigh and lateral pelvic areas.
   g. Dirt and dried plan material was present on the face and feet.
   h. Extensive scalp contusion (bruising), most marked on the right.
   i. No evidence of skull fracture.
   j. Minor left subdural and right subarachnoid haemorrhage associated with contusion of the cerebellar hemisphere grey matter and cerebral white matter.
   k. Contusions over anterior chest wall.
   l. Upper seven left rib fractures, right 4th anterior rib fracture, right 7th and 8th posterolateral rib fractures.
   m. Right haemothorax (quantity of blood not stated).
   n. Superficial laceration of the right upper lobe and posterolateral lobes of the right lung associated with contusions of both lower lobes.
   o. One litre haemoperitoneum.
   p. Superficial laceration of the inferior aspect of the right lobe of the liver on a background of early cirrhosis (no histological evidence of established cirrhosis).

q. Alcoholic steatohepatitis documented on histology.
r. No evidence of cardiac injury; 500g heart with 75% stenosis distal left anterior descending coronary artery and 50% stenosis right coronary artery.
s. Haematoma ileal mesentery.
t. Great vessels intact.
u. Spleen intact.
v. Spine, pelvis and limbs reportedly intact.
w. No evidence of kidney injury.
x. Toxicological analysis was performed on blood only; this demonstrated a blood alcohol concentration of 0.29%.

Cause of death was given as:
1(a) Internal bleeding and closed head injury
1(b) Possible alcohol intoxication

8. Histological examination of selected tissues was performed separately by forensic pathologist Dr Christopher Lawrence. He documented features of alcoholic hepatitis and raised the possibility of an early area of myocardial infarction.

9. Scene photographs demonstrate the deceased's body lying in its right side, surrounded by bushes, small rocks and sandy soil. His jean and underpants are seen to me around midthigh level on the left, and just below the lower aspect of the pubic region on the right at the front. His black jumper is located above his head; arms still in the sleeves.

   Multi-directional brush abrasions, along with parchmented abrasions are present about the trunk and exposed buttocks, most marked on the right. There is lividity present on the right side of the body.

QUESTIONS AND REPONSES

Q1. The adequacy of the post mortem investigations conducted to Mr Paynter.

It is recognised that there have been substantial changes to autopsy practice in the decades since Ms Paynter's death. However, for the purposes of review, I make the following comments:

i. Post mortem examination is adequate to provide a cause of death.

ii. The description of the deceased's external injuries is relatively brief.

iii. Autopsy photographs were taken, however are not available for the purposes of this review.

iv. Given the state of the deceased's clothing, specific description to around the presence or absence of anogenital injuries is warranted. There is no such description in the report.

v. The medical language aboud Mr Paynter's cerebral injuries (i.e. his contusions) is confusing, however does not alter conclusions.

vi. There is no description around the status of the deceased's laryngeal skeleton.

vii. The spine, pelvis and limbs are reported to appear to be intact. This is surprising, but does not preclude a fall from a significant height (i.e. 50 metres). It is noted however that without radiological assistance, subtle fractures, particularly to the axial skeleton may not be detected, particularly by a non-forensically trained autopsy practitioner.

viii. A full toxicology screen would have been advisable to exclude the presence of drugs other than alcohol.

ix. Dr Lawrence describes a possible early area of myocardial infarction. This description however is not entirely convincing.

x. If sexual assault or antemortem sexual activity were considered to be important investigative considerations prior to autopsy, anal and rectal swabs for the presence of spermatozoa could have been considered. However, aside from the state of the deceased's clothing, there appears to be no other circumstantial information to suggest this is relevant.

Q2. *With Mr Paynter's injuries please outline your views regarding whether Mr Paynter's injuries are consistent with a fall, or whether any injuries are more likely to have been obtained by other means, for example misadventure, suicide or foul play.*

Whilst Mr Paynter's external injuries are relatively perfunctorily described, these descriptions, along with the scene photographs and the description of the topography where Mr Paynter was found, would be in keeping with a fall from a height with multiple secondary impact points and rolling/tumbling of the deceased's body following primary impact. The presence of numerous linear and parchmented abrasions, and the photographs demonstrating multi-directionality of these abrasions, is in keeping with significant tumbling of the body following primary impact.

The autopsy report describes significant blunt trauma to the head, chest and abdomen. The types of injuries described are in keeping with those sustained in a fall from a significant height (with impact and deceleration type injuries).

The differentiation between injuries sustained in a fall from a height and associated secondary impact(s), and blunt force trauma that may have been sustained prior to the fall, is usually very difficult. The presence of subtle injuries in protected areas can raise the possibility of preceding trauma. In this instance, the description of external injuries is limited and not systematic, and thus is silent in regard to such injuries.

Whilst the deceased's injuries are in keeping with those sustained in a fall, this does not inform how the fall occurred, i.e., there is nothing in the medical findings that can differentiate between an accidental fall (for example in the setting of alcohol intoxication), suicide or homicidal fall in which the deceased was pushed.

Q3. The position of Mr Paynter's clothing, specifically whether this arrangement is consistent with a fall from a cliff or whether it is likely Mr Paynter was undressed before the fall.

The distribution of abrasions seen to Mr Paynter's body, including the multi-directionality of linear and brush type abrasions, is in keeping with multiple secondary impacts from tumbling following a primary impact. This mechanism allows for the possibility of Mr Paynter's clothing to have been disturbed from its original position. It is possible that his upper garment was partially snagged on branches/other foliage. Mr Paynter's fly was undone but his top button intact. Mr Paynter's body habitus suggests truncal obesity with a small waist/hips. This would allow for Mr Paynter's trousers and underpants to passively end up below their normal position in the setting of tumbling following a high energy fall. Given Mr Paynter's apparent intoxicated state, little can be drawn from his fly being undone. Whilst that it cannot be excluded that Mr Paynter's clothing was in this state prior to the fall, it does not necessarily need to be the case.

Q4. Your view as to the medical cause of Mr Paynter's death (including any reasons for taking a different view to that formed by the forensic pathologist who conducted the autopsy).

I note that the autopsy in this instance was conducted by a non-forensic pathologist with review of histological sections by a forensic pathologist. Whilst the intent of the cause of death given by Dr Oakley is understood, Mr Paynter's cause of death is better stated as follows:

1(a) Multiple injuries sustained in a fall from the height in the setting of alcohol intoxication

As above, "fall from a height" does not imply a specific mechanism of fall. In this instance multiple injuries incorporates blunt head injuries (scalp bruising, minor subdural and subarachnoid haemorrhage, cerebral contusions), chest injuries (chest bruising, rib fractures, lung lacerations and contusion) and abdominal injuries (haemoperitoneum, liver laceration and ileal mesentery contusion).

Histological reporting raises the possibility of myocardial infarction. The description of the changes in the heart is not entirely convincing and established histological features of acute myocardial infarction in the circumstances as described would be highly unusual, would however without reviewing the slides I cannot comment further. In the context of the issues raised by the commission, exploring this point is of limited utility.

Q5. View as to any conclusions that can be drawn from the toxicological analysis.

Toxicological analysis performed on blood demonstrates blood alcohol concentration of 0.29% (almost six times the legal limit for driving). A witness described Mr Paynter as being in an intoxicated state around the time he left the Tathra Hotel. This is supported by post mortem toxicological findings.

Q6. Any recommendations for further investigations with respect to determining the manner and cause of Mr Paynter's death.

Whilst it would be helpful to view autopsy photographs, photographs of the topography, and histology if the finer points surrounding Mr Paynter's death need to be explored, based on the material that I have available for review, the condition of Mr Paynter's clothing, along with the autopsy findings, can be explained by a fall with a significant primary impact, and multiple secondary impacts with tumbling and rolling of the

deceased's body after falling from a height of around 50 metres. Significant alcohol intoxication, the cover of darkness and a high fall risk site in an unfenced area, is a plausible scenario for an accidental fall. However, other mechanisms of fall (i.e., the deceased being pushed, or the deceased jumping) cannot be excluded on medical evidence alone, as there may be not anatomical findings to indicate same.

I, Dr Linda Iles, acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in Schedule 7 to the said rules and agree to be bound by it.

I hereby acknowledge that this statement is true and correct and I make it in the belief that a person making a false statement in the circumstances is liable to penalties of perjury.

PROTECTED

Dr Linda E. Iles
B Med Sci, MB BS (Hons), FRCPA, DMJ (Path), FFPMI (RCPA)
Forensic Pathologist
Head of Forensic Pathology
Victorian Institute of Forensic Medicine

PROTECTED