



Special Commission of Inquiry into LGBTIQ hate crimes

26 July 2022

Jae Gerhard
Independent Forensic Services

By email: [REDACTED]

Dear Ms Gerhard,

Special Commission of Inquiry into LGBTIQ hate crimes: death of Scott Miller

As you are aware, I assist the Honourable Justice John Sackar in the Special Commission of Inquiry into LGBTIQ hate crimes (“the Inquiry”). The Inquiry is considering the death of Scott Stuart Miller, who was found deceased near Wharf 5, Hickson Road in Darling Harbour, Sydney on Monday, 3 March 1997.

Request for supplementary expert opinion

You have previously provided an expert report dated 29 May 2023 to the Inquiry in relation to Mr Miller’s death.

Since receipt of your expert report, the Inquiry has given consideration to possible further forensic testing of Mr Miller’s clothing. In consideration of further testing, a summons to produce was issued to the Forensic and Analytical Science Service (“FASS”) on 27 June 2023.

On 30 June 2023, FASS produced material pursuant to that summons which indicated that on 10 March 2010, Detective Sergeant Robert Allison requested that FASS conduct trace DNA testing on Mr Miller’s clothing, and a supplementary report was prepared on 9 November 2012.¹

By this letter, you are requested to prepare a supplementary report addressing the further testing conducted by FASS conducted between 2010 and 2012 and addressing the utility of any further testing that could be done now.

Materials with which you are briefed

To assist you in the preparation of your report, I refer to the background information and briefing materials provided in my letter of instruction dated 24 April 2023, to the extent that they are necessary. It is not anticipated that any re-examination of Mr Miller’s clothing will be necessary to provide the report.

¹ FASS Report of further DNA testing, 9 November 2012, 7 and 12 (SCOI.84765).

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For the purpose of the supplementary opinion, you are also briefed with the further material which is **enclosed** with this letter:

1. The complete file for the DNA analysis conducted by FASS between 2010 and 2012 regarding the death of Scott Miller; and
2. Two photographs of the stained t-shirt worn by Mr Miller.

Matters to be addressed in your supplementary report

I would be grateful if you could address the following matters in your supplementary report, having regard to the material with which you are briefed and to the extent that they are matters which fall within your training and expertise:

1. Please outline the interpretation and significance of the results of the further DNA analysis undertaken by FASS between 2010 and 2012, including the nature of the tests undertaken. If this further analysis is relevant to addressing the matters below, please indicate as such in your answer.
2. In your expert report dated 29 May 2023, you noted a number of different stains on Mr Miller's jeans, which tested negative for the presence of blood.² Please provide your opinion as to the likely nature of the staining to Mr Miller's jeans, and if it is consistent with being dirt, debris or another form of organic matter.
3. Please outline any further testing available to identify the staining to Mr Miller's jeans, and whether you consider that testing would have probative value in this case.
4. As noted in your expert report dated 29 May 2023, DNA analysis was previously conducted on four areas of Mr Miller's white t-shirt and the results of that testing indicated that the blood was consistent with being from Mr Miller.³ From the perspective of a bloodstain analyst, please provide your opinion as to whether it is possible the other bloodstains on Mr Miller's t-shirt came from different sources.
5. Please provide your opinion on whether you would recommend further DNA testing of the blood stains on Mr Miller's t-shirt.

In answering the above question, please outline any specific stains or areas which ought to be selected for testing and conversely, any areas which ought not be targeted. Please also outline the nature of the testing, including whether it would involve the cutting or destruction of the t-shirt.

6. Please outline the likely utility of testing Mr Miller's clothing for trace DNA, in light of the circumstances of and background information provided regarding his death, and any testing or analysis already conducted on Mr Miller's clothing. If the concepts of transfer and persistence are relevant to answering the above, please explain their impact on your answer.

If there is any other matter arising from the circumstances of Mr Miller's death within your area of expertise on which you wish to express an opinion and which will be of assistance to the Commissioner, please do so.

² Expert Report of Jae Gerhard of Independent Forensic Services, 29 May 2023, [10.2], [10.6]-[10.7] (SCOI.83328).

³ Second Statement of Virginia Friedman, Division of Analytical Laboratories, 19 May 1998 (SCOI.10048.00006); Expert Report of Jae Gerhard of Independent Forensic Services, 29 May 2023, [11.17] (SCOI.83328).

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Timeframe for Provision of Supplementary Report

Your supplementary report is requested as soon as possible and by **Thursday, 3 August 2023**.

In the event that you require further time to prepare your report, please advise Ms Lockery as soon as possible.

Expert Code of Conduct

I **enclose** a copy of the Expert Code of Conduct and ask that you read it carefully. In the supplementary report you should acknowledge that you have read the Code and agree to be bound by it. I suggest the following form of words be included in the body of your report:

“I, **Jae Gerhard**, acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in Schedule 7 to the said rules and agree to be bound by it.”

Thank you for your consideration and assistance.

Please do not hesitate to contact Kate Lockery on [REDACTED] or [REDACTED] if you have any queries in relation to this matter.

Yours faithfully,



Kate Lockery
Principal Solicitor
Solicitor Assisting the Inquiry