VICTORIAN INSTITUTE OF FORENSIC MEDICINE

OPINION REPORT

MARK STEWART
CASE NO. A00179/22

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.

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Case No. A00179/22
Re : STEWART deceased

I have been requested by Ms Caitlin Healey-Nash, Senior Solicitor for Crown Solicitor, to address a number of questions pertaining to the death of Mark STEWART as outlined in a letter of instruction dated 5 October 2022. In order to do so, I have reviewed the following:

Material considered in compiling opinion report

- P79A Report of Death to Coroner
- Interim autopsy report
- Toxicology report
- Autopsy report
- Inquest findings of City Coroner John Brian Goldrick
- Transcript extract of inquest
- Death certificate
- Statement of Constable Keith Douglas Thoms
- Statement of Constable Ronald James Fyson
- Statement of Constable Christopher John Ure
- List of personal effects from Mr Stewart's room 3117
- Statement of Colin Richard McGuire (witness)
- Statement of John Spanswick (father)
- Statement of Patricia Cupitt (receptionist).

Synopsis of materials

The body of Mr Mark Stewart (age 18 years) was found at around 10 am on 11-5-1976, 6 metres east of the cliff face at the bottom of Fairy Bower Headland. The clifftop was located approximately 50 meters above. The deceased was lying on his right hand side, facing west (note – described as face down in police statements). His shoes were off and laced and were located in close proximity to his body. A wristwatch was located 6 metres east of the deceased's body, bearing the time 8.02 and the date 11/5.

A hotel receptionist reported booking Mr Stewart into the Hilton Hotel at 9.30 pm on 9th May 1976.

The Report of Death to the Coroner indicates the deceased was found wearing the following:

- Pale green slacks.
- Bone coloured blet [*sic*].
- Bright green sneakers
- Cream body shirt.
- Blue denim jacket
- White cotton singlet
- Blue floral underbriefs.

Property is documented as gold Seiko watch (damaged), gold cigarette lighter, stainless steel comb, $15.27 in money, and a small piece of paper bearing the (phone?) number of the Sydney Chevron-Hilton Hotel where the deceased was reportedly staying, with 7.20 and 11.5.76 written in biro.

An autopsy was conducted at 11 am on 14 May 1976, by Dr Oettle. This report documents the following:

1. The body is that of a young adult male of medium build, weighing 60 kg and measuring 172 cm (BMI 20.3).
2. Numerous parchment scrape abrasions along the left side of the body on the posterolateral aspect.
3. Left parietal scalp splitting (laceration).
4. Extensive skull fractures of “all aspects of its dimensions”.
5. Gross brain laceration.
6. Thin extradural haemorrhage, subdural haemorrhage.
7. No intraparenchymal brain haemorrhages.
8. Let mid shaft humerus fracture.
9. Bilateral pubic ramus fractures.
10. Left femur mid shaft fracture.
11. Left tibia and fibula fractures above the ankle.
12. Cervical spine fracture at the level of the C3 associated with a small amount of haemorrhage.
13. Mediastinal haemorrhage.
14. Tearing (laceration) of the trachea at the carina.
15. Tearing (laceration) of the pulmonary hilar regions.
16. Small amount of free blood inhaled into the lungs.
17. “Gross tearing” (laceration) to the centre of the liver and extending onto the left and right sides.
18. Extensive “tearing” (laceration) of the spleen.
19. 100 mL of blood in the abdomen.
20. 550 mL of blood within the left chest cavity and 100 mL of blood in the right.
21. Tearing (laceration) of the pericardial sac associated with a small amount of blood clot.
22. Empty stomach.
23. Pale renal cortices.

The cause of death was given as “multiple injuries”.

Blood was sent for analysis for alcohol. No alcohol was detected. No other analysis was performed.

Questions and responses:

Q1a. Any additional areas of medical investigation or expert opinion relevant to Mr Stewart's injuries and cause of death.

Q1b. Appropriate experts from whom to seek further expert opinion

Response:

No. More data on the terrain about where the deceased was found (informing the likelihood of impacts during decent) would be helpful if more external injuries were described, but this is not the case.

Q2. View as to the adequacy of the post mortem investigations conducted with respect to Mr Stewart.

Response:

It is recognised that substantial changes to autopsy practice have occurred in the decades that have passed since Mr Stewart's death. This notwithstanding, for the purposes of case review, there are deficiencies as follows:

- Beyond the description of "numerous parchment scrape abrasions along the left side of the body on the posterolateral aspect", there is no detailed description of external injuries or external identifying features which would allow one to say with confidence that a thorough external examination has taken place.

- There is no description of the aorta (the probability of an aortic injury following a fall from a height of 50 meters is high, considering the other documented injuries). There is no commentary on the presence or absence of rib, sternal, lumbar or sacro-iliac fractures; the absence of fractures to some or all of these areas from a fall from this height is unusual, but in no way invalidates this as the mechanism of death.

- There is no description of the larynx and its surrounding structures in terms of injury (presence or absence thereof).

- The presence or absence of anogenital injuries or other pathology is not described.

- Toxicological analysis for alcohol has been performed, however the analysis for other substances has not been undertaken.

- Photo documentation of external features at a minimum would be of assistance in terms of retrospective case review.

Q3. View as to cause of Mr Stewart's death.

Response:

The cause of death provided by Dr Oettle is entirely reasonable based on the findings described. The presence of pulmonary hilar tear indicates a high energy deceleration type injury, in keeping with a fall from a height of around 50 metres, even in the absence of rib fractures. Given the presence of tracheal laceration at the carina, and mediastinal

tears, a small amount of haemaspiration may be evident within the lungs following agonal respiratory movements.

Q4. Timing of Mr Stewart's death

Response:

Based on the material available for my review, I am unable to estimate a time of death beyond circumstantial data. Even under optimal circumstances, estimating time of death is subject to numerous inherent inaccuracies due to uncontrolable variables. In this instance, there is no documentation of body temperature and ambient temperature around the time the deceased was found. The autopsy report does not document features such as rigor mortis or livor mortis (the inherent unreliability of these indictors notwithstanding) to enable any comment at all with regards to the time of death. In short, there are no recorded medical observations to allow a more specific time of death to be determined beyond Mr Stewart's last reported sighting when alive (9.30 pm 9/5/76) and when his body was spotted (10 am 11/5/76). There are no observations provided in Dr Oettle's autopsy report that shed light on how he concluded that death took place 3-4 days prior to autopsy (i.e. 3-4 days prior to 14 May 1976)

There is no medical information to enable me to opine as to whether Mr Stewart died prior to the time identified on his wristwatch (8.02 Tue 11). Mr Stewart *may* have died at 8:02 am on Tuesday the 11th, *if* his watch was showing the correct time, *and* he was wearing it at the time of impact, *and* its mechanism was irreparably damaged during the fall. However, these assumptions cannot be confirmed or refuted based on medical evidence.

Q5. View as to whether Mr Stewart's injuries are consistent with misadventure, suicide or foul play.

Response:

There are no features based on the information available to me that would allow me to determine the manner of Mr Stewart's death. Whilst the presence of subtle injuries in the protected regions of the body *may* indicate trauma prior to Mr Stewart's body impacting rocky surfaces during his descent from the cliff top down to the rocks below, the absence of such injuries does not preclude foul play, nor would the presence of such injuries definitively identify that foul play have occurred. It is rare for the pattern and type of injuries in isolation to definitively delineate manner of death in the setting of falls from a height. Nevertheless, the documentation of external injuries and identifying marks in the autopsy report is insufficient to address the presence or absence of such subtle injuries.

Whilst it is beyond my expertise, it appears possible to estimate data points such as horizontal launch speed based on fall height and horizontal distance travelled[1]. In this instance, autopsy examination documents the presence of scrape abrasions along the posterior left side of the body, and injuries to long bones on the left side of the body, indicating a left sided primary impact. Mr Stewart is variably described as being found lying on his right side, or on his back. This indicates significant impact prior to Mr Stewart's body being located at its final resting place (i.e. he may have rolled further away from the cliff face). Regardless, published literature would appear to indicate that a horizontal distance of 6 metres in the setting of a 50 metre high fall is not unusual[2]. Interrogation of the biomechanical data in this literature is beyond my expertise.

Q6. Provide any other comment within the area of your expertise regarding the likely cause of Mr Stewart's death.

Response:

I agree with Dr Oettle's observations that Mr Stewart's death was due to multiple injuries; it may more fulsomely described as "multiple injuries sustained in a fall from a height". It should be noted that "fall from a height" does not imply a specific mechanism of fall (i.e. accidental, suicide or homicide). I am unable to opine, based on the medical evidence, the circumstances in which the fall from the height occurred.

References

1. Cross, R. Forensic physics 101: Falls from a height. *Am J Phys* 2008, 76 (9): 833-837.
2. Shaw K-P, Hsu S Y. Horizontal distance and height determining falling pattern. *J Forensic Sci* 1998, 43 (4): 765-771.

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.

Signed 

Linda E. Iles
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