



Special Commission of Inquiry into LGBTIQ hate crimes

SUPPLEMENTARY SUBMISSIONS OF COUNSEL ASSISTING

25 July 2023

IN THE MATTER OF SAMANTHA ROSE

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**), and supplement the submissions in this matter dated 2 June 2023.

Later UHT Reviews and Police Investigations

2. On 25 June 2023, the Inquiry received a further tranche of material from the NSW Police Force (**NSWPF**) in response to Summons NSWPF3. That material included several documents in relation to the matter of Samantha Rose and in particular, documents pertaining to investigative steps taken or not taken by the NSWPF following the initial Unsolved Homicide Team (**UHT**) review in 2004.
3. On 20 May 2007, Detective Inspector Ashwood (**DI Ashwood**) recommended that the case of Ms Rose be allocated to the Eastern Beaches Local Area Command (**EBLAC**) for the purpose of further investigation. That further investigation comprised the pursuit of certain identified lines of inquiry with a view to resolving any “outstanding issues that may or may not lead to identifying or charging specific offenders”. However, it was not intended that the case of Ms Rose be “fully reinvestigated”.¹
4. The following lines of inquiry were identified by DI Ashwood in a Recommendation Report dated 28 March 2007, and largely mirror the recommendations recorded in the 2004 UHT Review:²
 - a. Submitting exhibits held by the NSWPF to the Division of Analytical Laboratory (**DAL**), NSW Health for trace DNA examination to take place;
 - b. Conducting a review of all fingerprint evidence, including searches for palm prints on the National Automated Fingerprint Identification System II (**NAFIS II**);

¹ Report recommending investigation, 20 May 2007 (SCOI.84816).

² Recommendation for further investigation, 28 March 2007 (SCOI.84827); Case Screening Form, 6 May 2004, 18 (SCOI.03416).

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- c. Obtaining the Call Charge Records (**CCR**) and Reverse Call Charge Records (**RCCR**) for Sandra Durward's mobile phone;
 - d. Enquiring with the Coroners Court of New South Wales (**the Coroners Court**), in particular Deputy State Coroner Abernathy, in relation to the evidence Ms Durward gave at the inquest into the death of Ms Rose, noting that the court file was unable to be located;
 - e. Conducting electronic surveillance on Ms Durward, including consideration of overt/covert collection strategies for DNA and fingerprints; and
 - f. Pursuing further lines of inquiry regarding Mr Thwaites, including re-interviewing him in relation to the alibi he provided for Ms Durward.
5. A signed and certified copy of the 2004 UHT Case Screening Form in relation to Ms Rose was also produced by the NSWPF and attached to the report of DI Ashwood.³ That Case Screening Form is otherwise identical in substance to the version previously produced to the Inquiry.⁴
 6. Between 15 and 25 June 2007, DI Ashwood's recommendation was endorsed by the then Commander of the NSWPF Homicide Squad, Detective Superintendent Beresford, the then Manager of Investigations Support within the State Crime Command, Detective Chief Inspector Del Monte and other senior NSWPF officers, presumably within the EBLAC.⁵
 7. Strike Force Cumbumarra was established, presumably after 25 June 2007, to reinvestigate the matter of Ms Rose "as per the review and subsequent recommendations" made by the UHT in March 2007. Detective Sergeant Shaw (**DS Shaw**) was appointed Commander with oversight from Detective Inspector Pisanos (**DI Pisanos**).⁶
 8. On the basis of material produced by the NSWPF to date, it appears that limited investigative steps were taken by Strike Force Cumbumarra throughout 2007. On 9 January 2008, DS Shaw reported that a number of general enquiries were conducted in an effort to locate Ms Durward. Those enquiries were unsuccessful and described as "ongoing". In response to the report, DI Pisanos noted that he expected DS Shaw to "fully investigate this matter in a timely fashion and update Eagle-I".⁷
 9. On 13 March 2008, DS Shaw reported that over 100 exhibits relating to Ms Rose's death were being considered by investigators. Investigators were also liaising with DAL for the purpose of determining

³ Case Screening Form, 22 June 2004 (SCOI.84820).

⁴ Case Screening Form, 6 May 2004, 18 (SCOI.03416).

⁵ Report recommending investigation, 22 June 2007 (SCOI.84816).

⁶ Terms of Reference – Strike Force Cumbumarra (SCOI.84821).

⁷ Report regarding dissemination of case file (SCOI.84823).

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the most appropriate exhibits to re-examine. The report also noted enquiries with the Coroners Court in relation to transcripts of Ms Durward's evidence and other enquiries regarding CCR and RCCR's for Ms Durward. In response to the report, Detective Sergeant Grant Elder (**DS Elder**), Investigation Manager at EBLAC, noted that "this investigation needs to be attended to prior to [DS Shaw's] proposed extended leave in 2008. There is little record of investigation performed thus far". DI Pisanos also noted that "action is required forthwith" and to "address the forensic side of things".⁸

10. On 4 February 2009, DS Shaw reported on the progress of the investigation and outlined the steps taken by Strike Force Cumbumarra. In response to that report, the following entries are recorded:⁹

- a. DS Elder noted that it is "quite evident that [DS Shaw] has not conducted satisfactory and timely inquiries with this matter and further investigations need to occur forthwith".
- b. The Crime Manager at EBLAC noted that "this matter has not progressed sufficiently from when it was received at the LAC. [DS Shaw] is to be monitored more closely to ensure the above enquiries are completed in a timely manner".
- c. DI Pisanos noted that the matter should be returned "with strict adherence to timeframes" with "monthly status reports required".

11. On 12 February 2009, DS Shaw contacted the EBLAC. A related investigator's note records as follows:¹⁰

"[DS Shaw] stated he was given the investigation back in 2007 and by his own admission he has not conducted any inquiries into the matter. He informed me that the suspect in the matter Sandra DURWARD, died in 2006 and therefore his investigation was complete. He was informed that the necessary inquiries would still have to be undertaken regardless with the matter either put before the Coroner again if required, or a lengthy report completed and submitted to the Commander of Homicide outlining the inquiries and actions taken."

12. It is unclear whether any further investigative or other steps were taken by the EBLAC or NSWPF prior to the UHT conducting a second review of the matter in 2021.

Further forensic examinations conducted

13. On 29 June 2023, an expert certificate setting out the further analysis undertaken by the Forensic and Analytical Service (**FASS**) and the results obtained in relation to the testing was received by the

⁸ Report regarding dissemination of case file, 25 March 2008 (SCOI.84826); Exhibit book and related entries (SCOI.84822).

⁹ Report regarding dissemination of case file, 12 February 2009 (SCOI.84825).

¹⁰ Investigator's Note regarding enquiries, 16 February 2009 (SCOI.84824).

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Inquiry. The nature of that testing was outlined at [54(e)] and [54(g)] of the written submissions in this matter dated 2 June 2023.¹¹

14. Ms Franco reported that the hair located on Ms Rose's bra was unsuitable for DNA testing. As to the other hair located on the outside of Ms Rose's t-shirt, mitochondrial testing revealed that the profile matched that of a guinea pig.

Professional opinions obtained

15. The Inquiry sought the expert opinion of Professor Alison Jones as to the likely effects of methylated spirits consumption.¹²
16. Professor Jones reported that methylated spirits contain 70-99% ethanol, which is a known neurotoxin and central nervous system depressant. Professor Jones described the effects of consumption as follows:¹³
 - a. Even at low to moderate blood ethanol levels, it has been observed to impair balance, visual focus, reaction times, executive judgment and to change a person's behaviour;
 - b. Substantial impairments across multiple measures of cognitive (e.g. information processing) and psychomotor functions (e.g. eye-brain-hand-foot coordination) that directly then bear on the risk of all forms of injury; and
 - c. Acute effects of ethanol on the brain and central nervous system has discovered impairments of visuo-motor control, divided attention, focused attention, reaction time, response inhibition and working memory.
17. As to the propensity for violence, Professor Jones opined that, although at times controversial, there is robust evidence supporting the conclusion that alcohol use by victims at the time of the offence increases the risk of interpersonal violence. In relation to Ms Durward in particular, Professor Jones observed that Ms Durward had a history of repeated violence and methylated spirits consumption.¹⁴

¹¹ Expert Certificate of Michele Anne Franco, 29 June 2023 (SCOI.84817).

¹² Letter of Instruction to Professor Alison Jones, 6 June 2023 (SCOI.84818).

¹³ Expert report of Professor Alison Jones, 13 July 2023, 2-3 (SCOI.84819).

¹⁴ Expert report of Professor Alison Jones, 13 July 2023, 4 (SCOI.84819).

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18. Professor Jones also noted that alcohol-dependent people who have built up a tolerance to alcohol may use methylated spirits as their drink of choice due to the high alcohol content. Based on her experience, Professor Jones opines that patients who use methylated spirits are generally chronic alcohol dependent people.¹⁵
19. With respect to memory recall, Professor Jones reports that acute systemic exposure to ethanol and its metabolites through methylated spirits ingestion can result in behavioural and motor coordination changes and low blood alcohol concentration. In particular, consumption of ethanol is associated with an increased risk of injury, domestic violence and intentionally inflicted harm.¹⁶

Submission

Later UHT Reviews and Police Investigations

20. Whilst the overall police investigation into Ms Rose's death was adequate, some concern arises as to the adequacy of steps taken following the establishment of Strike Force Cumbumarra. As outlined above, it appears that limited efforts were made by DS Shaw between 2007 and 2009 to action the items identified in the Recommendation Report. It is also unclear, based on the material produced by the NSWPF to date, whether further steps were taken to action any of the inquiries after 2009. Given the recommendations contained in the 2021 UHT review, it appears that no to limited further enquiries were made by the NSWPF.

Professional opinions obtained

21. As previously submitted, the various threads of evidence point indirectly towards Ms Durward's guilt but are insufficient to conclude, on the balance of probabilities, that Ms Durward was involved in Ms Rose's death.¹⁷ Professor Jones' opinions in respect of the effects of consumption of methylated spirits furthers the hypothesis that Ms Durward, a consumer of methylated spirits, *may* have been experiencing changes in behaviour, impairment in judgement, cognitive impairment, increased violence and impairment to memory around the time of Ms Rose's fatal assault. This may also go some way in explaining some of the bizarre statements she made to friends and colleagues after Ms Rose's death.

¹⁵ Expert report of Professor Alison Jones, 13 July 2023, 5 (SCOI.84819).

¹⁶ Expert report of Professor Alison Jones, 13 July 2023, 6 (SCOI.84819).

¹⁷ Written submissions of Counsel Assisting, 2 June 2023, [162].

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22. Professor Jones' opinion however does not change the ultimate submission that while the involvement of Ms Durward might be regarded as more likely than any other particular hypothesis, the evidence does not reach the requisite standard to make a positive finding as to her actual involvement in Ms Rose's death.

Balance of materials

23. The contents of the supplementary materials do not otherwise affect the submissions made by Counsel Assisting in the written submissions dated 2 June 2023 with respect to the exhibits, manner and cause of death, or as to bias.

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