



Special Commission of Inquiry into LGBTIQ hate crimes

SUBMISSIONS OF COUNSEL ASSISTING

9 June 2023

IN THE MATTER OF WENDY WAINE

Introduction

1. These submissions are filed on behalf of Counsel Assisting the Special Commission of Inquiry into LGBTIQ hate crimes (**Inquiry**).

Summary of matter

Date and location of death

2. Wendy Waine was found deceased at about midday on Tuesday, 30 April 1985, in her unit on Darlinghurst Rd in the suburb of Darlinghurst.
3. Ms Waine is likely to have met her death the previous day, Monday, 29 April 1985. The time of her death is uncertain. As discussed below at [134]-[148], the available evidence suggests that she died at some time in the eighteen hours or so between approximately 3:15am and 9:00pm on 29 April 1985.

Circumstances of death

4. Ms Waine was shot at close range in her own apartment. There was one shot to the back of her neck and one to her upper back. There was also a bullet wound to her left hand, which was probably caused by a third bullet (as opposed to being a secondary re-entry wound caused by one of the original shots: see below at [115]-[117]). In addition to the gunshot wounds, Ms Waine had bruising to the back of her head consistent with blunt force trauma. Her body was found lying face down and naked on the floor at the side of the bed.

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5. The distinctive muzzle imprint around the wounds to the back and neck are typical of those caused by an automatic pistol, held in close contact with the skin at the time of discharge. The wounds are larger than what would be expected to be caused by a .22 to .32 inch calibre firearm.¹
6. No bullets or spent cartridges were located upon a search,² suggesting that the offender or offenders were sufficiently sophisticated to remove ballistic evidence from the scene.³
7. The precise circumstances of Ms Waine's death, including who discharged the firearm, are otherwise unknown.

Findings of post-mortem examination

8. A post-mortem examination was performed on 30 April 1985 by Dr Oettle. His final report is dated 15 October 1985.⁴
9. Dr Oettle recorded the following bullet wounds:
 - a. A bullet entry wound in the back of the neck, from which a track ran through the 2nd cervical vertebra, across the mouth and through the left side of the mandible where an exit wound was present (**gunshot A**);
 - b. A bullet entry wound in the upper back at the base of the neck, from which a track ran slightly to the right of the 1st thoracic vertebra, the oesophagus and the right side of the trachea, where an exit wound was present (**gunshot B**);
 - c. An entry and exit wound on the left hand (**gunshot C**).
10. Dr Oettle provided no opinion as to whether gunshot C, to the left hand, was caused by a third bullet, or alternatively was a secondary injury caused by the re-entry of a bullet from one of the first two wounds. However, Dr Iles, a forensic pathologist briefed by the Inquiry, favours the explanation of this wound being caused by a third bullet: see below at [115]-[117].
11. Dr Oettle further described a rectangular bruise on the scalp, 45mm x 18 mm, as well as bruising on the periosteum (outer covering) of the skull and a subarachnoid haemorrhage about the right temporal lobe.

¹ Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477).

² Statement of Constable Raymond Constable, 4 May 1986 (SCOI.00014.00017).

³ Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477).

⁴ Post mortem report of Dr Oettle, 15 October 1985 (SCOI.00014.00022).

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12. A parchment abrasion was noted to be present under the right-hand side of the chin. An area of blue bruising was present on the upper right arm, on the margin of which was an abrasion consistent with a fingernail mark. There was minor bruising on the left iliac crest (i.e., top of the left hip).
13. Dr Oettle recorded the cause of death as “bullet wounds of the neck and thorax.”

Persons of interest

14. There were and are a number of lines of enquiry in relation to Ms Waine’s case. Each of them points to a different person or persons who may have been involved in Ms Waine’s death. While all of these are considered below, there is insufficient available evidence to found a submission that any one or more of those persons was in fact so involved.

Indicators of LGBTIQ status or bias

15. Ms Waine was a transgender woman. She was reported to take great pride in being a member of the LGBTIQ community.⁵ Ms Waine received monthly hormone injections and was scheduled to have gender affirmation surgery.⁶ She was a well-known entertainer and “drag queen” in Kings Cross, and also a sex worker, soliciting in laneways in the Darlinghurst area and providing services to clients at her residence.
16. According to her sister, Ms Betty Ernst, Ms Waine would sometimes present as male when working “odd jobs”, but would present as female and go by “Wendy” when working in entertainment or socialising with friends.⁷
17. Ms Waine’s name is recorded as “Wayne Brennan” throughout the police and coronial files, but “Wendy Waine” will be used by the Inquiry. The majority of Ms Waine’s friends and acquaintances called her “Wendy” in the witness statements that they provided to police, suggesting this to be her preference.
18. The circumstances of her death leave no doubt that she was the victim of a homicide. Her prominence in the LGBTIQ community, and widespread contemporaneous hostility to members of that community including transgender persons, give rise to the realistic possibility that her murder involved LGBTIQ hate. (After her death, an anonymous caller to a radio station claimed responsibility for Ms Waine’s murder, supposedly on behalf of the “Coven of Mercy for Fate”, and threatened further violence against the LGBTIQ community, but the credibility of this claim of responsibility is dubious.)

⁵ Allan Edwards, ‘Obituaries – Wendy Waine’, *Campaign Australia* (Sydney, June 1985).

⁶ P109 Report of Occurrence, “Interview of Dr David Bennett – Deceased’s Doctor”, 3 May 1985 (SCOI.82942).

⁷ Statement of Betty Ernst, 11 May 2023 (SCOI.82945).

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19. However, there are other possible reasons why Ms Waine was murdered that are unrelated to LGBTIQ hate. Her murder has some features of a professional “hit”, including the use of a large calibre gun at close range and the removal of ballistics evidence from the scene. Her work as a street-based sex worker exposed her to significant risks of violence generally. Another possibility on the available evidence is that her murder may have been retaliation for Ms Waine disposing of heroin that was being packaged for sale by others in her apartment. Her death may have been the result of violence against her by a person with whom she was in a relationship, possibly a police officer and/or a security guard (both of whom might have had access to firearms).
20. The multitude of theories in relation to the motivation for killing Ms Waine, none of them able to be established, makes it impossible to determine whether LGBTIQ bias was a factor in her death. Conversely, however, while the identity of Ms Waine’s killer or killers remains unknown, the possibility of LGBTIQ hate or bias motivating her murder cannot be excluded.

Exhibits: availability and testing

21. During the course of the investigation, police collected the following exhibits:
 - a. An anal swab from Ms Waine taken by Dr Oettle at autopsy;
 - b. Hair taken from the left hand of Ms Waine; and
 - c. Six cigarette butts taken from an ashtray in the lounge room at Ms Waine’s unit.⁸
22. The anal swab and cigarette butts were examined in 1985. Semen was not detected on the anal swab. Saliva was detected on one of the cigarette butts and showed the presence of a group A blood substance. This was consistent with having come from Ms Waine, who was a group A secretor, but not determinative of that fact. The hair from Ms Waine’s left hand was never examined.
23. There have been significant advances in forensic testing technology since 1985 when these exhibits were first tested, the most dramatic of which is the ability to extract and analyse DNA profiles from organic material.
24. The Inquiry sought and obtained a statement from David Bruce, of the Forensic and Analytical Science Service (**FASS**), as to the opportunities for forensic testing that would have been available had the exhibits been located.⁹

⁸ Statement of Constable Raymond Constable, 4 May 1986 (SCOI.00014.00017); Forensic Biology Report of Rudolf Weigner, 22 May 1985 (SCOI.00014.00020).

⁹ Expert certificate of David Bruce, 10 May 2023 (SCOI.47480).

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25. In relation to the anal swab, Mr Bruce noted that semen and spermatozoa were *not* detected in 1985. Chemical and microscopic examination of possible semen samples has not altered significantly to the present day, so it is unlikely this result would change with contemporary testing. In the absence of semen on the swab, Dr Bruce considered that DNA testing would be likely to only yield the DNA profile of the victim. Accordingly, the utility of re-testing the anal swabs would be limited.
26. Of more significance, Mr Bruce considered that the hair sample from Ms Waine's left hand could have been subject to autosomal DNA profiling if there was cellular material on the root of the hair, as is typical of plucked hairs, or mitochondrial DNA sequencing if there was no such material, as is typical of shed hairs.
27. Any autosomal, mitochondrial or Y-chromosome profile could have been compared to NSW, national or international databases, that could have yielded either direct matches to individuals and/or other crime scenes, or familial matches to possible relatives of an unknown individual.
28. The hairs in Ms Waine's left hand are of particular forensic significance, as they may well have originated from a person involved in her homicide.
29. In relation to the cigarette butts, Mr Bruce stated that these should contain saliva from the smoker, being a "high yield DNA source", which could have been DNA profiled using autosomal or Y-chromosome kits, and, again, compared to NSW, national or international databases.
30. The cigarette butts, while not necessarily left by any person involved in Ms Waine's death, could nonetheless have developed important investigative leads.
31. The Inquiry issued a summons to the NSW Police Force (**NSWPF**) to obtain these exhibits for the purposes of re-testing. The Inquiry has been advised that, despite searches of various NSWPF holdings, the whereabouts of the exhibits listed above at [21] is unknown.¹⁰ Further testing is accordingly precluded.
32. In response to a summons by the Inquiry, on 9 September 2022 police advised that they had located a pink and blue single-sized flannelette flat sheet, said to have been held by the Ballistics Unit. It appears from crime scene photographs¹¹ that this may be the flannelette that covered Ms Waine's bed. There is no police statement recording the collection of this flannelette.

¹⁰ Statement of Detective Sergeant Neil Sheldon, 16 March 2023 (SCOI.82961).

¹¹ Crime scene photographs (SCOI.82948).

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33. A review of the ballistics file does not indicate what examinations, if any, were conducted on the exhibit.
34. The Inquiry considered the utility of testing this sheet for gunshot residue or other evidentiary material. An independent ballistics expert briefed by the Inquiry, Mr Frank Lawton, advised that firearm debris could only assist in determining the type of ammunition used, not the type of firearm.¹² He opined that there was little scope for further investigation or analysis that might identify the firearm used in the shooting. Having regard to this opinion, the Inquiry did not seek to have the sheet tested.

Findings at inquest, including as to manner and cause of death

35. On 18 September 1986, some sixteen months after Ms Waine's death, an inquest was held at the Coroners Court at Glebe. On that date, State Coroner Gregory Glass found that Ms Waine "died of the effects of bullet wounds of the neck and thorax inflicted there and then by a person unknown."

Criminal proceedings

36. No person has been charged with any offence in relation to Ms Waine's death.

Features of the original police investigation, and opportunities missed

37. There are three comments to be made in respect of the original police investigation.
38. **First**, if the records produced to the Inquiry by the NSWPF (pursuant to summonses in this matter) are the totality of police records relating to the case, then (as appears below) there is ground for serious concern as to why various lines of enquiry were either not pursued at all, or not pursued to finality.
39. However, the Inquiry has been confronted, in numerous other cases which have been the subject of documentary tenders so far, with the reality that police records, or some parts thereof, cannot now be located by the NSWPF. In the case of Ms Waine, no such assertion has been made by the NSWPF, and accordingly the absence of certain material, which it is to be expected would surely exist and should therefore have been produced, is both striking and troubling. These submissions proceed, as they must, on the footing that all police records relating to the death of Ms Waine have been located and produced to the Inquiry.

¹² Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477).

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40. **Secondly**, bearing those matters in mind, a review of “the police investigative file”, produced as such by the NSWPF to the Inquiry, indicates that while numerous theories as to who was involved in Ms Waine’s death were pursued, to greater or lesser extents, by investigating police, some lines of inquiry were not fully investigated, while in other respects there is insufficient material presently available from which to assess whether all appropriate steps were taken.
41. These matters are explored in more detail below. The problems and apparent deficiencies in this case include the following:
- a. Police did not obtain statements from a number of witnesses, including (among others) a witness who may have been able to assist in determining the time of Ms Waine’s death ([1232] (BA)), and a witness who claimed to recognise, from photographs, a police officer with whom Ms Waine was thought to have been having a relationship ([1233] [1233] (MR)).
 - b. Police did not thoroughly investigate the accounts of witnesses who referred to Ms Waine being in a relationship with a police officer, prior to declaring that line of enquiry to be “exhausted”;
 - c. Police did not check the alibi evidence relied upon by MSS Security officer [NP179] (NP), nor obtain records in relation to whether he had signed in his MSS Security-issued pistol as claimed;
 - d. Police did not check with a witness who saw an MSS Security officer enter Ms Waine’s building whether the person he saw was NP;
 - e. Police did not investigate the explanation provided by [NP178] (MG) for his fingerprint being found on a phone in Ms Waine’s apartment;
 - f. Police did not obtain phone records or otherwise investigate the identity of the anonymous caller/s who claimed responsibility for Ms Waine’s murder on behalf of the “Coven of Mercy for Fate”;
 - g. Police did not investigate an alleged confession by [NP176] (MF) to involvement in the murder of Ms Waine.
42. **Thirdly**, some information of apparent potential relevance to the investigation, including the alleged confession made by MF, seems not to have been provided to the Coroner in connection with the inquest into Ms Waine’s death: see below at [183], [236]-[237].

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Unsolved Homicide Team (UHT)

43. The Inquiry has been provided with two “case screening forms” in relation to Ms Waine’s death, prepared by participants in a Homicide Course held at the Goulbourn Police Academy in October 2004.
44. The Inquiry has been informed that unsolved homicide cases were from time to time given to syndicates of students at such a Homicide Course as part of “desktop exercises” conducted during the course. The exercise was completed by a group consisting of four or five participants, who were usually from various investigative backgrounds, locations, and experience levels.¹³
45. Each case screening form has two signature blocks at the bottom of the document to “certify” the review: one for completion by the “reviewer” and the second for completion by the “co-ordinator”. The Inquiry has been informed that the “reviewer” was to undertake a thorough review of the matter by accessing all available documents and exhibits, whereas the “co-ordinator” conducted a high-level review of the matter to ensure reviews were being undertaken appropriately.¹⁴
46. One case screening form in relation to Ms Waine includes a “reviewer’s certification” in the name of Detective Senior Constable (DSC) McDonald of the UHT, dated 31 January 2005, and a “co-ordinator’s certification” in the name of Detective Inspector (DI) Jarrett, dated February 2005. However, the space provided for each signature is blank.
47. The second case screening form includes a “reviewer’s certification” in the name of eight individuals, signed and dated 13 October 2004. The rank and location of each officer is not stated. The co-ordinator’s certification is blank.
48. The Inquiry sought clarification of the nature and status of a “review” completed by participants in a Homicide Course, and the significance of the document being “certified.”¹⁵ By letter dated 9 May 2023, the Inquiry was advised by the NSWPF that “the significance and/or meaning of the term ‘certified’ in relation to the review document cannot be accurately explained.”¹⁶
49. The Inquiry sought further clarification of what function, if any, each review performed in the context of the UHT’s operations.¹⁷ The response provided by the NSWPF did not elucidate whether it was intended that any of the recommendations generated by each review be given further consideration by the UHT.¹⁸

¹³ Letter from Katherine Garaty to Enzo Comporeale, 26 May 2023 (SCOI.83325).

¹⁴ Letter from Katherine Garaty to Enzo Comporeale, 26 May 2023 (SCOI.83325).

¹⁵ Letter from Enzo Comporeale to Patrick Hodgetts, 1 May 2023 (SCOI.82995).

¹⁶ Letter from Patrick Hodgetts to Enzo Comporeale, 9 May 2023 (SCOI.47476).

¹⁷ Letter from Enzo Comporeale to Patrick Hodgetts, 17 May 2023 (SCOI.83324).

¹⁸ Letter from Katherine Garaty to Enzo Comporeale, 26 May 2023 (SCOI.83325).

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50. In the case of Ms Waine, each of the 2004 case screening forms contained extensive recommendations as to possible further investigative steps, including submitting exhibits for forensic analysis (noting that the status of those exhibits was listed as “to be clarified”), interviewing MF, checking the alibi of NP, and re-interviewing a number of witnesses spoken to by original investigating police. There is no evidence that any of these recommendations was considered or implemented by the UHT.
51. There has been no actual review or reinvestigation of Ms Waine’s death by the UHT itself.
52. The case screening form completed by DSC McDonald includes a reference to the “fired bullets” having been examined and retained by the Ballistics Unit. This reference would appear to be in error, as the evidence establishes that no bullets were lodged in Ms Waine’s body, or located by police at the scene. For completeness, the Inquiry drew this contradiction to the attention of the NSWPF and asked for the basis or source of the information contained in the UHT document.¹⁹
53. The Inquiry was advised that it remains unclear how the conclusion that fired bullets were examined and retained by the ballistics unit was reached. The NSWPF confirmed that there is no mention, in the Ballistics Case File for the investigation, of projectiles or fired cartridge casings being located and/or examined.²⁰

Strike Force Parrabell

Use of the Bias Crimes Indicators Form

54. Of the ten indicators in the Bias Crime Indicators Form (BCIF)²¹:
- a. Five were answered “Suspected Bias Crime”, namely “Comments, Written Statements, Gestures”, “Organised Hate Groups (OHG)”, “Previous existence of Bias Crime Incidents”, “Motives of Offenders”, and “Location of Incident”;
 - b. Four were answered “Insufficient Information”, namely “Differences”, “Drawings, Markings, Symbols, Tattoos, Graffiti”, “Lack of Motive”, “Level of Violence”;
 - c. One was answered “No Evidence of Bias Crime”, namely “Victim/Witness Perception.”
55. The comments as to the indicators “Comments, Written Statements, Gestures” and “Organised Hate Groups (OHG)” make reference to the phone calls from the anonymous caller claiming responsibility for the murder of Ms Waine on behalf of the “Coven of Mercy for Fate”: see below at [239]-[240].

¹⁹ Letter from Enzo Camporeale to Patrick Hodgetts, 1 May 2023 (SCOI.82995).

²⁰ Letter from Patrick Hodgetts to Enzo Camporeale, 9 May 2023 (SCOI.47476).

²¹ Strike Force Parrabell Bias Crimes Indicators Review Form, undated (SCOI.74969).

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However, it is also noted that the unknown caller was never identified and “was more than likely a hoax caller.”²²

56. The answer of “Suspected Bias Crime” to the indicator “Motives of Offenders” seems somewhat confused. The response to the prompt, “The victim was perceived to be breaking from traditional conventions or working non-traditional employment”, is that Ms Waine was “breaking from traditional conventions and was working in non-traditional employment”. However, the indicator concerns the motive of the offender or offenders. The mere repetition of part of the wording of the prompt, without reference to the perception of any offenders in relation thereto, is of no relevance. Any such perception, on the part of any such offender/s, was unknown.²³
57. The indicator “Victim/Witness Perception” was answered “No evidence of bias crime”. The response to the only prompt applicable to that indicator, as to the perception of “actual” witnesses “that the incident was motivated by bias”, records statements by friends or acquaintances to the effect that they did not know who would want to hurt Ms Waine and were not aware of any threats against her, or enemies she may have had. Such statements, to the extent that they were relevant to the prompt or the indicator, would seem (if anything) to suggest a lack of any other motive than bias or hate for her killing.

Results of Strike Force Parrabell

(a) The “Summary of Findings”

58. While five of the ten indicators were answered “Suspected Bias Crime”, the Summary of Findings ultimately categorises the case overall as “Insufficient Information.” No criterion nor basis for this overall position is disclosed. The Summary of Findings otherwise appears to be no more than a repetition of some of the earlier content entered in relation to each indicator.

(b) Case Summary

59. The Strike Force Parrabell case summary (no. 16) for this matter reads as follows:

Identity: Wayne Brennan (Aka ‘Wendy Wain’) was 36 years old at the time of her death.

Personal History: Ms Brennan was well known as a ‘drag queen’ who worked as a manager and performer at gay cabaret restaurant ‘Pete’s Beat’ in Oxford Street, Darlinghurst. Ms Brennan

²² Ibid, p 4.

²³ Ibid, p 10-11.

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would routinely sit at the front of her unit block on Darlinghurst Road to solicit men as they walked past, and if successful, take them into her residential unit for sex.

Location of Body/Circumstances of Death: Ms Brennan's body was located naked, lying face down on the floor of her residential unit at Darlinghurst Road, Darlinghurst. The pathologist report indicated Ms Brennan had been initially knocked unconscious by a blow to the back of her head before being shot twice to the back and head with a large (possibly .45 calibre) firearm. The person/s that murdered Ms Brennan intended to kill her. All traces of evidence were removed from the crime scene. Police interviewed many people during this investigation, however no clear motive or suspects were identified and no person has been charged with this murder which remains unsolved.

Sexual Orientation: Ms Brennan identified as a transgender female.

SF Parrabell concluded there was insufficient information to establish a bias crime²⁴

60. A person's gender identity is not a "sexual orientation." The Case Summary is consistent with the comments in the BCIF, although does not refer to the telephone calls from the Coven of Mercy for Fate which formed the basis for two of the indicators being answered "Suspected Bias Crime".

(c) Academic Review

61. The review by the Flinders academics also categorised this case as "insufficient information". In explaining their use of the term "Insufficient Information" in a general sense, the academic team stated as follows:

That is, despite an exhaustive exploration of the archived material, it was ultimately impossible for the detectives to make definitive determinations about many of the deaths under review, and based on available information, the academic reviewers concur. Part of the reason this was the case can be attributed to a relative paucity of information.²⁵

62. The Flinders academics did not utilise a category such as "Suspected Bias Crime", nor indeed a category of "Evidence of Bias Crime". Rather, the four categories they devised and used were: "Anti-gay bias", "Anti-paedophile animus", "Insufficient Information" and "No Evidence of Bias Crime".²⁶

63. Further, the academic team made it clear that for them, for a case to be categorised as a "bias crime" (whether anti-gay or anti-paedophile), some form of *expression* of that bias, by a *communication*, was

²⁴ Exhibit 6, Tab 49, Strike Force Parrabell: Case Summaries, undated, 27 (SCOI.76961.00014).

²⁵ Exhibit 1, Tab 2, Final Report of Strike Force Parrabell (undated) at p. 54 (SCOI.02632).

²⁶ Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, undated, 92 (SCOI.02632).

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essential.²⁷ Hence in any case where there was no such communication, the academic team was left with only two choices: “Insufficient Information”, or “No Evidence of Bias Crime”.

Investigative and other steps undertaken by the Inquiry, and their outcomes

64. In the course of assessing Ms Waine’s case, the Inquiry has taken various investigative and other steps, including:

- a. Requesting the coronial file;
- b. Summoning the police investigation file;
- c. Requesting and summoning the exhibits from the Police, and, when it became apparent that the exhibits could not be located, obtaining a statement as to what searches had been undertaken;
- d. Issuing summonses to the NSWPF, police agencies in other States, the Registry of Births, Deaths and Marriages (**BDM**), and other government agencies, to obtain information about key witnesses and suspects, and in particular to attempt to locate MF;
- e. Requesting and obtaining a statement from FASS, as to what testing is available, and what the likely utility of such testing would be, if the exhibits had been able to be located;
- f. Seeking the opinion of a forensic pathologist, Dr Linda Iles, in relation to the manner of Ms Waine’s death;
- g. Seeking the opinion of an independent ballistics consultant, Mr Frank Lawton;
- h. Conducting a review of media articles in relation to Ms Waine’s death; and
- i. Making contact with Ms Waine’s family and obtaining statements from members of her family.

Request for coronial file

65. The Inquiry requested the coronial file in relation to Ms Waine’s death on 11 May 2022. That file was produced on 26 May 2022.

Attempts to locate and contact family members

²⁷ Exhibit 1, Tab 2, Final Report of Strike Force Parrabell, undated, 82-83 (SCOI.02632); see also Dr Derek Dalton, transcript pages 2504.22-30, 2506.8-30; Dr Willem De Lint, transcript pages 2691.1-2693.35, 2695.10-2698.18.

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66. The Inquiry spoke with Ms Waine's sister Betty Ernst on 17 April 2023. Ms Ernst subsequently provided a statement to the Inquiry dated 24 April 2023 recording her observations when attending Ms Waine's flat in the weeks after her death.

67. On 11 May 2023, Ms Ernst provided the Inquiry with a further statement, reflecting on the life of Ms Waine and the impact her death had on her family.

Summons for the NSWPF investigative file

68. A summons to the NSW Police Force was issued on 18 May 2022 for, among other things, all NSWPF investigative material, including any material held or created by the Unsolved Homicide Team, in relation to Ms Waine's death (Summons No. NSWPF1). A hard copy of the investigative file in relation to Ms Waine's death was produced on 8 June 2022.

69. A further summons was issued on 29 September 2022 requesting any personnel or Professional Standards records relating to "[REDACTED]" (Summons NSWPF23). Documents responsive to that summons were produced on 11 and 19 October 2022. The material produced related to a [REDACTED] NP180 (DRB), and is discussed further below at [184].

Searches for exhibits

70. On 24 August 2022, a summons to the NSWPF was issued requesting exhibit book references and EFIMS records in relation to four exhibits obtained in the course of the investigation of Ms Waine's death: strands of hair found in her left hand, six cigarette butts, bed linen, and fired bullets (Summons NSWPF10).

71. On 7 September 2022, being the return date of that summons, the NSWPF advised by email that two archive boxes previously delivered to the Inquiry on 2 June 2022 may contain material responsive to the summons. A search of those boxes revealed no responsive material. That email continued:²⁸

A further archive box was requested from archives on 1 September 2022 (as part of a broader request) which has not yet been received and which may also contain material responsive to this Summons. An estimate of the provision of this further archive box is being requested.

I am instructed that apart from any relevant material that may be contained within those archive boxes, exhibit book references and EFIMS records for the exhibits listed in the Summons have been unable to be identified. This is apart from a single EFIMS record which appears to relate to a "sheet" that was located at the Ballistics Unit and was transferred to long-term exhibit storage in 2015. It is possible that that sheet relates to the "fired bullets" exhibit referred to in the Summons, however it is also possible that that exhibit was entered against the relevant event number in error. I am requesting that an attempt be made to clarify that.

²⁸ Email from Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, dated 7 September 2022 (SCOI.82927).

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72. On 14 September 2022, the NSWPF produced a photograph of a flannelette sheet, a J85-267 Ballistics Case File comprising two documents, J85-267 Ballistics Scene Photos, and three “floor plans”. Referring to its outstanding searches, the covering email stated:

I am instructed that the outstanding box of archive material was couriered to the Inquiry on or about 1 August 2022, and is the same as that referred to above at Summons #7.

In relation to the “sheet” that was identified to have been held at the Ballistics Unit associated with the matter referred to in that Summons (and as referred to in my email of 7 September), it is apparent that that exhibit is a flannelette sheet. I attach a photograph of that exhibit. It is not clear to our instructing officers at this stage what the relationship of this exhibit is to the matter, if any. Our instructing officers are currently making attempts to clarify that.²⁹

73. On 6 March 2023, the Inquiry wrote to the NSWPF requesting a formal statement outlining the searches which had been carried out to locate material responsive to summonses NSWPF10 and NSWPF46. That statement was provided on 16 March 2023 by Detective Sergeant Neil Sheldon. In relation to NSWPF10, Detective Sergeant Sheldon advised that:³⁰

- a. Searches had been conducted on the NSWPF exhibit management system – Exhibits Forensic Information and Miscellaneous Property System (**EFIMS**);
- b. Searches had been conducted of all NSWPF investigative holdings (WebCOPS, historical COPS data, pre-COPS data, E@glei and KODA);
- c. Enquiries were made with the Kings Cross Police Area Command, which encompasses the Darlinghurst Police Station;
- d. Enquiries were made with the NSWPF Records and Information Management Unit (**Archives**) for exhibit books located by Darlinghurst Police Station;
- e. Searches were made of the exhibit books for the time period of April 1985 at Central Exhibits;
- f. Enquiries were made with the Forensic Evidence and Technical Services (**FETS**);
- g. Enquiries were made with the Forensic and Analytical Science Service (**FASS**).

74. None of the above searches or enquiries located either the exhibit books or the exhibits. Among those exhibits, no longer available, were the “fired bullets”.

²⁹ Email from Office of the General Counsel, NSW Police Force, to Solicitor Assisting the Inquiry, dated 14 September 2022 (SCOI.82937).

³⁰ Statement of Detective Sergeant Neil Sheldon dated 16 March 2023 (SCOI.82961).

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75. On 17 April 2023, a summons was issued to the NSWPF requesting the four exhibits the subject of summons NSWPF10 (summons NSWPF86). By a letter of the same day, the Inquiry requested a formal statement as to the searches undertaken to locate those exhibits in the event that no exhibits were produced. That summons also requested, inter alia, the full fingerprint file in relation to Ms Waïne's death. On 28 April 2023, NSWPF advised by letter that there were no documents to produce in relation to either of the aforementioned categories, and that they relied on the statement of DS Sheldon dated 16 March 2023 as to the searches that have been conducted in relation to this matter.

Inquiries in relation to key witnesses or persons of interest

76. Extensive enquiries were made by the Inquiry, by way of summonses, to obtain information in relation to the following witnesses or persons of interest:

- a. MF;
- b. MG;
- c. NP;
- d. NP181 (SR);
- e. Danny Shakespeare;
- f. NP177 (GR); and
- g. Charles Saville.

77. In total, over 20 summonses were issued in relation to these persons, to the NSWPF, the NSW Registry of Births, Deaths and Marriages (**BDM**), the Department of Health, the Department of Communities and Justice (**DCJ**), Transport for NSW, MSS Security, and the police forces of each State and Territory in Australia. Requests for assistance were also made to the Department of Foreign Affairs and Trade (**DFAT**), Services Australia and FASS.

78. Each of these summonses and requests, and their results, are set out in the statement of Mr Carvosso, solicitor at the Inquiry, dated 30 May 2023.

79. The information obtained from these summonses, where relevant, is set out in the section below.

Professional opinions obtained

80. The Inquiry sought the opinion of an expert forensic pathologist Dr Linda Iles of the Victorian Institute of Forensic Medicine. The topics/questions she was asked to address included:

- a. The adequacy of the post-mortem investigations conducted with respect to Ms Waïne;

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- b. The time of Ms Waine's death; and
- c. The location and nature of gunshot wounds found on Ms Waine's body.

81. The report of Dr Iles dated 28 October 2022 is addressed below at [107]-[126].

82. The Inquiry also sought the opinion of an independent ballistics consultant, Mr Frank Lawton. The topics/questions he was asked to address included:

- a. The likely calibre of the weapon used to shoot Ms Waine;
- b. The number and trajectory of fired bullets;
- c. The position of the shooter(s) and victim at the time of discharge; and
- d. Whether any (and if so, what) testing was possible on the flannelette sheet produced by police.

83. The report of Mr Lawton dated 26 May 2023 is addressed below at [119]-[124].

Other sources of information

84. The Inquiry carried out manual search of relevant newspaper records, including the Star Observer, Queer Archives and daily newspapers (the Sydney Morning Herald, Daily Telegraph, Daily Mirror and Sun newspapers) to find any references to Ms Waine. Several relevant articles were identified.

85. On 18 April 2023, a summons was also issued to NSW Land Registry Services seeking to ascertain the registered proprietor of Ms Waine's Darlinghurst apartment at the time of her death (Summons LRS1).

Submission as to the evidence now available

86. This part of the submissions sets out key matters arising from the Inquiry's consideration of the evidence and the conclusions that it is suggested can be drawn from the evidence.

Wendy Waine's background

87. Wendy Waine was a transgender woman and a well-known entertainer in Kings Cross in the 1980s. At the time of her death, she was working at cabaret bar Pete's Beat on Oxford St, not only performing, but also managing the talent and producing the many costumes for the casts of the shows that they hosted. Her drag performances were reported to draw large crowds, and she was known for her colourful, professional and dazzling shows.³¹ Ms Waine had also previously owned a plant shop

³¹ Glenn Wells, "Gay Murder Unsolved Two Years Later", *Darlinghurst Area Reporter Examiner* (Sydney, 14 May 1987); Allan Edwards, "Wendy Waine", *Obituaries, Campaign Australia* (Sydney, June 1985).

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with a friend, Ms Laurie Bradford, called “The Crown Plant Shop” on Crown Street, near Albion Street.³²

88. Ms Waine was also a sex worker. In the months prior to her death, she had advertised her services in the *Wentworth Courier*,³³ and would also solicit on Premier Lane³⁴ and St Peters Lane³⁵ (two connected laneways behind William Street in Darlinghurst) and outside her unit in Darlinghurst Road.³⁶ Ms Waine used her residential unit for sex work.³⁷ According to one witness, Ms Waine was “top-dog” or “very high up” on “the Street” as a sex worker.³⁸

89. In early 1984, Ms Waine had been living at an address on Victoria Street, Potts Point. She later moved to an address on Liverpool Street, Darlinghurst, and moved again in about November 1984 to the Darlinghurst Road premises, where she would eventually be killed.³⁹ She maintained the lease over the premises on Liverpool Street and sublet them to another sex worker named [REDACTED] (TH).⁴⁰

90. The premises on Darlinghurst Road had previously been leased, from the same owner, by a woman named SR. SR used to “work out of” the unit with two other sex workers, and was eventually evicted for running the premises as a brothel.⁴¹ The landlord of the premises stated that “drag queens” had been living at his premises in the entire time that he owned it.⁴² One of Ms Waine’s neighbours told police that he did not know how many people were living in the flat on Darlinghurst Road “because there [were] people coming and going all the time,” including many transgender people.⁴³ There is some evidence that Ms Waine also allowed other sex workers to use her apartment for work.⁴⁴

91. Ms Waine’s criminal record comprised only three minor offences. The first two were for “offensive behaviour” in 1972, namely being a “male prostitute” and “offering French love dressed in womans [sic] clothing, male prostitute”.⁴⁵ These convictions were entered before the decriminalisation of sex

³² Statement of LH, 3 May 1985 (SCOI.10040.00083); Statement of Laurie Bradford, 7 May 1985 (SCOI.00014.00019); P109 Report of Occurrence, Shirley MacArthur Interviewed, 2 May 1985 (SCOI.82924, p. 45).

³³ Statement of GM, 30 April 1985 (SCOI.10040.00062); Statement of JC, 30 April 1985, [2] (SCOI.00014.00016).

³⁴ Statement of TH, 30 April 1985 (SCOI.10040.00047); Statement of Carmen Rupe, 30 April 1985 (SCOI.10040.00034).

³⁵ Statement of Patrick Crowe, 30 April 1985 (SCOI.00014.00023).

³⁶ Statement of Michael McCarthy, 7 May 1985 (SCOI.00014.00000); P109 Report of Occurrence, [REDACTED] interviewed, 9 May 1985 (SCOI.82924, p. 82).

³⁷ Statement of TH, 30 April 1985 (SCOI.10040.00047); Statement of LH, 3 May 1985 (SCOI.10040.00083); P109 Report of Occurrence, List of persons spoken to by vice squad police on 30.4.85, 30 April 1985 (SCOI.82924, p. 28) (information provided by [REDACTED]).

³⁸ Statement of LH, 3 May 1985 (SCOI.10040.00083).

³⁹ Statement of TH, 30 April 1985 (SCOI.10040.00047); Statement of CS, 1 May 1985 (SCOI.10014.00012); Statement of CH, 3 May 1985 (SCOI.10040.00081); P109 Report of Occurrence, Interview with SJ, 1 May 1985 (SCOI.82924, p. 32).

⁴⁰ Statement of TH, 30 April 1985 (SCOI.10040.00047).

⁴¹ Typed record of interview with SR, 30 June 1986 (SCOI.10040.00044); P109 Report of Occurrence, Landlord of premises [REDACTED] interviewed, 30 April 1985 (SCOI.82924, p. 25).

⁴² P109 Report of Occurrence, Landlord of premises [REDACTED] interviewed, 30 April 1985 (SCOI.82924, p. 25).

⁴³ Statement of Charles Saville, 2 May 1985 (SCOI.10040.00073).

⁴⁴ P109 report of Occurrence, BA Interviewed, 1 May 1985 (SCOI.82924, p. 35); P109 Report of Occurrence, [REDACTED] interviewed, 9 May 1985 (SCOI.82924, p. 82).

⁴⁵ CNI Card of “Wayne Brennan” (SCOI.10039.00004).

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work in NSW. The third charge was of larceny as a servant in 1983, relating to “four jackets”. Beyond this limited and minor offending, there is no evidence that Ms Waine was involved in any criminal activities.

92. Ms Waine was close to her family, including her sister Betty Ernst and her children. Ms Waine’s death had a devastating impact on her family, who have continued to mourn her loss, and struggle to understand why she was killed.⁴⁶

The discovery of Ms Waine’s body

93. Ms Waine’s body was found by a friend, [REDACTED] (KB), at about midday on Tuesday 30 April 1985. KB described himself as a “drag queen” who was also known as [REDACTED], and also worked at Pete’s Beat.⁴⁷

94. KB had attempted to ring Ms Waine unsuccessfully three times on the previous day, Monday 29 April. On the Tuesday, Mr Crowe, who managed the shows at Pete’s Beat, called KB, also concerned that he had not heard from Ms Waine since Sunday.⁴⁸ It was agreed that KB would check to see if she was home.

95. At about midday on Tuesday 30 April, KB went to Ms Waine’s unit. When he arrived, he noticed that the front door was about 10 inches open. He pressed the doorbell and called her name but received no response. After waiting some time, he went inside. The TV and the electric heater were on. KB discovered Ms Waine’s body lying face down on the floor by the side of her bed. The bed was messed up and pillows were on the floor.

96. KB called Mr Crowe, who came to Ms Waine’s flat with another employee at Pete’s Beat, Mr Steven Crich.⁴⁹ Police were called.

Crime scene examination

97. When police arrived, the front door of the premises was open, and a set of keys was observed in the inside lock. (Police would later receive information from a friend of Ms Waine’s that it was her habit to place the key in her dead lock on the inside when she entered her flat.⁵⁰) The television and electric heater remained on.⁵¹

⁴⁶ Statement of Betty Ernst, 11 May 2023 (SCOI.82945).

⁴⁷ It is unknown whether KB was transgender and identified as a woman. The name and pronouns are used consistently with contemporaneous police documents.

⁴⁸ Statement of KB, 30 April 1985 (SCOI.00014.00011).

⁴⁹ Statement of Patrick Crowe, 30 April 1985 (SCOI.00014.00023); Statement of Steven Ross Crich, 30 April 1985 (SCOI.10040.00026).

⁵⁰ P109 Report of Occurrence, GM Interviewed, 1 May 1985 (SCOI.82924, p. 34).

⁵¹ Statement of Senior Constable Stephen Coles, 30 April 1985 (SCOI.00014.00013).

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98. On entering the bedroom, police observed a double bed in the centre of the room. The bedspread and blanket had been pulled down slightly in the centre of the bed, which was otherwise made. There was a blood-soaked pillow partially covered by the bedspread towards the centre of the bed, and blood spots on the lower part of the bedspread.⁵²
99. When the bedspread was turned back, blood was observed on the top of the spread, and there was a hole through the spread in the vicinity of the blood.⁵³
100. The right bedside table had blood smears on it, as did the wall to the left of the table. The body of Ms Waine was on the floor in front of the bedside table, lying face down, with her legs spread about a metre apart. Her left arm was outstretched above her head, while her right arm was under her right armpit. There was a pool of blood just above the left hand. A second pool of blood was to the right of that, connected to a blood smear leading to the location of Ms Waine's head. There was another pool of blood under Ms Waine's head.
101. Later that same evening (30 April 1985), police returned to the unit to further search the premises for possible spent bullets or fired cartridge cases. A search, said to be "thorough", did not locate any fired cartridge cases or spent bullets.⁵⁴ The search was said to have involved the removal of the carpet for possible damage to the floorboards by the projectiles; no damage to either the carpet or floorboards was noted in statements by the searching officers. No bullets were found lodged in Ms Waine's body, with each entry wound having a corresponding exit wound.
102. Accordingly, it appears that at no time were any "fired bullets" found or collected as exhibits, despite assertions to the contrary in a later UHT "review": see above at [52].
103. Constable Raymond Constable, an officer attached to the Ballistics Unit, provided the following opinion:
- "From my examination of the bedroom I am of the opinion that the deceased was lying naked, face down on the bed and the first shot fired was either in the back or the neck, the bullet exiting the deceased and travelling through the bedspread stopping at the blanket. The deceased was then pushed off the left side of the bed onto the floor and the second shot discharged into the body. The offender then partially removed the bedspread to where the bullet had stopped at the blanket and removed it. The deceased was then dragged rearwards on the carpet and the bullet believed to be beneath [her] was recovered. A search was made of the room and the fired cartridge cases were found and all of these items removed from the scene by the offender, who then left the premises."

⁵² Statement of Senior Constable Stephen Coles, 30 April 1985 (SCOI.00014.00013).

⁵³ Statement of Constable Raymond Constable, 4 May 1986 (SCOI.00014.00017).

⁵⁴ Statement of Constable Raymond Constable, 4 May 1986 (SCOI.00014.00017).

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104. Police officers recorded no observations as to whether Ms Waine’s flat appeared to have been searched or otherwise disturbed elsewhere. However, Ms Waine’s sister, Ms Betty Ernst, told police that it appeared that Ms Waine’s purse and other property was missing from her brown leather carry bag that was in the table on the living room, and that a diamond ring belonging to Ms Waine was missing. It is possible that these items were stolen by the offender or offenders.⁵⁵

105. The Inquiry made contact with, and obtained a statement from, Ms Betty Ernst, sister of Ms Waine. Ms Ernst recalled that a few weeks after Ms Waine’s death, police returned the apartment keys to her. She went to the apartment with her eldest son. On entering the bedroom where Ms Waine was killed, she did not observe blood on the floor or on the bed. The carpets did not appear to have been lifted, and she did not observe any bullet hole in the carpet.⁵⁶

Post-mortem examination, including review by Dr Iles

106. The findings of the post-mortem examination are summarised above. Dr Oettle described three gunshot wounds as well as an injury to the back of Ms Waine’s head, and recorded the cause of death as “bullet wounds of the neck and thorax.”

107. Dr Iles was briefed by the Inquiry to provide an independent review of the post-mortem report: see [80] above. While recognising the substantial changes to autopsy practice in the decades since Ms Waine’s death, Dr Iles identified a number of deficiencies with the initial review.⁵⁷

108. Dr Iles regarded the photo documentation of the gunshot wounds as “suboptimal”, and the description of the gunshot wounds as “perfunctory”. Of particular note, there were no detailed descriptions or measurements of the actual gunshot wounds contained within the report, nor was there a pathological determination of the range at which the shot was fired.

109. In relation to the bruise to Ms Waine’s head, Dr Iles noted that while the bruise on the under-surface of the scalp is documented, the hair from the scalp should have been removed to determine whether any patterned injury was evident on the skin of the scalp.

110. In the statement of Detective Sergeant (**DS**) McCann, it is noted that the force of the blow causing the injury to the back of Ms Waine’s head “would have been sufficient to render the victim unconscious.”⁵⁸ This appears to be summarising an opinion apparently provided orally by Dr Oettle at the time of the post-mortem examination. That opinion does not appear in Dr Oettle’s final report.

⁵⁵ P109 Report of Occurrence, “Information re Property Missing from the Flat Occupied by Brennan”, 4 May 1985 (SCOI.10040.00080, p 3).

⁵⁶ Statement of Betty Ernst, 11 May 2023 (SCOI.82945).

⁵⁷ Expert report of Dr Linda Iles, 28 October 2022 (SCOI.82960).

⁵⁸ Statement of DS McCann, 22 July 1986 (SCOI.00014.00008) at [5].

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Dr Iles' view was that the blow would not necessarily have rendered Ms Waine unconscious, although that possibility could not be excluded.

111. Dr Iles also considered that specific documenting of the presence or absence of injury to the rectum and external genitalia would have been warranted, given the setting in which Ms Waine was found.

Opinions as to the gunshot wounds

112. Dr Iles has also provided her views in relation to the specific manner in which each of the gunshot injuries, described and defined above at [9], may have been inflicted. Her opinions in those respects, as compared to the opinions of investigating police, are outlined below.

113. Gunshots A and B: The opinion of Constable R Constable was that the wounds associated with gunshot A and gunshot B were "consistent with having been caused by the passage of a large calibre projectile with the muzzle of the weapon held in close contact with the skin at the time of discharge."⁵⁹

114. Dr Iles' opinion⁶⁰ is consistent with that of Constable R Constable. Dr Iles describes the entry wound associated with gunshot B as being "clearly a contact type wound", referring in particular to the "very distinct muzzle abrasion" evident in the photographs. The entry wound associated with gunshot A is less "well-demonstrated" in the photographs, but Dr Iles considers that there is "a suggestion of the outline of the recoil spring guard of a pistol" not dissimilar to that seen with gunshot B. She also observes that less clarity as to a muzzle abrasion is reasonably expected given Ms Waine's scalp was covered by hair.

115. Gunshot C: Neither Dr Oettle nor Constable R Constable provided an opinion on the relationship between the wound to Ms Waine's left hand and the other two gunshot wounds. Detective Sergeant McCann's view was that the wound to the left hand was "consistent with it having been in line with the trajectory of either projectile [i.e. gunshot A or B]."⁶¹

116. However, Dr Iles favours the view that the wound to the hand was caused by a third gunshot, rather than being a re-entry wound from a projectile related to gunshot A or B. Dr Iles notes the "apparent circular entry wound" with "notable blackening" around its margins, which she considered to be suggestive of "bullet wipe" (lubricant, gun barrel residue located on the outer surfaces of a bullet). Although Dr Iles notes that "drying artefact" around a penetrating wound can also give the appearance of blackening similar to bullet wipe, such that the possibility of gunshot C being a

⁵⁹ Statement of Constable Raymond Constable, 4 May 1986 (SCOI.00014.00017).

⁶⁰ Expert report of Dr Linda Iles, 28 October 2022 (SCOI.82960).

⁶¹ Statement of DS McCann, 22 July 1986 (SCOI.00014.00008) at [5].

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secondary entry wound cannot be excluded, she considers the wound to be “more suggestive” of a third gunshot entry wound.

117. Given the absence of stippling or muzzle abrasion in the photograph, she considers gunshot C to be a “distant” or “indeterminate pathological range” gunshot.

The calibre, make and/or model of the firearm(s) used

118. In a police running sheet dated 3 May 1985,⁶² authored by “Sandeman/ Constable” of the Ballistics Unit, the opinion is expressed that the wounds are consistent with having been caused “by large calibre projectiles possible .45 calibre.” No basis is provided for this opinion, and its validity cannot be assessed in the absence of measurements taken of the gunshot wounds post-mortem. Dr Iles expresses no opinion as to the calibre of the firearm that inflicted the wounds.

119. The Inquiry sought an opinion from Mr Lawton as to the calibre, make and/or model of the firearm used to shoot Ms Waine. In his report dated 26 May 2023, Mr Lawton stated that the lack of firearm evidence (fired projectiles, fired cartridge cases and the firearm itself) precluded the identification of the type, make, model and calibre of the firearm used.⁶³

120. He further observed that when a bullet hits and passes through the skin, it stretches and then contracts, making it difficult to estimate the size or calibre of a firearm from a gunshot wound.⁶⁴

121. Nonetheless, he was of the opinion that the wounds in the photograph were “clearly” larger than those expected from a .22 to .32 inch, or similar, calibre firearm.⁶⁵

122. A photograph taken at autopsy shows a pair of hands holding a black pistol close to the entry wound of gunshot B.⁶⁶ The shape of the muzzle appears to be consistent (at least approximately) with the muzzle abrasion on Ms Waine’s back. There is no record as to the make or model of the firearm being held in the photograph.

123. Mr Lawton reviewed the photograph taken at autopsy. Mr Lawton identified the gun as an automatic pistol, similar in appearance to a Colt 1911, of which there are many copies, variants and manufacturers. He was unable to identify the precise gun shown. He further opined that the

⁶² P109 Report of Occurrence, Murder of Wayne Brannan (sic) at ██████████ Darlinghurst Road, Kings Cross, 3 May 1985 (SCOI.82924, pp. 56-57).

⁶³ Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477), p 2.

⁶⁴ Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477), p 3.

⁶⁵ Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477), p 3.

⁶⁶ Crime scene photographs, p 6 (SCOI.82948).

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distinctive muzzle imprint around the wounds to the back and neck are typical of those caused by an automatic pistol.⁶⁷

124. Mr Lawton considered there to be little scope for further analysis that might identify the firearm used.⁶⁸

Medical evidence as to time of death

125. In the original post-mortem report, Dr Oettle considered that the approximate time of death was about one day prior to 7:30pm on 30 April 1985 (being the time and date on which the autopsy was performed) – ie, about 7.30pm on Monday 29 April.⁶⁹

126. On the other hand, Dr Iles considered⁷⁰ that there were no physical observations documented at the scene, or outlined in the autopsy report, which provide any scientific support for a specific estimate of time of death. The autopsy report does not record scene or core temperature observations, nor the presence of rigor mortis or livor mortis. While early decompositional changes were noted in the liver, spleen and pancreas, the extent of decomposition depends not only on time since death, but other variables including ambient temperature, the presence or absence of clothing, cause of death, other underlying pathological conditions and entomological activity. Dr Iles concluded that there are “no medical observations recorded that usefully inform time of death estimation”, and that estimates of time of death must instead be drawn from circumstantial information.

127. The circumstantial information relevant to the likely time of Ms Waine’s death is discussed below.

Movements prior to death

128. Police conducted interviews with a large number of witnesses, including witnesses who were able to provide information as to the movements of Ms Waine in the days prior to her death.

129. Ms Waine’s movements are well accounted for on Sunday 28 April 1985. In the early hours of that morning, at about 2am, Ms Waine finished work at Pete’s Beat, and when she left the club said she was going “down to work.”⁷¹ There is conflicting evidence as to whether she walked alone⁷² or was

⁶⁷ Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477), pp. 3-4.

⁶⁸ Ballistics report of Frank Lawton, 26 May 2023 (SCOI.47477), p. 5.

⁶⁹ Post mortem report of Dr Oettle, 15 October 1985 (SCOI.00014.00022).

⁷⁰ Expert report of Dr Linda Iles, 28 October 2022 (SCOI.82960).

⁷¹ Statement of GM, 30 April 1985 (SCOI.10040.00062).

⁷² Statement of GM, 30 April 1985 (SCOI.10040.00062).

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driven by a friend, Mr Nicholls;⁷³ however it is apparent that she went to Premier Lane in Darlington, ⁷⁴ where she worked as a sex worker.

130. At about 1:00pm that same day, Sunday 28 April, Ms Waine was seen by a friend, I224 (KD), walking in Liverpool Street, Darlington, with an unknown man. KD observed that they were arguing. She heard the man say, “Christ!” and wave his hands around in the air, but otherwise could not hear what they were saying. KD describes the unknown man as:

“about 37-38 old, about 5’10” tall, of average build with the start of a tummy, he had very dark collar length hair that was straight, but very messed up, very messy, like he had gel in it, but I don’t think he did. He had an olive complexion and to me he looked like a Yugoslav or similar. He had a thick growth on his face. He had a blue denim jacket on and black trousers. He was wearing black running shoes with grey [stripes] on the side – they may have been dirty white. He had really noticeable eyebrows, very thick and bushy and they joined up in the middle and bit thinner than the rest. He had a very broad nose.”⁷⁵

131. That evening, at about 5pm, Ms Waine met with her friend Mr Crowe and went for dinner with him and other friends on Oxford Street.⁷⁶ At around 9:00 or 9:30pm, Ms Waine went to the apartment of TH, in Liverpool Street, to collect rent. She was dressed to go out.⁷⁷

132. Ms Waine was seen at Premier Lane that night (Sunday 28 April), and in the early hours of the following morning (Monday 29 April), by other sex workers including I225 (JK) and I227 I227 (PS).⁷⁸

133. JK worked at Premier Lane between 7:30pm on Sunday evening and 2:00am on Monday morning, and said that Ms Waine was at Premier Lane until at least the time when JK went home. JK described her as wearing a reddish brown and orange horizontally striped top, with a low neckline, and a very short white or cream skirt. She had a pink or cream jacket, a pair of cream shoes with a “mini-stiletto” type heel, and a black belt on her waistline. There is no record of whether such clothing was found in Ms Waine’s apartment.

134. At about 3:15am on Monday morning 29 April, according to PS, Ms Waine was dropped at Premier Lane by a person known as “Bill”. While this might appear to be inconsistent with JK’s evidence that Ms Waine was already at Premier Lane as at 2:00am, any such inconsistency may be explained by Ms

⁷³ P109 Report of Occurrence, “Interview of Frederick George Nicholls, Associate of Deceased”, 30 April 1985 (SCOI.82924, p. 2).

⁷⁴ P109 Report of Occurrence, “Interview of I249 Associate of Deceased”, 30 April 1985 (SCOI.82924, p. 1).

⁷⁵ Statement of KD, 30 April 1985 (SCOI.10040.00055).

⁷⁶ Statement of Patrick Crowe, 30 April 1985 (SCOI.00014.00023); Statement of David Cook, 30 April 1985 (SCOI.10040.00032).

⁷⁷ Statement of TH, 30 April 1985 (SCOI.10040.00047).

⁷⁸ Statement of JK, 7 May 1985 (SCOI.00014.00021); Statement of PS, 30 April 1985 (SCOI.00014.00018).

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Waine having left Premier Lane temporarily to service a client in a private location, possibly her apartment or in a car, before returning at a later time.

135. Only moments after Ms Waine's arrival, PS was approached by a male looking to purchase sexual services, but referred this man to Ms Waine when it became apparent that he was interested in a sex worker who had a room. According to PS, the man approached Ms Waine; they spoke for a few seconds, and then Ms Waine left Premier Lane with the man. As she was leaving, Ms Waine said, "I'll be back in half an hour girl at the latest." This was the last that PS saw Ms Waine, and is the last confirmed sighting of Ms Waine alive.

136. PS provided the following description of the male with whom Ms Waine left Premier Lane:

"about 22 to 26 years old, about 5'9" tall, medium build, medium complexion, dark collar length straight brown hair and he was wearing blue scraggy jeans and a black t-shirt which had a design on it... [H]e had a stud earring in his left ear which was silver... [He] had a tattoo on the back of his left hand which went down to his middle finger. I am not sure what the tattoo was but I thought it might have been a crucifix."

137. Some twelve hours later, between 3:45 and 4:00 pm on Monday afternoon 29 April, a friend of Ms Waine's named BA, who also used the name [1232], went to Ms Waine's unit on Darlinghurst Rd. The front door was slightly open, and BA knocked but received no answer.⁷⁹ This information is recorded in a police occurrence pad, but no statement was taken.

138. About five hours later still, at about 9:00pm on Monday evening 29 April, [1242] (JC), another friend of Ms Waine's, went past Ms Waine's unit. She also found the front door open an inch and the interior light on. She rang the doorbell and yelled out, but there was no answer. She looked in and saw that no one was in the living room.⁸⁰

139. At about 11:00pm that night, Monday 29 April, JC walked back past the flat, and noticed that the door was still open.⁸¹

140. As noted above, when Ms Waine's body was found at about midday the following day (Tuesday 30 April), the door was ajar and the interior light was on. It seems likely, given the state of the door and the light as observed by BA and JC, that the apartment had been left in this state from the time of her death. It is therefore possible that Ms Waine was already deceased at the time of those visits by BA and JC, at 3:45pm and 9:00pm respectively on Monday 29 April.

⁷⁹ P109 Report of Occurrence, BA Interviewed, 1 May 1985 (SCOI.82924, p. 35).

⁸⁰ Statement of JC, 30 April 1985 (SCOI.00014.00016).

⁸¹ Statement of JC, 30 April 1985 (SCOI.00014.00016).

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141. However, in relation to the earlier visit at 3:45pm, consideration also needs to be given to a possible sighting of Ms Waine at 7:45pm, discussed below.

Sighting of a woman outside Ms Waine's flat

142. At approximately 7:45pm on Monday 29 April 1985, two men, Anthony Reid and Michael McCarthy, walked past Ms Waine's flat on Darlinghurst Road. Mr McCarthy saw a woman seated in front of the open door. Mr McCarthy believed her to be soliciting, and noted that there was a red light above the front door. He made a comment about her soliciting to Mr Reid, to the effect of, "Don't they ever give up, even in the rain." He described the woman as wearing a "black brief dress" and having "dark brown hair," but commented in his statement that he would not be able to recognise this person.⁸² Mr Reid confirmed that Mr McCarthy made that comment, but did not himself see the woman, as he was making a point of not looking to avoid being propositioned.⁸³

143. Investigating police treated this evidence as a conclusive sighting of Ms Waine at approximately 7:45pm. In his statement to the Coroner,⁸⁴ DS McCann commented that the person described "fitted exactly the description of the deceased," and so surmised that Ms Waine probably died between 7:45pm and the time of JC's visit at 9pm. On this basis, DS McCann considered that "little value" could be given to the line of investigation regarding the man with whom Ms Waine had been seen leaving Premier Lane at about 3:15am that morning, or any other possible clients she may have picked up while soliciting in the early hours of that Monday morning.

144. However, it is submitted that the level of certainty expressed by DS McCann is unduly high, and that this 7.45pm sighting should not be treated as conclusive. The description provided by Mr McCarthy (which refers only to a "black brief dress" and "dark brown hair") is far from "fitting exactly" to Ms Waine. As to clothing, there is no record as to any clothing found at the crime scene that may have been worn by Ms Waine shortly prior to her death. As to her hair, photographs of Ms Waine show her with reddish brown hair in a distinctive curly bob style. Crime scene photographs show a dark coloured wig on the floor under the left knee of Ms Waine's body, but the exact colour or style of the wig cannot be ascertained.⁸⁵ While the description given by Mr McCarthy does not exclude the possibility that it was Ms Waine whom he saw at 7.45pm on Monday evening 29 April, it also is not a positive identification.

⁸² Statement of Anthony Reid, 7 May 1985 (SCOI.00014.00010).

⁸³ Statement of Michael McCarthy, 7 May 1985 (SCOI.00014.00009).

⁸⁴ Statement of DS McCann, 22 July 1986 (SCOI.00014.00008) at [8].

⁸⁵ Crime scene photographs (SCOI.82948).

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145. This possible sighting, by Mr McCarthy, is insufficiently conclusive to rule out the possibility that Ms Waine was killed earlier in time than 7.45pm on Monday evening. That would align with the evidence of BA, that Ms Waine's door was ajar, but no one was responding to the doorbell, at about 3:45pm on the Monday afternoon. That in turn would mean that it is possible that she was killed by a person that she had picked up from Premier Lane, including the male described by PS as leaving Premier Lane with Ms Waine at about 3:15am on Monday morning 29 April.

146. In the opinion of Dr Iles, there are no medical observations that preclude the possibility that Ms Waine died prior to the alleged sighting at 7:45pm by Mr McCarthy.⁸⁶

147. However, the possibility that Mr McCarthy did sight Ms Waine at about 7.45pm means that the time of her death may have been later than 7.45pm on Monday 29 April, and that she may not have been deceased at the time of BA's visit to her apartment at 3:45pm on that day.

148. Accordingly, on the available evidence, the appropriate conclusion is that Ms Waine's death occurred on Monday 29 April 1985 at a time between approximately 3:15am (when she was last seen alive by PS) and 9:00pm (when [REDACTED] 1242 visited the Darlinghurst unit).

Summary of lines of inquiry and persons of interest

149. The police investigation identified a number of possible lines of enquiry in relation to how Ms Waine met her death. These included:

- a. An association or relationship that Ms Waine had with a police officer known as "David";
- b. An association or relationship that Ms Waine had with an MSS security guard, who was identified as possibly being a man named NP;
- c. A theory that Ms Waine had been killed in relation to a dispute over a quantity of heroin that she had supposedly flushed down the toilet, based on statements allegedly made by a woman named MF to a man named Danny Shakespeare;
- d. Claims made by an anonymous male that the "Coven of Mercy for Fate" was responsible for Ms Waine's killing;
- e. A fingerprint found on a phone in Ms Waine's apartment, identified as belonging to a man named MG.

150. Each of these lines of enquiry is considered below.

⁸⁶ Expert report of Dr Linda Iles, 28 October 2022 (SCOI.82960).

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Police officer "David"

151. Numerous friends and associates of Ms Waine told police that she had been involved with a policeman, known to several of her friends as "David". Their various accounts have both similarities and differences, as indicated in the following paragraphs.

152. **I223** (CS):⁸⁷ CS was a sex worker who would solicit at Premier Lane. She considered Ms Waine to be a close friend. CS said that Ms Waine told her that she was "living in a relationship" with a policeman she called "David", that he worked at Darlinghurst Police Station, and that she ironed his shirts. CS also said that Ms Waine told her that David was living partly with her and partly with his mother on Liverpool Street in Darlinghurst, and that David's mother did not approve of his relationship with Ms Waine because she was transgender.

153. CS said that she first met David "about 6 months ago" (i.e. early November 1984), at Ms Waine's former unit in Victoria Street. He was wearing casual clothes. She described him as "*a male, about 33 years of age, possibly of Greek or Italian origin, well built, dark short hair but not close cropped.*" She said David only stayed for a minute and then left.

154. CS said she saw David again once "about 2 months ago" (i.e. late February/early March 1985), this time at Ms Waine's apartment on Darlinghurst Road. On this occasion he was wearing white overalls.

155. Laurie Bradford:⁸⁸ Ms Bradford and Ms Waine were formerly business partners in a plant shop on Crown Street. When Ms Bradford knew Ms Waine, she was residing in "the Cross in a street behind the Crest Hotel." This may be a reference to her former apartment on Victoria Street, Darlinghurst.

156. Ms Bradford said that Ms Waine told her that she was "going around" with a policeman called "David Brown or Brawn or something similar." Ms Waine had told her that he had "something wrong with his leg or arm." She had met David once when she went to Ms Waine's flat; he was sitting on the lounge in uniform. Ms Bradford also used to do Ms Waine's washing, and saw some police shirts with one stripe on them.

157. Ms Bradford described David as "25 to 30 old, young looking face, slim build, (I only saw him sitting down) he wore Mens size shirts (I knew this because I ironed some)."

158. MR:⁸⁹ MR was a sex worker who also used the name **I233**. She had known Ms Waine for approximately five years, initially from their shared "beat" of Premier Lane.

⁸⁷ Statement of CS, 1 May 1985 (SCOI.00014.00012).

⁸⁸ Statement of Laurie Bradford, 7 May 1985 (SCOI.00014.00019).

⁸⁹ Police run sheet, interview with MR, 10 May 1985 (SCOI.82924, p. 85).

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159. MR recalled that in October or November 1984, she was at Ms Waine's apartment on Victoria Street when a man knocked on the door. Ms Waine said that this man was a "police officer who was hassling [her]." This police officer entered the flat, and Ms Waine picked up the telephone "to call Internal Affairs." When she did this, the police officer hit her in the face, and then went into the kitchen where he broke a glass. Ms Waine had a conversation with the man and the situation settled itself.
160. Ms Waine later told MR that the police officer had lived with her for about a month and had taken money off her, and also had brought two friends to her home to have sex with her.
161. MR also said she saw the same person sitting in the passenger seat of a police truck, in uniform, patrolling Darlinghurst Road, Kings Cross.
162. There is no record of any description of this person by MR, in the police note summarising the account she gave.
163. As discussed below at [177], MR was later recorded by police as having recognised a photograph of "[REDACTED], Radar Technical Unit, Flemington" as being the person that she saw: see below at [177]. The material provided to the Inquiry by the NSWPF includes no statement from MR, nor any such photograph, nor any documentation in relation to the photographs that she was apparently shown.
164. [1237] (AP):⁹⁰ AP was a friend of Ms Waine's for approximately four years. AP said that about "eight months ago" (i.e. September 1984), Ms Waine informed her that she was seeing a uniformed policeman from Darlinghurst Police Station. AP said that Ms Waine told her of her relationship with the policeman on at least four or five occasions. However, she added that Ms Waine "carried on a bit" when bragging about who she was involved with. AP could not recall Ms Waine mentioning the policeman's name. There is no statement from AP in the material provided to the Inquiry by the NSWPF.
165. [1231] (PW):⁹¹ PW had known Ms Waine for about 9 years, and used to live in Ms Waine's old premises in Liverpool Street. When asked by police about close associates of Ms Waine, PW told police that Ms Waine had a "friend" who was a policeman called "George", although PW never saw this person. There is no statement from PW in the material provided to the Inquiry by the NSWPF.
166. [1238] (GM):⁹² GM had been a friend of Ms Waine's for about 20 years. She said that Ms Waine was "at one stage" going out with a uniformed police constable from Darlinghurst Police

⁹⁰ P109 Report of Occurrence, Interview with AP, 6 May 1985 (SCOI.82924, p. 74).

⁹¹ P109 Report of Occurrence, Interview with PW, 6 May 1985 (SCOI.82924, p. 75).

⁹² P109 Report of Occurrence, Interview with GM, 1 May 1985 (SCOI.82924, p. 34).

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Station. GM said that she saw him once only, when he arrived at Pete's Beat to collect Ms Waine. She described him as having "blonde hair and a moustache." There is no statement from GM in the material provided to the Inquiry by the NSWPF.

167. [I239] (CH):⁹³ CH was a casual waiter at Pete's Beat. CH said that "about 10 months ago" (i.e. July 1984), Ms Waine had been at Pete's Beat when she received an upsetting phone call. Ms Waine said that she had a policeman as a boyfriend and that he had broken his arm. She said that this policeman stayed at her place on Victoria Street "off and on". CH had also heard from Ms Waine that this policeman worked for the "Central Police Station."
168. CH was in a relationship with CS (see above at [152]), and said that CS had talked to him about Ms Waine's relationship with the policeman, specifically that she was seeing this policeman "pretty regular" and that his name was "David". Ms Waine had also, at a staff meeting in approximately September 1984, suggested that she could have criminal name checks done through this policeman, and had in fact found out that CH's brother was on a good behaviour bond.
169. [I240] (LH):⁹⁴ LH was the brother of CH, and also knew Ms Waine through working at Pete's Beat. LH had also heard that she was "seeing a copper friend", who was able to look into people's records. LH believed this to be true as Ms Waine knew about his own juvenile record, and that he was on a good behaviour bond for arson.
170. Catherine Grimley:⁹⁵ Ms Grimley was a DJ at Pete's Beat. Ms Grimley told police that in January 1985, she had been at the home of Ms Waine when Ms Waine received a phone call informing her that "David" had been injured at the Long Bay Gaol and that he was suffering from a broken arm and injuries to his ribs. Ms Waine had told Ms Grimley that she needed to arrange to have David's car moved from Long Bay Gaol. This car was said to "possibly" be a white Ford Fairmont that was owned jointly by "David" and Ms Waine. There is no statement from Ms Grimley in the material provided to the Inquiry by the NSWPF.
171. [I234] (AC):⁹⁶ A brief police note records that information was received from AC that Ms Waine was "going out" with a police officer named "David Brown or Bowen." No further information is recorded. A statement was taken from AC (under the name [I234]); however, the statement made no mention of Ms Waine's relationship with a police officer.⁹⁷

⁹³ Statement of CH, 3 May 1985 (SCOI.10040.00081).

⁹⁴ Statement of LH, 3 May 1985 (SCOI.10040.00083).

⁹⁵ P109 Report of Occurrence, Interview with Catherine Grimley, 4 May 1985 (SCOI.82924, p. 65).

⁹⁶ P109 Report of Occurrence, Interview with AC, 5 May 1985 (SCOI.82924, p. 67).

⁹⁷ Statement of AC, 30 April 1985 (SCOI.10040.00049).

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172. [I241] (SS):⁹⁸ SS had known Ms Waine for about 9 months, having met her at Pete’s Beat, but reported that they did not see “eye to eye.” SS stated that he was aware that Ms Waine was having a relationship with a policeman named “David”, and that Ms Waine was very protective of him. If David was present when another friend visited her apartment, Ms Waine would not allow them to enter and would ask them to come back at another time. There is no statement from SS in the material provided to the Inquiry by the NSWPF.

173. Robert William Lyon:⁹⁹ Mr Lyon was an inmate at the Metropolitan Remand Centre in Long Bay. He approached prison authorities stating he had information in relation to the murder of Ms Waine. Mr Lyon told police that he knew Ms Waine from working at Pete’s Beat and had become good friends with her. On one occasion in November 1984, he said he was visiting Ms Waine at her flat on Victoria Street when a person came to the door and Ms Waine slammed the door on him. Ms Waine told Mr Lyon that the person’s name was “David”, and that he had been hassling her because Ms Waine kept on knocking him back. Mr Lyon described David as being “*in his early 30’s, about 6’ tall and clean shaven.*” He also reported that this person had a new sports car. There is no statement from Mr Lyon in the material provided to the Inquiry by the NSWPF.

174. [I236] (SJ):¹⁰⁰ SJ was a friend and former flatmate of Ms Waine. SJ said she was aware that Ms Waine had at least two security guards as customers, and also one uniformed policeman and one detective who Ms Waine believed was in the drug squad. SJ was not able to provide further details about these persons. There is no statement from SJ in the material provided to the Inquiry by the NSWPF.

Inquiries by investigating police into “David Brown” in 1985-86

175. The accounts summarised above indicate that a large number of witnesses were aware of Ms Waine having a relationship with a person said to be a police officer. Some of those witnesses claimed to have seen this person, and several said that Ms Waine referred to him as “David”. While there is some variance in the descriptions of this person, several witnesses said that he was attached to the Darlinghurst Police Station and several estimated his age as around 30. Mr Lyon and MR referred to the police officer as “hassling” Ms Waine, and MR recounted his being physically violent towards Ms Waine.

⁹⁸ P109 Report of Occurrence, Interview with SS, 2 May 1985 (SCOI.82924, p. 53).

⁹⁹ P109 Report of Occurrence, Interview with Robert William Lyon, 2 May 1985 (SCOI.82924, p. 55).

¹⁰⁰ P109 Report of Occurrence, Interview with SJ, 1 May 1985 (SCOI.82924, p. 32).

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176. From the information available on the material provided to the Inquiry by the NSWPF, the investigation into this “police officer” appears to have been incomplete.

177. A police note dated 10 May 1985 records both that MR “identified the photograph of [REDACTED], Radar Technical Unit, Flemington” as being the person whom she had seen in company with Ms Waine, and that that officer had never been attached to Darlinghurst Police Station.¹⁰¹ As noted above, there is no statement from MR in the material provided to the Inquiry by the NSWPF, nor any such photograph, nor any documentation in relation to the photographs that she was apparently shown.

178. CS, who had seen “David” twice (as had MR) and provided a description of him (see above at [153]) was also shown the photograph of “[REDACTED]” that was nominated by MR. She said that this was definitely not the policeman “David” whom she had seen and with whom Ms Waine was “having an affair.”¹⁰²

179. In his statement to the Coroner, DS McCann referred to various of Ms Waine’s associates having said that she was seeing a policeman named David, and that CS and Ms Bradford had met David. (In fact, more than two witnesses claimed to have seen or met the policeman referred to, although not all of them said that they knew his name to be “David”.)

180. DS McCann said that, “in light of the fact that the killer had some awareness [of] ballistic evidentiary value, emphasis was placed on trying to identify this person.” As to MR having identified a constable from the photographs, DS McCann said:

“That Constable was questioned and it [was] established that he had never been attached to Darlinghurst Police nor has he been in any Police truck in the area. Therefore it is felt that this line of enquiry has been exhausted.”

181. To say that the line of enquiry concerning a policeman known as “David” had been “exhausted” may have overstated the position, for at least the following reasons:

- a. First, it is possible that MR identified the wrong person, particularly given that CS thought that the person in the photograph (“[REDACTED]”) was definitely *not* the person Ms Waine was in a relationship with.

¹⁰¹ P109 Report of Occurrence, Interview of MR, 10 May 1985 (SCOI.82924, p. 85).

¹⁰² P109 Report of Occurrence, Interview of CS, 10 May 1985 (SCOI.82924, p. 84).

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- b. Secondly, there were other witnesses who could have been asked whether they could identify the relevant person from photographs; however, there are no police notes or occurrence sheets to indicate that this occurred.
- c. Thirdly, there were other details provided about the supposed police officer that could have provided a means of identifying his identity – for example, where he was residing, the apparent injuries he sustained, and the car he was said to have driven. There is no indication in the material produced to the Inquiry that such checks were made.
- d. Fourthly, several witnesses said that the police officer in question worked in the Darlinghurst area and/or was attached to the Darlinghurst Police Station. That would seem to indicate that “[REDACTED]” from the Radar Technical Unit at Flemington was unlikely to have been that officer. Whether there were any Constables called “David”, or otherwise meeting the description provided by witnesses, working in the Darlinghurst area does not seem to have been pursued.

182. There is no evidence available to the Inquiry to link the police officer (if indeed the person in question was a police officer) with whom Ms Waine was in a relationship (whoever that police officer was) with her murder. However, further steps should have been taken to exhaust this line of enquiry.

The Inquiry’s investigations into the policeman known as “David”

183. As noted above, the Inquiry received the personnel file for one “DRB”. The Service Register indicates that he was a “radar engineer” in 1985, and accordingly this is likely to be the same “[REDACTED]” said to have been identified by MR and, according to the statement of DS McCann, questioned to by police. There is no contemporaneous record in any of the material produced to the Inquiry by the NSWPF of Constable DRB being questioned.

184. The records describe DRB (the radar engineer) as being born in 1955 (and so 29 or 30 at the time of Ms Waine’s death), with fair hair, green eyes, weighing 78 kg and being 179 cm in height. CS had described “David” as having “dark short hair” and as possibly having a Greek or Italian background, which tends to suggest that the person understood by CS to be the police officer in a relationship with Ms Waine was not DRB.

185. The Inquiry received information as to the name of a person who was suspected at the time of being the person, said to be a police officer, who witnesses identified as being in a relationship with Ms Waine. Various records were summonsed in relation to this person, and in May 2023 he was questioned in a private hearing of the Inquiry.

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186. On the basis of the evidence obtained, this person is *not* considered to be the person who was in a relationship with Ms Waine, nor a person of interest in relation to Ms Waine's death. This evidence will be the subject of a confidential part of the Report of the Inquiry in due course.

187. It appears from a Police Armoury issue paper of 16 January 2023 provided to the Inquiry that this person had been issued a .38 revolver when serving in the NSWPF in around 1985.¹⁰³ Based on the expert evidence of Mr Lawton outlined above at [123], Ms Waine was likely killed with an automatic pistol rather than a revolver.

The MSS Security Guard

188. On 2 May 1985, William Elton, an associate of Ms Waine's, told police that Ms Waine was "keeping company" with an MSS Officer who drove a white Datsun 120 Y Sedan. Mr Elton also claimed to have overheard from other "drag queens" that this person would frequent the Premier Lane area, wearing his full uniform and in possession of a pistol.¹⁰⁴

189. Also on 2 May 1985, Charles Saville, who resided in the same building as Ms Waine, told police that on the late morning of either Sunday 28 April or Monday 29 April 1985, between 10:00 am and 12:00 pm, he saw a man dressed in a blue "uniform type outfit" walk in the main doors of the building.¹⁰⁵ Mr Saville said that this person was a security guard, and that he was "pretty sure" that the logo on his shoulder badge (which was light blue with red) was MSS Security. He described this man as, "30 to 35 old, 5'8 or 9" tall, well build [sic] by that solid and fit, dark brown hair that was long at the sides and he was wearing a uniform type hat same as the Police and the colour matched his uniform. His skin was fair." Mr Saville told police that he would recognise this person again.

190. Whether Mr Saville saw this person on Sunday morning 28 April or the Monday morning 29 April is obviously important, but does not emerge clearly from his statement. In that statement, he described his movements on Sunday 28 April, saying that he was "home through most of the day", other than leaving to attend the Hare Krishna Temple between 4:30pm and 8:00pm. This may perhaps suggest, although not necessarily, that his sighting of the security officer was more likely to have been on the Monday. A sighting of an MSS Security Officer entering Ms Waine's building on the Monday 29 April would be of greater significance, since Ms Waine was not killed until sometime after about 3.15am on that day.

¹⁰³ NSWPF Issue Paper by Chief Inspector R Steinborn (Police Armoury), dated 16 January 2023 (NPL.0119.0002.0001).

¹⁰⁴ P109 Report of Occurrence, Interview with William Elton, 2 May 1985 (SCOI.82924, p. 49).

¹⁰⁵ Statement of Charles Saville, 2 May 1985 (SCOI.10040.00073).

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191. Police enquiries ultimately identified an MSS Security officer by the name of NP, who admitted to having a sexual relationship with Ms Waine. NP had dated, and would go on to date, other transgender sex workers who lived in the Kings Cross and Darlinghurst areas.¹⁰⁶

192. Mr Saville was never shown a photograph of NP to ascertain if he was the man he had seen entering Ms Waine’s apartment block.

193. Mr Saville is now deceased.¹⁰⁷

Interview with NP in 1985

194. On 2 May 1985, NP was interviewed by police and provided a signed statement.¹⁰⁸

195. NP told police that he had been employed by MSS as a “static guard” for approximately 8 months, and was engaged on duties in various locations throughout the metropolitan area. NP said he met Ms Waine at Pete’s Beat about 2 years ago (i.e. in 1983), and had a relationship with her for only about 2 weeks after they first met, at which time she was living on Albion Street in Surry Hills. Since that time, he had seen Ms Waine “a couple of times” at Pete’s Beat.

196. However, Mr Elton’s account to police (not the subject of a statement by him, but only of an entry in a run sheet), seems to have been that Ms Waine was “keeping company” with an MSS Security officer at the time of her death, in April 1985. If that is right, then either there was another MSS officer (later than NP) who was doing so, or NP’s account was not true.

197. NP gave a detailed account of his movements between Friday 26 April 1985 and Monday 29 April 1985. Given that the time of Ms Waine’s death must have been in or after the early hours of Monday morning 29 April, it is his movements from late on Sunday 28 April 1985 to Monday 29 April 1985 that are most relevant, and these are set out below:

- a. NP lived at an address on [REDACTED] in the suburb of “Karilla”, with two people named “Michael and Maree” (surnames not provided). There is no such suburb as “Karilla”. The address may have been in Kareela, NSW, where there is a [REDACTED].
- b. NP claimed to have arrived home at about 6pm on Sunday 28 April 1985, to have spoken to Michael and Maree, and then remained at home from that time on that evening;

¹⁰⁶ Statement of [REDACTED] 1222, 30 April 1985 (SCOI.10040.00053); Statement of David Gallagher, 7 March 1986 (SCOI.10040.00079).

¹⁰⁷ Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [32].

¹⁰⁸ P109 Report of Occurrence, Resume of statement obtained from NP, 2 May 1985 (SCOI.49283); Statement of NP, 2 May 1985 (SCOI.10035.00014).

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- c. NP stated that he was woken by Michael at 6:00 am on Monday 29 April 1985, and left for work at “Darlinghurst Social Security” on Oxford Street, Darlinghurst, at 7:30am;
- d. He said that he took his lunch break at 12:30 pm, and also went to the bank to get money out, before returning to work at the Social Security Office, where he finished work at about 5:30pm;
- e. After that, NP said that he did martial arts training with Lawrence Lee at an address on Terry Street in Drummoyne. Training finished at 7:30pm, and he returned home to Kareela.

198. NP stated that he received a pistol from MSS Security, which he had to sign for. The pistol was a Browning 32mm. He stated that he signed the pistol in at about 1:30am on Saturday, 27 April 1985 and did not sign the pistol back out until Tuesday 30 April 1985, at about 5:30pm. Accordingly, on NP’s account, he did not have access to his MSS pistol over the window of time during which Ms Waine was killed. NP said that he did not have any private firearms and nor, to his knowledge, did Michael or Maree.

199. There is no indication in any of the material provided to the Inquiry by the NSWPF that any steps were taken to check the account given by NP. In particular, police could and should have: identified, located and interviewed NP’s housemates in relation to his movements on Sunday evening 28 April and Monday morning 29 April; interviewed Lawrence Lee as to whether NP attended martial arts training on Monday evening 29 April; and obtained employment rosters or other confirmation from MSS as to his work schedule. The Inquiry has attempted to pursue these matters, but the passage of time (now some 37 years) means that in some respects this is now not possible.

The Inquiry’s investigations into NP

200. The Inquiry summonsed material from the NSWPF for any firearms records for NP. That material indicated that NP was issued with a one-year firearms license on 26 September 1989 (more than 3 years after Ms Waine’s murder), and that no firearms offences are recorded against NP.¹⁰⁹ Despite not having a firearms license in 1985, NP may have had lawful access to a firearm licensed to MSS Security in his capacity as a “licensed private inquiry agent”¹¹⁰: see *Firearms and Dangerous Weapons Act 1973*, s 7. However, as noted above, the material available to the Inquiry suggests that a firearm used to kill Ms Waine was of a larger calibre than .32 (being the calibre of firearm to which NP said he had access).

¹⁰⁹ Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [23].

¹¹⁰ Statement of NP, 2 May 1985 (SCOI.10035.00014) at [13].

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201. A summons was issued to MSS Security requesting any firearms and personnel records relating to NP. However, such records were only held for 7 years and are no longer available.¹¹¹ The opportunity to test NP's account against these objective records has been lost.
202. Finally, summonses were issued to Transport for NSW requesting the vehicle registration history for NP, and the Department of Communities and Justice requesting any employment records for NP at Long Bay Correctional Complex. Each was issued in order to explore the evidence given by Catherine Grimley as to Ms Waine's partner 'David' having been injured in January 1985 at Long Bay and having owned a white Ford Fairmont (addressed at [170] above), having regard to the possibility that witnesses may have confused a police officer and a security officer.
203. The Inquiry received electronic records from Transport for NSW which did not pre-date 1990.¹¹²
204. The Inquiry received no documents from Department of Communities and Justice in response to the summons, despite the Inquiry receiving confirmation that the records dated back to 1985.¹¹³ From this it may be inferred that NP was not employed at that facility at the relevant time.
205. Although the Inquiry was able to ascertain the current whereabouts of NP, other information acquired by the Inquiry was such that a decision was made that it would be inappropriate to summons NP to give evidence before the Inquiry.¹¹⁴

Interview with Danny Shakespeare

206. On 5 January 1986, at the Maroubra Police Station, police from Darlinghurst Police Station (Detective Constable 1/C P.H. Short and Detective Trench) interviewed a man named Danny Robert Shakespeare. A typed record of interview (**ROI**) was prepared, and it appears to have been signed by Mr Shakespeare (although not by the interviewing officer, DC Short).
207. The running sheet in respect of that day, 5 January 1986, to which this ROI seems to have been attached, is headed "WENDY WAYNE @ BRENNAN MURDER INQUIRY". At the foot of the page of the running sheet appears a date five years later, 20 January 1991, against the name of DSC Di Francesco of Homicide South.
208. Question 12 in the ROI was "Do you have any knowledge of who murdered Wendy WAYNE?" Mr Shakespeare's answer began as follows: "Yes. I was living with [MF] at Maroubra. I was questioned by Detectives over the murder of Wendy WAYNE." There is nothing in any of the material provided to

¹¹¹ Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [24].

¹¹² Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [25].

¹¹³ Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [27].

¹¹⁴ Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [20].

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the Inquiry by the NSWPF which indicates that Mr Shakespeare had been interviewed by police at any previous time in connection with the death of Ms Waine.

209. In the ROI, Mr Shakespeare claimed to have known Ms Waine through a woman named MF, with whom he said he was in a relationship at the time of Ms Waine's death. Mr Shakespeare gave a detailed account of an alleged confession made by MF, as to involvement in the murder of Ms Waine. The context and nature of that admission, according to Mr Shakespeare, was as follows:

- a. Mr Shakespeare was living with MF, and his mother, at his mother's address in Maroubra.
- b. He knew where Ms Waine lived, in Darlinghurst. He had been there once but had not gone in.
- c. He had been (as noted in the previous paragraph), "questioned by Detectives over the murder of Wendy WAYNE." He told MF that "I was worried that I could be charged with it."
- d. MF replied "No you can't be". When Mr Shakespeare asked her why, she said, "Because I know who the person involved was," and told Mr Shakespeare that she could "prove that" to him.
- e. At that point, MF went to the bathroom and had a shot of heroin, and Mr Shakespeare had a conversation with his mother.
- f. After Mr Shakespeare's mother had gone to bed, they continued their conversation about the murder. MF told Mr Shakespeare that she wanted to talk to somebody and that she trusted Mr Shakespeare. She told Mr Shakespeare to swear not to ever say anything about what she was about to tell him, because if he did they "would both be dead."

210. According to Mr Shakespeare, MF then proceeded to say the following things:

- a. MF at first said that she and Ms Waine were selling heroin for "a person". (Mr Shakespeare said that he did not initially know who MF was talking about, but that he later understood from MF that it was Neddy Smith.)
- b. MF had been staying at Ms Waine's place when he (Mr Shakespeare) first met MF, which he estimated as "about 7 or 8 months ago". (That would indicate a period from early May to early June 1985, a period beginning slightly after Ms Waine was killed, and so must be inaccurate.)
- c. While staying at Ms Waine's place, MF had heroin that she and another sex worker named "Sammy" were bagging to sell. When Ms Waine came home and saw what they were doing,

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an argument started, and MF said she would get rid of the drugs. MF went and made a phone call, and when she came back, both Sammy and the drugs were gone.

- d. The following day, Sammy told her that Ms Waine had flushed the drugs, and that Ms Waine had demanded that Sammy get out or she would ring the police.
- e. MF and Sammy together then spoke to Ms Waine in a coffee shop, and Ms Waine confirmed that she had flushed the drugs.
- f. MF told Ms Waine that she would have to “pay back the money”, being five or six hundred dollars. Ms Waine replied that she wasn’t going to pay MF back. She said that she knew who MF was selling drugs for, and that if MF didn’t leave her alone and stop “hassling” her, she would “drop them”.
- g. After that meeting, MF saw Ms Waine a number of times, who still refused to “pay back the money”. MF believed “she had no choice either Wendy copped it or she [MF] copped it.”
- h. At some point after that, MF and two men, one named Ian and another man whose name Mr Shakespeare could not remember, had gone to Kings Cross, where MF and Ian waited across the road from Ms Waine’s place.
- i. The other man drove to the lane and acted as a customer and picked up Ms Waine. He took her back to her apartment, where she did “the \$100 and \$200 jobs.”
- j. MF and Ian waited for 10 or 15 minutes, before entering the apartment with a key that MF had from when she was staying there. The unnamed man left.
- k. MF started to argue with Ms Waine, who “had nothing on”. MF pushed her to the ground, and Ian shot her “with a .22.” (Mr Shakespeare added here: “I don’t know if that is the right gun [MF] doesn’t know about guns.”)
- l. MF grabbed a few of her belongings and left. The “other guy” (Ian) remained at the flat because “he was going to make sure that no one knew how or what she was shot with.”
- m. MF and Ian then met the unnamed man in his car outside the Gold Fish bowl (a club in Kings Cross).
- n. All three then drove to “the Art Museum”, and MF got rid of the stuff that she had picked up as Ms Waine’s flat. They also got rid of the gun “somewhere down there” (but MF did not tell Mr Shakespeare what they did with it).

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- o. The murder was organised by Neddy Smith, and MF was paid in “smack” and her debts were wiped out. Ms Waine was murdered because “she knew too much” about MF’s “association and activities and the people she was involved with.”

211. Ms Waine’s reported reaction, on finding MF and “Sammy” engaged in bagging heroin in her flat (see c – e above), would suggest that the initial claim recounted by Mr Shakespeare, that Ms Waine had been jointly involved with MF in selling drugs, was unreliable.

212. Mr Shakespeare stated that he was prepared to attend court and give evidence in this matter. However, it appears that no statement was ever taken from Mr Shakespeare.

213. Nor, so far as can be ascertained from the material produced to the Inquiry by the NSWPF, was any attempt ever made to locate and interview MF in relation to Mr Shakespeare’s accusations.

Interview with SR

214. On 30 June 1986, nearly six months after the interview with Mr Shakespeare and more than a year after Ms Waine’s death, investigating police (DS McCann and Plain Clothes Constable Di Francesco) spoke to SR (also known as NP181): see [90] above. Again a typed record of interview (**ROI**) was prepared, and it appears to have been signed by SR (although again not by the interviewing officer, who in this case was DS McCann).

215. The running sheet in respect of that day, 30 June 1986, to which this ROI seems to have been attached, is also headed “WENDY WAYNE @ BRENNAN MURDER INQ”. At the foot of the page of this running sheet again appears the much later date, 20 January 1991, against the name (again) of DSC Di Francesco of Homicide South.

216. SR’s ROI is somewhat difficult to follow and at times ambiguous. However, SR does recount a conversation that she claims to have had with Mr Shakespeare about Ms Waine’s murder. When this conversation is suggested to have taken place is not clear.

217. According to SR, Mr Shakespeare told her, among other things, that:

- a. He himself had been present at Ms Waine’s flat on the night of Ms Waine’s murder, at about 10:00pm. Also present, apart from himself, were Ms Waine, MF, “some guy reportedly MF’s boyfriend whose surname was Alexander”, and a person called “Phyllis” who was “Wendy’s best friend”.
- b. He “hadn’t told the police everything because he didn’t want his wife to know that he had been involved with these transsexuals”.

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- c. He had left MF at Ms Waine’s place “because there was some argument over a quantity of heroin, reportedly about \$15,000, street value worth”, that Ms Waine had “flushed” down the toilet because she hadn’t wanted heroin in her place.
- d. The heroin that MF had “came through” Neddy Smith, and Mr Shakespeare had “no doubt in his mind” that Ms Waine had been murdered over heroin.

218. According to SR, she expressed suspicion about the involvement of “Phyllis”. She said that although Phyllis was Ms Waine’s “best friend”, she had not waited for the funeral but instead had just gone to New Zealand immediately after Ms Waine’s death.

219. However, more than a year earlier, on 6 May 1985, police had interviewed PW, a friend of Ms Waine’s, who claimed that she had travelled to Christchurch, New Zealand, on 18 April 1985 – that is, some eleven days before Ms Waine’s death.¹¹⁵

220. Through interagency cooperation, the Inquiry has confirmed that PW did in fact depart Australia on 18 April 1985, on vessel TE44. On the assumption that PW was the “Phyllis” in question, then the accusations about her both by Mr Shakespeare (to SR), and by SR herself, would appear plainly to be wrong.

221. SR’s whole account must be treated with great caution, including because it is second-hand hearsay and generally of an imprecise or speculative nature.

222. There are also notable discrepancies between Mr Shakespeare’s account in his own ROI and that attributed to him by SR in her ROI – including, for example:

- Mr Shakespeare told police he had never been inside Ms Waine’s flat, but supposedly told SR that he was in the flat on the very night that Ms Waine was murdered;
- Mr Shakespeare’s ROI makes no mention of any involvement of “Phyllis” in Ms Waine’s death, but in the version he supposedly conveyed to SR, “Phyllis” was also present in the flat on the night in question;
- Mr Shakespeare’s ROI makes no mention of a person whose surname was Alexander, being MF’s boyfriend, while conversely SR’s ROI makes no mention of Mr Shakespeare saying anything about “Ian”;

¹¹⁵ P109 Report of Occurrence, Interview with PW, 6 May 1985 (SCOI.82824, p. 75).

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- The reputed street value of the drug was “five or six hundred dollars” according to Mr Shakespeare’s ROI, but “about \$15,000” according to what Mr Shakespeare supposedly told SR.

223. The Inquiry has confirmed that SR is now deceased.¹¹⁶

Credibility of Danny Shakespeare

224. Danny Shakespeare has a long public criminal history as a conman, police informer and liar. His criminal record dates back to 1979, and spans NSW, Victoria, South Australia and Queensland. His record includes offences of fraud, stealing, and robbery, as well as notably a charge of knowingly making a false accusation (as to which, see [225.b] below).¹¹⁷

225. Mr Shakespeare has been comprehensively and repeatedly discredited as a witness of truth. Two examples indicate the views of judicial officers about Mr Shakespeare’s reliability:

- a. Mr Shakespeare was the key prosecution witness in the case against Mr Garry Nye for the murder of Mr Roy Thurgar. Mr Nye was acquitted after trial in 1992, and sued the State of New South Wales for malicious prosecution, wrongful arrest and false imprisonment. O’Keefe J upheld Mr Nye’s claims and awarded both aggravated and exemplary damages: *Nye v State of New South Wales* [2003] NSWSC 1212. In his judgment, O’Keefe J made a scathing assessment of Mr Shakespeare’s credibility.¹¹⁸ His Honour described Mr Shakespeare as an “obvious liar”,¹¹⁹ and found that Mr Shakespeare’s account was “so shot-through with recantations, contradictions, discrepancies and like indications of the untrustworthiness as to be ludicrous”.¹²⁰ His Honour considered that “deliberate lies were apparent”¹²¹ and that Mr Shakespeare was “making a good deal of his story up as he went along.”¹²² As Mr Shakespeare’s evidence was essential to the prosecution case, his Honour concluded that there was no reasonable and probable cause for the institution of the criminal proceedings against Mr Nye.
- b. In 1996, Mr Shakespeare gave evidence before the NSW Coroner that he had witnessed Detective Inspector John Davidson murder the notorious hitman Christopher Dale Flannery,

¹¹⁶ Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [19].

¹¹⁷ See Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [12]-[18].

¹¹⁸ *Nye v State of New South Wales* [2003] NSWSC 1212 at [47]-[94].

¹¹⁹ At [93].

¹²⁰ At [88].

¹²¹ At [59].

¹²² At [80].

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also known as “Mr Rent-a-Kill”.¹²³ At that time, Mr Shakespeare was using the alias Danial Page.¹²⁴ Mr Shakespeare’s account was thoroughly discredited. In his findings as to the death of Mr Flannery, Coroner Greg Glass commented that Mr Shakespeare “displayed an extraordinary ability to stand his ground, to persistently lie under oath with a straight face, and exhibit effrontery and boldness in the manner he gave his false evidence.” His evidence was described as a “systematic and calculated attempt by him to mislead police, coronial investigators, Counsel Assisting, the Court and even his own legal advisers on a grand scale.”¹²⁵ Mr Shakespeare would later plead guilty to a charge of making a knowingly false accusation against Mr Davidson.¹²⁶ Coroner Glass referred the inquest papers to the Director of Public Prosecutions, on the basis there was evidence to support a perjury charge against Mr Shakespeare.¹²⁷

226. Some aspects of Mr Shakespeare’s ROI are consistent with some of the objective circumstances known about Ms Waine’s death, including: that Ms Waine was seen leaving Premier Lane with an unknown man; that Ms Waine was killed in her Darlinghurst apartment; that Ms Waine was naked when killed; that Ms Waine was killed by gunshot; and that the offender/s had removed ballistics evidence from the scene.

227. However, a media review conducted by the Inquiry discloses that all of those details had been published in newspaper reports at the time of Ms Waine’s death.¹²⁸ Accordingly they cannot and do not indicate anything about the veracity of Mr Shakespeare’s overall account.

Subsequent investigative steps not taken

228. By 1986 (when Mr Shakespeare was interviewed in connection with the death of Ms Waine), Mr Shakespeare had been convicted of serious violent property offences, including robbery and demanding money with menaces. However, he did not yet have any convictions for dishonesty offences. His first conviction for a dishonesty offence, dishonestly obtaining a benefit by deception, occurred in late 1987. It is therefore unknown whether investigating police would have been aware of his unreliability and untruthfulness.

¹²³ Inquest findings into the disappearance and suspected death of Christopher Dale Flannery, 5 June 1997.

¹²⁴ *Ibid* p. 480.

¹²⁵ *Ibid* p. 482.

¹²⁶ *Ibid* p. 484.

¹²⁷ *Ibid* p. 485.

¹²⁸ ‘Drag queen’s death riddle’. *The Daily Mirror*, 1 May 1985 (SCOI.82939); ‘Police hunt transvestite’s killer’. *Sydney Morning Herald*, 1 May 1985 (SCOI.82923); ‘Killer could strike again: Body in the pool of blood’. *The Sun*, 1 May 1985 (SCOI.82947); ‘I sent ‘Wendy’ his Killer! Police told of ‘sick pervert’. *The Daily Mirror*, 3 May 1985 (SCOI.82966); ‘Wendy killing shocks gays’. *The Daily Telegraph*, 1 May 1985 (SCOI.82963).

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229. However, as noted above, the discrepancies between his own ROI and what SR claimed that he had said to her are numerous and significant.
230. Nevertheless, given that the central feature of Mr Shakespeare's two different versions was that MF had some involvement in the murder of Ms Waine and knew who the actual murderer was, the apparent absence of any attempt to locate and interview MF is unexplained.
231. The only material produced by the NSWPF to the Inquiry which refers to any interaction by police with MF is a Bureau of Crime Intelligence form called a "Criminal and General Information" (CGI) Form. It is dated 26 January 1986, and it records that at 12.20am, on Saturday 25/1/86, Detective Constable BJ Whittle spoke to MF on the street at Kings Cross Road, Kings Cross.
232. The form, as completed by DC Whittle on 26 January 1986, makes no mention of Ms Waine's murder. It notes that MF also had an "alias/nickname" of "[redacted NP176]". It refers to her "new address" in Petersham, and to things that she said including who she said she was living with, that she had been released from prison three weeks ago, that she was not using heroin or working on the streets, and that she was receiving unemployment benefits.
233. This CGI form, like the ROIs of both Mr Shakespeare (5 January 1986, three weeks earlier) and SR (30 June 1986, five months later), was also annexed to a police "running sheet", this one in respect of 26 January 1986. This running sheet was again headed "WENDY WAYNE @ BRENNAN MURDER INQ". Again, at the foot of the page of this running sheet appears the date, 20 January 1991, against the name of DSC Di Francesco of Homicide South.
234. The running sheet in relation to the interaction with MF on 25 January 1986 contains the following under the heading "Narrative":
- "[MF] was spoken to at Kings Cross on 26.1.86. At the time the interviewing officer did not realise that she/he was a suspect in the matter and only recorded the details as a matter of course."
235. Thus, according to this running sheet, MF was regarded as at 25 January 1986, by someone, as a "suspect in the matter". Whether that view was based on Mr Shakespeare's claims, or otherwise, is not apparent. However, regardless of the basis on which police held that view, there is nothing in any material produced to the Inquiry by the NSWPF which suggests that any other steps were ever taken to locate or interview that "suspect", MF, in connection with the murder of Ms Waine.
236. On 22 July 1986, DS McCann signed a statement for the Coroner, which was tendered at the inquest into Ms Waine's death on 18 September 1986. The statement made no mention of the claims made

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by Mr Shakespeare or SR, or about any line of inquiry relating to Ms Waine being killed in relation to drug related matters. DS McCann said:

“Extensive media coverage was given to the murder and consequently a number of lines of information were received. These enquiries have extended to other states of Australia, however, nothing of any constructive value has come to light. It is fair to say that at this stage, there is no singular concerted line of investigation.”¹²⁹

237. It is submitted that the Coroner should have been made aware of the alleged confession by MF as to her involvement in the death of Ms Waine. At the very least, the Coroner may have taken steps to summons MF as a witness. Even if, as may be the case, police (not unreasonably) considered Mr Shakespeare’s evidence to be of no “constructive value”,

- (a) Mr Shakespeare’s credibility was properly a matter to be considered by a Coroner, and
- (b) in any event the real issue was what MF might say rather than what Mr Shakespeare might have said.

238. The Inquiry has made extensive efforts to ascertain whether MF is still alive and if so her whereabouts, as detailed in the statement of Mr Carvosso.¹³⁰ This included summonses to BDM as well as the corresponding agency in every other state and territory, the police forces of each state and territory, DCJ Housing and the Department of Health, as well as requests to Services Australia, the DFAT and FASS. Staff of the inquiry also visited the last recorded address for MF. These efforts have been unsuccessful. The last confirmed record of MF was for petty charges in Sydney in May 1986. Since then, there appears to be no record of her, anywhere in Australia.

The Coven of Mercy for Fate

239. On 1 May 1985, Alan Baskin, a journalist at 2UE radio station, received a call from an unknown male person, who told Mr Baskin that he was from the “Coven of Mercy for Fate.” This person stated, “We got Wendy and hope to get all Sydney gays. This is a public announcement.”¹³¹ The person was described as having a “youngish voice”.

¹²⁹ Statement of DS McCann, 22 July 1986 (SCOI.00014.00008) at [11].

¹³⁰ Statement of Rhys Carvosso, 30 May 2023 (SCOI.47479) at [4]-[11].

¹³¹ P109 Report of Occurrence, Information received at radio station, 1 May 1985 (SCOI.82924, p. 43).

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240. On 2 May 1985, Terry Goulden from the Gay Counselling Service of NSW received a recorded telephone message of a male voice saying “We have got Wendy and you’re going to pay. This is the Coven of Mercy for Fate.”¹³²

241. The material produced to the Inquiry by the NSWPF contains no indication that any steps were taken to request call records or otherwise to identify the caller or callers who made the phone calls received by Mr Baskin and Mr Goulden.

242. The Inquiry’s own investigations, including a media review, have not uncovered any information about any group or organisation called the “Coven of Mercy for Fate.” “Mercyful Fate” was a heavy metal band formed in 1981, whose song “Into the Coven” was released in 1983 and contained occult and satanic themes. It may be that these themes were being referenced by the unknown caller.

243. However, there is no evidence to substantiate any link between Ms Waine’s death and an unidentified “coven.” It may be that the unknown caller/s was or were opportunistically taking advantage of Ms Waine’s murder to sow fear amongst LGBTIQ community.

A fingerprint match in 1989

244. In July 1989, more than four years after Ms Waine’s death, a fingerprint that had been found on a telephone in Ms Waine’s premises in 1985 was identified as belonging to a known person, MG.¹³³ This identification occurred shortly after MG’s prints were uploaded onto the police database in June 1989 when he was arrested for unrelated driving matters.¹³⁴

245. On 10 January 1991, MG was interviewed by Detective Senior Constable Di Francesco. A typed record of the interview was made. In the interview, MG admitted to knowing Ms Waine through another “Kiwi” transgender sex worker, and to engaging her services as a sex worker in 1984.

246. MG initially denied ever going to Ms Waine’s premises at [REDACTED] Darlinghurst Road, Kings Cross. However, when confronted with the evidence that his fingerprint was located there, he told police that he had a friend who had lived at the premises prior to Ms Waine, named Carmen Rupe. Ms Rupe was also a transgender sex worker, and had been spoken to by police early in their investigation, on 30 April 1985.¹³⁵ The available evidence indicates that Ms Waine only moved into the apartment in

¹³² P109 Report of Occurrence, Information from Terry Goulden, 2 May 1985 (SCOI.82924, p. 54).

¹³³ Latent Fingerprint Unit, Serious Crime Identification Report, 27 October 1989 (SCOI.10228.00002).

¹³⁴ See Fingerprint form for MG, 18 June 1989 (SCOI.82922), p. 2.

¹³⁵ Statement of Carmen Rupe, 30 April 1985 (SCOI.10040.00034).

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November 1984, and that prior to that time the unit was already frequently being used for sex work: see above at [90].

247. However, the police do not appear to have made any investigation into MG's explanation for the presence of his fingerprint on the telephone. No enquiries were ever made with Ms Rupe, after police became aware of the fingerprint match, as to her association with MG.

248. The Inquiry has ascertained that Ms Rupe is now deceased, and the opportunity to corroborate or disprove MG's explanation is lost.

249. The material produced to the Inquiry by the NSWPF does not contain any statement from the crime scene officer who examined Ms Waine's unit for fingerprints in 1985. There is no description of where the telephone upon which MG's fingerprints were found was located within the unit, nor as to where on the telephone the fingerprint was placed. There is also no information as to whether any other unidentified fingerprints were found in Ms Waine's apartment.

250. In the absence of this information, it is impossible to assess the plausibility of MG's fingerprint persisting on the telephone from November 1984, at the latest, until the date of Ms Waine's death. The Inquiry understands through inter-agency cooperation that MG is alive.

Submission as to bias

251. Ms Waine was a transgender woman, a visible and prominent member of the LGBTIQ community, and a street-based sex worker. These factors exposed her to the risk of being the target of LGBTIQ hate or bias, and the possibility that her gender identity was a factor in her death cannot be excluded.

252. However, she was killed by bullets fired from close range into the back of her neck and her upper back, and the bullets and spent cartridges were apparently removed by the killer or killers. Those factors suggest the likelihood of a professional "hit" rather than a hate crime.

253. While the identity of Ms Waine's killer or killers remains unknown, there is no sufficient basis for a conclusion as to whether or not that her murder involved LGBTIQ bias.

Submission as to manner and cause of death

254. It is submitted that the original finding at the coronial inquest remains appropriate, namely that Ms Waine died on 29 April 1985 of the effects of bullet wounds of the neck and thorax inflicted there and then by a person unknown.

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Submission as to recommendations

255. There is no submission as to recommendations.

Peter Gray SC

Kathleen Heath

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