



# VICTORIAN INSTITUTE OF FORENSIC MEDICINE

## OPINION REPORT

**WENDY WAINE  
CASE NO. A00181/22**

**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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## OPINION REPORT

**Case No. A00181/22**  
**Re : WAINE deceased**

I have been requested by Ms Caitlin Healey-Nash, senior solicitor for Crown Solicitor NSW to review materials pertaining to the death of Wendy Waine, age 35 years.

### Materials considered in compiling opinion report

- P79A report of death to the coroner
- Forensic biology report
- Toxicology report
- Autopsy report
- Inquest findings
- Series of crime scene and autopsy photographs (x25)
- Statement of Detective Sergeant Stephen Desmond McCann
- Statement of Senior Constable Steven Mark Coles
- Statement of First Class Detective Constable Raymond Constable
- Statement of [REDACTED] I227
- Statement of [REDACTED] I230
- Statement of [REDACTED] I242
- Interview of [REDACTED] I232
- Statement of [REDACTED] I239
- Interview of Dr David Bennett
- Statement of Michael Francis McCarthy
- Statement of Anthony Leslie Reid

### SYNOPSIS OF MATERIALS

1. Wendy Waine was a 35 year old transgender woman whose body was located face down on the floor of the bedroom of her apartment at [REDACTED] Darlinghurst Road Kings Cross around midday on 30 April 1985. Ms Waine was reportedly seen at around 3:15 am on 29 April 1985 with a male client by a fellow sex worker.
2. A member of the public Mr Michael McCarthy walked past the front of flat [REDACTED] Darlinghurst Road about 7:45 pm on Monday, 29 April 1985 and observed a

woman with appearances similar to Ms Waine. However, it is not clear if this was a reliable sighting of the deceased.

3. Constable Raymond Constable from the Ballistics Unit of the Scientific Investigation Section of New South Wales Police examined Ms Waine's bedroom. He was of the opinion that she was initially shot whilst lying naked face down on her bed with the bullet exiting the deceased and travelling through the bedspread, stopping at the blanket. He opined that the deceased was then pushed off the left side of the bed onto the floor, where a second shot was discharged into the deceased's body. It was his view that the offender had partially removed the bedspread to where the bullet had stopped at the blanket and removed it. The deceased was then dragged rearward on the carpet and the bullet beneath the body recovered. Search was made of the room and no fired cartridges or projectiles were found.
4. An autopsy was performed on the deceased's body by Dr Thomas Howard Godfrey Oettle at 7:30 pm on 30 April 1985. This demonstrated the following:
  - a. Body of an adult Caucasian male weighing 72 kg and measuring 177 cm in height (BMI 23.0).
  - b. Gunshot entry wound present on the back of the neck 159 cm from the right heel and 2 cm from the midline, passing forward, through the second cervical vertebrae across the mouth and through the left side of the mandible, exiting in the region of the left mandible, 159 cm from the left foot and 2 cm from the midline. ***For the purposes of this review, this will be referred to as gunshot A.***
  - c. Second gunshot entry wound on the upper back, 149 cm from the left foot immediately to the left of the midline, tracking forwards and slightly to the right through the first thoracic vertebra, the oesophagus, right side of the trachea and exiting on the right side of the neck 2 cm from midline and 151 cm above the right heel. Extensive haemorrhage was present around the tracks of these gunshot wounds. ***For the purposes of this review, this will be referred to as gunshot B.***
  - d. An entry-exit gunshot wound complex was located on the left hand, extending from the region of the second metacarpal to the fourth metacarpal with the track measuring 5.5 cm in length. ***For the purposes of this review, this will be referred to as gunshot C.***

- e. 4.5 x 1.8 cm rectangular bruise on the under-surface of the scalp at the left occiput. No evidence of underlying skull fracture was detected.
  - f. "Little" subarachnoid haemorrhage over the lateral surface of the right temporal lobe and adjacent inferior surface of the right frontal lobe.
  - g. "Very little" subarachnoid blood in the midline on the inferior surface of the vermis and adjacent medial surface of each cerebellar hemisphere.
  - h. Parchment abrasion under the right side of the chin, 1.5 x 1.5 cm with the shape of the abrasion approximating a right angle triangle.
  - i. A 6 x 4 cm area of blue bruising on the outer aspect of the right upper arm. A 1 cm crescentic parchment abrasion was located near the bruise thought to be consistent with a fingernail mark; immediately behind this was a 3 x 1 cm area of very superficial parchment abrasion.
  - j. Minor blue bruising on the left iliac crest laterally.
  - k. Internal examination demonstrated a small amount of fresh blood in the airways and a small amount of inhaled blood in the lungs. The renal cortices were described as pale. Fatty change was noted in the liver. Early decompositional changes were noted in the spleen, liver and pancreas. Silicone breast implants were present bilaterally. No evidence of anal verge injury was identified.
5. Blood was submitted for toxicological analysis for alcohol; this was negative.
6. Hairs from the left hand were retained along with six cigarette butts, and a swab was taken from the anal verge. No semen was detected on the latter.
7. Ballistics officer Constable Raymond Constable also attended the autopsy examination. He was of the opinion that the gunshot wound to the upper back (**gunshot B**) was a contact wound and that a large calibre projectile passed upwards, slightly to the right and forward to exit the front/right side of the neck. He also observed a gunshot entry wound to the base of the skull (**gunshot A**). He opined that this was consistent with having been caused by the passage of a large calibre projectile with the muzzle of the weapon healed in close contact with the skin at the time of discharge. The projectile exited from beneath the chin to the left of the midline. He noted a third entry-exit wound complex on the back of the left hand (**gunshot C**).

8. Detective Sergeant Stephen Desmond McCann in a statement given at inquest noted at 5.3 that the entry and exit wound on the left hand (**gunshot C**) was consistent with it having been in line with the trajectory of either projectile.
9. It was also noted at 5.4 that an 18 x 40 mm bruise on the left side of the back of the skull was present, and that the force of this blow would have been sufficient to render the victim unconscious.
10. At autopsy examination, Ms Waine's stomach was noted to be full of "partially digested food" which large pieces of what appeared to be steak and large pieces of vegetable material including cut potatoes. This had not passed the pylorus.
11. Dr Oettle opined that that death had taken place about one day previously and that the cause of death was bullet wounds to the neck and thorax.

## QUESTIONS AND REPONSES

Q1. *Following your review of your briefing material, please identify: (a) Any additional areas of medical investigation or expert opinion you consider would assist His Honour on the issues of Ms Waine's injuries and cause of death; and (b) if relevant, appropriate experts from whom His Honour may wish to seek further expert opinion.*

In the absence of any further material documenting Ms Waine's gunshot wound (for example, any notes from ballistics officer Constable Constable), I do not believe the medical investigation can be further progressed.

Q2. *Your view as to the adequacy of the post mortem investigations conducted with respect to Ms Waine.*

It is recognised that there have been substantial changes to autopsy practice in the decades since Ms Waine's death. However, for the purposes of review, some deficiencies are identified as follows:

1. Photo documentation of the deceased's gunshot wounds is suboptimal, placing limitations on the review of these injuries.
2. Description of gunshot wounds:

- a. The description of gunshot wounds to Ms Waine's body in the autopsy report is perfunctory. Whilst the anatomical location of the wounds and the direction of the wound tracks are described, no detailed descriptions or measurements of the actual wounds are contained in the report.
- b. No pathological determination of range is included in the autopsy report. However the ballistics officer opines that the wounds to the upper back and base of skull region are contact gunshot entry wounds.
3. A rectangular bruise is documented on the under-surface of the occipital scalp. Ideally, the hair from the overlying scalp should have been removed to determine whether any patterned injury was evident on the skin of the scalp. There is no photographic documentation of this bruise.
4. Specific documentation of presence/absence of injury to the rectum and external genitalia would be warranted given the setting in which Ms Waine was found. Likewise, a rectal swab for semen in addition to the anal verge would have been advisable.
5. Whilst the post mortem examination is adequate to determine the cause of Ms Waine's death, lack of detail in particular around the cutaneous aspects of her injuries limits precision of retrospective review.

*Q3. The time of Ms Waine's death. Without limiting the matters which you may consider relevant to this question, please outline (a) Whether you agree with the estimated time of death expressed in the original autopsy report. Why/why not? (b) What factors relevant to Ms Waine's death impact on the precision with which time of death can be estimated?*

In the original autopsy report Dr Oettle opines that death occurred about one day prior to 7:30 pm on 30<sup>th</sup> April 1985, when the autopsy was performed. I believe it unlikely Dr Oettle would have intended this estimate to be interpreted with particular precision. There are no physical observations documented at the scene, or outlined in the autopsy report, that provide any scientific support for a specific estimate of time of death. No scene or core temperature observations are documented; the presence of rigor mortis or livor mortis (the relative unreliability of the factors notwithstanding) are not documented. The presence of "partially digested food in the stomach" is noted. Relying on gastric emptying as an estimate for cause of death is fraught with difficulties.

Regardless, there is no documentation around when and what Ms Waine last ate or drank.

Early decompositional changes within the liver, spleen and pancreas are noted in the autopsy report. The extent of decomposition depends not only on time since death, but other variables such as ambient temperature (including if and how long the body is refrigerated prior to autopsy), the presence or absence of clothing, cause of death, other underlying pathological conditions, and entomological activity. In the absence of any useful documented physical observations, only circumstantial information can be utilised to estimate time of death.

*Q3b. (Please outline) if it is possible that Ms Waine died prior to the alleged sighting by Mr McCarthy at 7:45 pm on Monday, 29 April 1985. Why/why not?*

There are no medical observations that preclude Ms Waine dying prior to the alleged sighting at 7:45 pm on Monday, 29 April 1985, as there are no medical observations recorded that usefully inform time of death estimation.

*Q4. The location and nature of gunshot wounds found on Ms Waine's body. Without limiting the matters which you may consider relevant to the question, please outline your view regarding (a) The entry and exit wounds found on Ms Waine's left hand.*

The entry and exit wounds on Ms Waine's left hand (**gunshot C**) are not described in any detail. I note that neither Dr Oettle nor the ballistics officer Constable R. Constable provide a view on the relationship of the wound complex on the left hand with the other gunshot wounds. The photograph labelled SCO1.00014.00026\_0002 demonstrates an apparently circular entry wound in the region of the radial border of the left second metacarpal. There is notable blackening around the margin of the wound, most pronounced at its inferior margins. There is a ragged exit wound overlying the back of the fourth metacarpal region, just proximal to the fourth metacarpophalangeal joint (knuckle). The appearances of the blackening about the entry wound are suggestive of bullet wipe (lubricant, gun barrel residue located on the outer surfaces of a bullet). There is no evidence of stippling or a muzzle abrasion in the photograph. Given these appearances, based on this single photograph, I favour this wound complex to represent a distant/indeterminant pathological range gunshot entry-exit complex.

It is however acknowledged that drying artefact can give the appearance of blackening around the margins of a penetrating wound. On this basis, given this photograph is the only material available, and no useful wound description is available, I cannot exclude this being a re-entry wound from a projectile related to **gunshot wounds A or B**. However, I favour the former explanation (i.e. a third gunshot wound).

*(b). Whether two or three bullets (or a different number) likely caused the three wounds to Ms Waine's neck, back, hand and (c) whether you agree with the opinion of the officer in charge that the wound to the left hand was consistent with it having been in line with the trajectory of either bullets to the neck and back. Why/why not?*

The entry wound to Ms Waine's upper back (**gunshot B**) is clearly a contact type wound given the very distinct muzzle abrasion evident in the provided photographs. The wound at the base of Ms Waine's back of neck (**gunshot wound A**) is less well demonstrated in photographs. It is evident that hair has been shaved from around the wound. A contact gunshot wound on hair-baring scalp would reasonably be expected to have a less prominent muzzle abrasion that one associated with direct skin contact. Constable R. Constable has clearly stated that this is a contact type wound in his statement. Whilst the photographic demonstration of this wound is suboptimal, there is a suggestion of the outline of the recoil spring guard of a pistol not dissimilar to that seen with **gunshot B**.

Accepting that these two wounds are contact gunshot entry wounds, if the wound to Ms Waine's hand is to be related to the trajectory of either of these two gunshots, it would therefore have to represent a re-entry wound. As outlined above, in the single photograph of this wound, it is circular in nature and is surrounded by a rim of dark material. This is more suggestive of a third distant/indeterminate range gunshot entry wound, and I favour this over it being a re-entry wound from a projectile that has passed through Ms Waine's body. However, given the single image of this wound, I am unable to say this definitively given the possibility of drying artefact around a re-entry wound may give an appearance similar to bullet wipe.

In summary, there are two contact gunshot entry wounds, one to Ms Waine's base of skull and one to her upper back (**gunshot wounds A and B**) associated with exit wounds to the left jaw and right neck respectively. I favour the wound complex her the left hand (**gunshot wound C**) to represent a third distant/indeterminant range gunshot



wound, with the possibility of a re-entry wound from either **gunshot wounds A or B** less favoured but not excluded.

*Q5. Please provide any other comment within your expertise which you consider to be relevant to the manner and cause of Ms Waine's death.*

I note that in the inquest brief, it is stated that force related to the bruising to Ms Waine's occipital scalp would have rendered her unconscious. Whilst this possibility is not excluded, this is not necessarily the case.

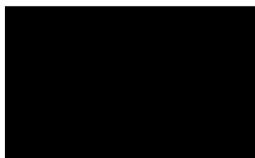
Whilst descriptions are vague, the subarachnoid haemorrhage described to the right temporal and frontal lobes of the brain is likely traumatic in origin and maybe related to the occipital subscapular bruising described above. The subarachnoid haemorrhage observed around the base of the cerebellum is likely consequent to gunshot wound A (region base of skull/C2).

An abrasion on the under surface of the right side of Ms Waine's chin is described the autopsy report and is seen in photograph SCOI.00014.00026\_0001. This *may* be related to the exit of the projectile associated with **gunshot A**, if this occurred with the deceased's head/neck in a flexed position.

Photograph SCOI.00014.00026\_0007 demonstrates an apparent bruise/abrasion injury complex in the subdeltoid region of the left upper arm. This may be the injury described to the right arm in the autopsy report. This injury is described as being on the left in the inquest brief.

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.



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