

2635/97

Form 2
CORONERS ACT, 1980

INQUEST BEFORE CORONER SITTING ALONE

New South Wales
To Wit, STATE CORONER`S COURT, GLEBE

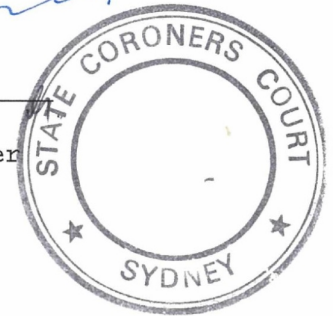
INQUEST held at the CORONERS COURT at GLEBE on the 18/11/1999,
before me JOHN ABERNETHY, Senior Deputy State Coroner concerning
the death of DAVID SAMUEL ROSE (hereinafter called the deceased).

I FIND THAT DAVID SAMUEL ROSE DIED ON 20 DECEMBER, 1997, AT
KENSINGTON, OF HEAD INJURY INFLICTED THEN AND THERE BY A PERSON
OR PERSONS UNKNOWN.

GIVEN under my hand and seal this 18/11/1999

J. Abernethy

Senior Deputy State Coroner



2635/97

INQUEST into the death of

DAVID SAMUEL ROSE

DATE OF COURT : 19/8/99 : 17.11.99 : 18.11.99.
 SGT ASSISTING : Radzieta : ✓ : ✓
 APPEARANCES : Morrison : NO IS :
 Interested Parties : (NOIK : Mr. Mrs :
 : - Ian Rose : Rose :
 ADJOURNED TO : 17.11.99 : 27.1.2000.
 TIME (If not 10am) : 10:30 AM :
 FOR - MENTION :
 - HEARING :
 OFFICE ACTION : TRANSCRIPT :
 REQUIRED : Warrant to :
 : Witness :
 : David Thwaites :
 CORONER : J.A. : J.A. :

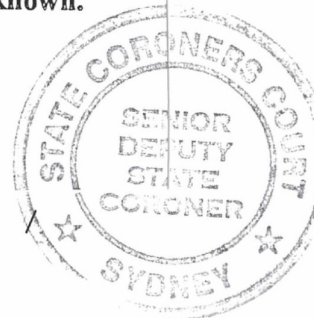
Finding.

That David Samuel Rose died on 20 December, 1997, at Kensington, of head injury inflicted then and there by a person or persons unknown.

(John Abernethy)
 NSW Senior Deputy State Coroner,
 Glebe. NSW.

(Coroner)

ADDITIONAL COMMENTS/RECOMMENDATIONS



Floppy # 8.**INQUEST INTO THE DEATH OF DAVID SAMUEL ROSE.**

Number 2635 of 1997.

Facts:-

David Rose, a well educated man with well paid employment, also worked on a voluntary or part time with a community FM radio station where he would announce and train new staff/volunteers. He was, by all accounts a gentle, kind man who was also a very private man who was known as being very security conscious. Though a cross dresser, he was not believed to mix with the Oxford Street crowd. He was not believed to be a homosexual.

Mr. Rose resided on his own at [REDACTED] Addison Street, Kensington and when in his unit would usually deadlock the front door and lock the security door. Further he would not usually unlock the front door until satisfied as to who his visitor was.

Rose as ill from about Tuesday, 16 December, 1997 with a virus and his family had no contact with him from about 10 am on Saturday 20 December, 1997. They had attempted to contact him but it appeared that his 'phone was off the hook. They approached police on a "concern for welfare" basis.

Police attended the unit with the family and noted that the security door was closed but unlocked, with a Christmas present between it and the main door which was deadlocked. After getting no response, police gained access through a sliding glass door which the deceased usually left open. They found him lying on his back on the floor in the kitchen, dead. A post-mortem examination subsequently showed that he died of head injury. He had been bashed about the head. Police noted that the main door to the unit was deadlocked. They found a set of keys in the unit and unlocked it.

Police investigations revealed that the deceased possessed a second set of keys which he had in the past given to various persons who had stayed at his home, often when he was overseas. These keys have never been located and it is likely that Mr. Rose's assailant let him or herself out of the flat with these keys. Whoever ended Mr. Rose's life deadlocked the front door when leaving but did not lock the security door.

An extensive investigation has been conducted by police. There are persons of interest - one in particular. But this person has an alibi or a virtual alibi. Nothing of a forensic nature was discovered which might link any particular person to the death. Fingerprints, for example were of no assistance though there was located one partial palm print. The identity of the person who left it has never been ascertained.

In general terms, because Mr. Rose lived a quiet, unobtrusive life, there were few friends and acquaintances for police to look at.

My inquest commenced on 19 August, 1999 and I looked at the brother of the deceased. There is not an iota of evidence that Ian Rose, or for that matter the parents

of the deceased (who are elderly) were in any way involved in his death. To the contrary there was concern about the deceased's health at about the time he became uncontactable. Ian Rose gave evidence and was, in my opinion a witness of truth. He appeared to answer all questions fully and truthfully. He admitted that he spent much of the Saturday at his home, alone. He indicated that he had not seen his brother since early December and had been discussing a joint gift for the parents for Hanukkah, an important Jewish day of celebration. He indicated that he felt fairly neutral about his brother's cross dressing and only tended to suggest to him that he ought "tone it down" when visiting his parents. His brother would say that what he did was his business and the issue was left at that. The Rose brothers dined with their parents most Friday evenings but on Friday, 19 December, 1997 David Rose did not as he was unwell. Ian Rose knew his brother was unwell during the week and was quite anxious to finalise arrangements for the Hanukkah gift with his brother. He rang David but was told that he would not be going to dinner on the Friday night as he was unwell. At the end of the day, I am satisfied that there is not one iota of evidence going towards Ian Rose or any family member having anything to do with the death of David Rose. Significantly there is no motive in that regard - I am satisfied that the Rose family are a typical Jewish close family unit.

It is very possible that another person, not discovered by police committed this crime. As I say, Mr. Rose was a private man who may have had one or two friends unknown to either the family or his other friends. Certainly it is probable that the person who killed him had been invited into the flat by David Rose, or was in possession of the second set of keys - I have no other rational explanation for the deadlocked main door of the unit. This person either had Rose's second set of keys and let him/herself into the flat and then left, re-locking the main but not the security door; or was invited in by Rose, killed him and then took possession of the second set of keys in order to exit the unit. Frankly the better explanation is probably that the person was already in possession of the second set of keys.

These keys have never been located and police have been unable to establish in whose possession they were immediately prior to the death of David Rose.

It is fair to say that the main person of interest is Sandra Durward. Durward was cross examined at length by both Sergeant Radzieta and counsel for the family. It is fair to say that M/s. Durward is also a very intelligent woman. She is however a recovering alcoholic and drug abuser. At about the time of death of Mr. Rose she recollects that she was drinking Methylated Spirits. She has memory of some events but says she cannot recollect other events which occurred over the weekend of 20 December, 1997. Whether she is a witness of truth or a clever liar is very difficult to determine. I am able to say that counsel made virtually no inroads in their cross examination of her.

Sandra Durward has stayed with the deceased at his unit on a number of occasions, either at the invitation of the deceased or when she had nowhere else to go because of her alcoholism. This was confirmed by the sister of the deceased, Fiona Feary, a very credible witness, and I believe a witness of truth. Feary, a married mother lives on the Peninsula and gave evidence which I must accept. She confirmed her sister's ascerbic sense of humour (she called it flippant - given to "one liners"; Durward called it "macabre"); she acknowledged her substantial problem at the time with alcoholism;

she confirmed that she quite regularly spoke to Mr. Rose about Sandra and that Mr. Rose "took her in" from time to time, because she was a friend in need and because he felt he was able to give Feary some respite from her sister; she painted a picture of her sister as a gentle person, even when drunk. She had never known her to fly into a rage and become violent. Of course the thrust of Mrs. Feary's evidence is to render more credible the evidence of Sandra Durward. Even if I don't fully accept the somewhat glowing picture painted by Feary, I have little evidence to the contrary - though David did indicate to others that for some reason he was "scared" of her. It was merely a comment made in passing - "to be careful of her".

So whilst it may be that Durward let herself into David Rose's unit or was admitted by him, perhaps on the basis that she was seeking a roof over head, she denies it and there is absolutely no evidence that she was near the Unit on Saturday 20 December, 1997. Of course there is no forensic evidence that she was there either and as I have said she has told the court of an alibi which virtually eliminates her if it is true. The alibi revolves around the movements of the deceased on the afternoon of 20 December, and one David Thwaites. The inquest was adjourned so that the alibi provided by Thwaites could be tested. In essence the pair say that they met in the early afternoon at Neutral Bay; attended an AA meeting; then had coffee with others; then went for a long walk and talk before Durward went into the city either by bus or taxi and caught a train to the far western suburbs where she clearly worked as a prostitute that night. If Thwaites corroborates that basic version of events it is difficult to see her getting out to Kensington, committing an "unpremeditated" killing (as this almost certainly was) and getting herself out to the St. Marys area to begin work at about 6.30 pm. Thwaites has now given evidence and I must accept his evidence. He appeared a witness of truth and gave cogent reasons for being sure of the date. In essence his evidence is as I have set out except that he did not see Durward until 1.30, after the meeting and they parted at about 4 pm, she by taxi. She was either going by taxi to St. Marys or to the City where she would obtain public transport. He has certainly provided a partial alibi, though Durward could have been at Kensington before the AA meeting or, briefly, after it. Thwaites saw nothing in Durward's demeanour at all which might lead to suspicion that she had been at Kensington dealing with Mr. Rose before the meeting. To the contrary, she was concerned about a friend's missing daughter.

Durward said seemingly inculpatory things to persons close to her after the event, such as "I may have killed him"; may have killed him in my sleep; I may have killed him in his sleep etc". She also spoke to a close friend Devitt of coming to a "hideous realisation struck me" "it is quite nasty and really serious". She said this by answering machine and whilst she has no memory of it, suggests that it may be that a former partner, Hilton may have done it and as she introduced him to the premises some time before, she was indirectly responsible for the death. This, to me, appears a rational explanation for saying such a thing. Though, as I say, it is inculpatory and therefore may be consistent with guilt. She puts the comments relating to killing Mr. Rose down either to her alcoholism or her "macabre" sense of humour. Perhaps the most damaging inference can be drawn from her remarks to her sister that perhaps the television was knocked over and hit him on the head. She has little recognition of this or any of these conversations but suggests that it was just an explanation which came into her head. On the one hand, the television had been knocked over when police

found the deceased, but as Durward says it may have been on a rickety stand - that is not really clear. On the other hand even if Durward is blaming it on the television as she in fact did kill the deceased, there is no forensic evidence that he fell or was thrown against it, perhaps hitting his head and knocking it over.

Other persons, used the unit through Durward but all say that keys were returned. All deny having anything to do with the matter and there is no forensic evidence of their involvement. Of course any one of a number of persons could have had keys cut but again, there is simply no evidence against any known person.

There is thus some suspicion about M/s. Durward, largely because of some of the peculiar things she said to those around her after the death, but there is absolutely nothing to link her to the homicide of David Rose, other than a quite vague suspicion.

Conclusion.

So a security conscious man, a gentle man appears either to have admitted someone into his unit, or someone with his spare keys has admitted him/herself into his unit. There has been a dispute and he has been assaulted in a manner which caused his death by homicide. This inquest has looked closely at the only obvious person of interest, and whilst there may be some suspicion about her, there is certainly insufficient evidence capable of satisfying a jury that any known person was responsible for the homicide. Importantly the sister of the person of interest, a credible witness, gives a very different, and to me honest picture of M/s. Durward and her demeanour. That in the end would be weighed, in any event, by any jury should there ever be a case for trial, against what evidence the Crown may be able to adduce.

As I understand it both investigating police and the next of kin concede that there is insufficient evidence, even when the Crown case is looked in its most positive light, to be capable of satisfying a reasonable jury properly instructed of an indictable offence in connection with the death of David Rose.

Detective Senior Constable Thornton sums the matter up in this way, and I have to agree with him:-

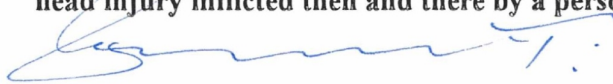
"David Rose died as a result of head injuries caused by fatal blows to his head. I believe that he knew his assailant and had allowed the offender into his unit. I do not believe that access was gained via the third floor balcony. I do not believe the killing was pre-meditated in the sense that the offender went to the unit specifically to kill the deceased. I can find no reason why the deceased was murdered other than the possible motives I have mentioned above. The investigation has been conducted as thoroughly as possible but despite this no persons have been arrested for the murder of David Rose."

The matter has been raised in the press and on "Australia's Most Wanted" to no avail.

There is cold comfort in the fact that by bringing in an open finding of homicide, this case will, like all other unsolved cases, be reviewed periodically and in the future evidence may be forthcoming to enable it to be solved.

Finding.

That David Samuel Rose died on 20 December, 1997, at Kensington, of head injury inflicted then and there by a person or persons unknown.



(John Abernethy)
NSW Senior Deputy State Coroner,
Glebe. NSW.