

PATHWEST LABORATORY MEDICINE WA
DEPARTMENT OF FORENSIC PATHOLOGY
& STATE MORTUARY SERVICE
(NATA/RCPA Accredited Laboratory No. 2392)



Ms Kate Lockery
Principal Solicitor
Solicitor Assisting the Inquiry
Special Commission of Inquiry into LGBTIQ hate crimes

Dear Ms Lockery

RE: Request for expert opinion, death of Scott Stuart MILLER
Case no. A00216/22

Thank you for your request for expert opinion.

Please refer to the attached document detailing the results of my review of the provided case material, with particular focus on the matters to be addressed.

Kind regards

A handwritten signature in blue ink, appearing to read "V. B. Kueppers".

Dr V. B. Kueppers MBBCh (Wales) FRCPA
Forensic Pathologist

18-Sept-2023

Case No. A00216/22

OPINION REPORT

Deceased S MILLER



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OPINION REGARDING THE DEATH OF SCOTT STUART MILLER

My name is Victoria Barbara KUEPPERS and my professional address is PathWest Laboratory Medicine, Locked Bag 2009, Nedlands WA 6909.

I am a registered medical practitioner practising as a specialist in forensic pathology.

My qualifications include a Bachelor in Medicine and Surgery (MBBCh) with Commendation from the University of Cardiff (Wales). I am a Fellow of the Royal College of Pathologists of Australasia (RCPA) by examination in Forensic Pathology.

I am employed as a Forensic Pathologist at PathWest Laboratory Medicine in Western Australia.

My practical experience in forensic pathology formally commenced in 2013, when I began supervised training in forensic pathology following successful completion of the Part 1 Anatomical Pathology examinations. I trained at PathWest Laboratory Medicine, where I have stayed on as a Consultant Forensic Pathologist following the successful completion of final specialist examinations in 2015.

I have been practising as a specialist Forensic Pathologist since February 2016.

Please also refer to the attached *curriculum vitae*.

VBK

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As per request from Ms Kate Lockery, Principal Solicitor for the Special Commission of Inquiry into LGBTIQ hate crimes, please see enclosed an opinion report based on briefing materials received.

EXPERT CODE OF CONDUCT

I, Dr Victoria Barbara Kueppers, 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.

MATERIALS PROVIDED (as at 8 Sept 2023)

- Final autopsy report of Dr Duflou
- Toxicology report
- Neuropathology report
- DAL certificate
- Additional DAL certificate
- Transcript of Coronial Inquest
- Coronial findings
- Crime scene photographs (25 total)
- Autopsy photographs (29 total)
- Panorama photograph of Munn Reserve
- Police running sheet
- Statement of plain clothes Senior Constable Michael Lane
- Statement of Detective Senior Constable Lyle William Van Leeuwen
- Statement of Detective Senior Sergeant Carlton Graeme Cameron
- Report of Detective Sergeant Desmond, "New information on Darling Harbour Death"
- Statement of Shawn Kelly
- Statement of Jane (.sic) Carter
- Expert report of Dr Linda Iles, Forensic Pathologist
- Letter of instruction to Dr Iles
- Expert report of Jae Gerhard, Independent Forensic Services
- Letter of instruction to Independent Forensic Services
- Statement of Inspector Andrew Brady re debris found in Mr Miller's hand
- Expert report of Professor Claude Roux re debris

VBK

BRIEF CASE SYNOPSIS

Mr Scott MILLER was a 21-year old man who was out drinking with friends in the evening and night of Saturday March 1, 1997. He and friends had attended the Mardi Gras parade. He was last seen by a friend at the Orient Hotel in the early hours of Sunday March 2. He was thereafter seen by a local resident (Jade Carter) as she was walking home from the Sydney Observatory area. Mr Miller was walking behind her and appeared possibly lost but he was not in a rush and did not appear injured. They did not interact.

Mr Miller's body was discovered within the compound of Patrick Stevedores Wharf 4 at Darling Harbour on Monday March 3 in the morning. His body was located on asphalt at the base of a (reportedly seven (7) metres high) cliff. Some green ivy and a tree branch were located next to the body.

Entry to the wharf area is fenced in and gated, although one statement mentions a defective gate which is left open (statement of Detective Senior Sergeant CAMERON refers). The cliff is fenced off with a steel fence which is fitted with barbed wire. There was blood staining on and near Mr Miller's body but no blood staining or droplets were located anywhere else in the machinery yard or in the area at the top of the cliff.

Scene photographs demonstrate the clearly injured body of a clothed young man lying on his front at the base of a cliff. A large pool of blood is present near the head. There is blood staining to parts of the (white) T-shirt, most prominent to the right sleeve and shoulder region, with a lesser amount visible towards the back of the right shoulder. Analysis indicated all blood stains came from Mr Miller. Mr Miller's wallet was present in his back pocket and appeared undisturbed. The clothing was also intact and undisturbed and whilst Mr Miller was not wearing underpants there was no indication of a sexual assault; later forensic analysis of intimate swabs did not identify semen.

The main issue appears to be whether Mr Miller sustained his fatal injuries as a result of a fall from height versus homicidal action.

According to all available information no forensic evidence has been recovered supportive of an assault or third-party involvement. At the time of the death the possibilities of a fall vs assault (homicide) or a combination were considered and initially the manner of death was favoured to be homicide (Coronial Report refers).

This was favoured in part as there had been no apparent disturbance to the foliage at the top of the cliff, or physical evidence of anyone climbing the fence at the top of the cliff. Furthermore, interpretation of injuries by Dr Dufrou favoured assault over a fall from height.

Since reports were provided by my colleagues Drs Dufrou and Iles, further expert reports have become available, which I am able to take into consideration (Expert report of Jae Gerhard, Independent Forensic Services; Statement of Inspector Andrew Brady re debris found in Mr Miller's hand; Expert report of Professor Claude Roux re debris).

MATTERS FOR CONSIDERATION WITH RESPONSES

1. *Please conduct a review of the reports of Dr Iles and Dr Duflou, and the opinion of Dr Duflou provided orally at the inquest into Mr Miller's death.*

- a) Dr Duflou's report (aa) and verbal opinion (bb)

aa) Dr Duflou attended the scene of the death in the morning of March 3, 1997 and conducted the autopsy later on March 3, 1997. The autopsy report is reflective of a comprehensive approach to the death and whilst photographs taken during the post mortem examination are not to current standard, they are sufficient to assist in the formation of an opinion with regards to the cause of death. Dr Duflou summarises his post mortem findings as multiple injuries, including massive skull fracturing, contusions of the brain, laceration of the liver, avulsion of the right kidney, intra-abdominal haemorrhage, bilateral wrist fractures, pulmonary contusion; as well as previous injury to the sternum and left tibia and alcohol intoxication (blood alcohol concentration 0.220g/100ml; 0.22%). No evidence of significant underlying natural disease is noted. Dr Duflou concludes that Mr Miller died as a result of multiple injuries. He provides different scenarios as to how these injuries may have occurred, including a fall from height, homicidal assault or a combination of both. At the time of providing the post mortem report one scenario is not favoured over another. Dr Duflou interprets the results of neuropathology and microscopy of tissues to be essentially non-contributory, with which I agree.

Based on the provided autopsy report in conjunction with scene and autopsy photographs I agree with Dr Duflou that Mr Miller died from multiple injuries.

bb) In summary, Dr Duflou expresses an opinion during the Coronial Inquest into Mr Miller's death which indicates that he favours the injuries to be due to assault rather than a fall from height. He opines that the injuries (truncal and head) are overall not typical of a fall from height and, in combination with a lack of definite evidence to support Mr Miller having been at the top of the cliff (on the wharf side of the fence) and partly the position of the body at the bottom of the cliff, concludes that he favours homicide as a manner of death. He also opines that the alcohol level detected in Mr Miller's blood (assumed to be reflective of his blood alcohol level at the time of his death) would not have supported the motor skills required to climb the fence; however, he states that if the deceased had managed to somehow climb the fence, a fall would have occurred very easily in such an intoxicated state.

I mostly disagree with Dr Duflou's verbal opinion.

VJK

In my opinion, the overall injuries in conjunction with the provided circumstances surrounding the death, including the positioning of the body at the bottom of the cliff, are entirely in keeping with a fall from height.

The blunt force injuries to the front of the face and neck appear to have a longitudinal (vertical) directionality to them, in areas appearing like brush abrasions which are not infrequently seen with broad blunt impact with a degree of directional friction, i.e. impacting a rough surface such as asphalt. The underlying skull and brain injuries are in keeping with a frontal impact to the head (more specifically the face), there being no obvious features of more localised assault and/or multiple impacts.

The internal injuries to the chest and abdomen are in keeping with deceleration-type injuries as may occur with a fall from height where the face is the primary impact site and essentially taking most of the kinetic energy from the fall. The body stops abruptly and the internal organs which are partially tethered get pulled back causing internal injury. In addition, in some cases of abdominal trauma significant abdominal wall injury may not be observed due to the pliable nature of the abdomen. Similarly, chest wall injuries or rib fractures may not be observed due to the pliable nature of the ribcage, especially in a young person. Furthermore, direct impact force to the chest and abdomen would have been reduced due to the primary impact point having been the head. The injuries to the wrists could have occurred due to the fall; there is nothing specific to the wrist or hand injuries that would indicate defensive-type injuries.

In my opinion, the overall findings are in keeping with the death having occurred as a result of a fall from height; I cannot deduce how the fall may have occurred, i.e. as a result of an accident or a push.

In my opinion, the overall appearances at the scene are in keeping with Mr Miller having fallen to that position, without any significant movement having occurred thereafter.

I agree with Dr Duflou that a fall from height is more likely to occur in an intoxicated individual, and there appears to be no dispute that Mr Miller was acutely intoxicated. I disagree that it is unlikely Mr Miller climbed the fence at the detected alcohol level; whilst 0.22% would render many individuals very intoxicated, the level of impairment does depend on the individual as well as their tolerance to alcohol.

b) Dr Iles' report

In summary, Dr Iles reviewed the case material in relation to the medical investigation into the death of Scott MILLER and concluded that in her opinion the death was due to multiple injuries and that a fall from height was an entirely plausible explanation for the injuries.

VJK

Case No. A00216/22

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I will not repeat all the information contained in Dr Iles' report, as it reflects the original case material also provided to me, including a list of all of Dr Duflou's examination findings.

I agree with Dr Iles' interpretation of the findings.

I would, however, not include the likely cause of the injuries (fall from height) in my cause of death. This is purely based on personal preference and local practice.

I agree with Dr Iles that whilst other high energy blunt impact scenarios are possible (such as a pedestrian being hit by a moving vehicle), there are no truncal or lower limb injuries which suggest this.

I agree with Dr Iles that no injuries suspicious of an assault or defensive action are clearly identifiable.

I agree with Dr Iles that an assault prior to the fall cannot be excluded.

2. *Please comment on whether you agree or disagree with the opinions expressed by Dr Iles and Dr Duflou, and provide reasons for your agreement or disagreement.*

Please refer to number 1 above.

3. *To the extent that the opinions of Dr Iles and Dr Duflou differ, please identify which opinion you prefer and your reasons as to why.*

I prefer Dr Iles' opinion, for reasons already explained (see number 1 above).

In summary, I agree with both Drs Duflou and Iles regarding the cause of death (Multiple Injuries). However, I disagree with Dr Duflou regarding his opinion on the manner of death (homicide) and agree with Dr Iles' interpretation of the findings that the injuries are most likely due to a fall from height.

Based on all information available to me it appears there is a lack of evidence of homicidal assault, including circumstantial and post mortem findings.

The injuries present are in keeping with a fall from height.

Regardless of the additional expert opinions available to me which were not available to Drs Duflou and Iles, I favour Dr Iles' interpretation of the findings.

The additional reports on blood pattern analysis and analysis of debris from Mr Miller's hand appear to further support Dr Iles' (and my) interpretation of the findings.

VJK

Comment on additional expert reports available to me

a) Expert report of Jae Gerhard, Independent Forensic Services

It appears that following the recommendation from Dr Iles blood pattern analysis was conducted by a team of experts in the field. The report concludes that no blood stains were observed to indicate assault at the top or the bottom of the cliff; the bloodstaining patterns observed on the clothing and in scene photographs was consistent with the position Mr Miller was found at the bottom of the cliff following a fall, and there was no evidence of significant movement of Mr Miller once the bleeding facial injuries occurred.

The above conclusions support the theory of a fall from height having resulted in the fatal injuries.

b) Statement of Inspector Andrew Brady re debris found in Mr Miller's hand

It appears 'a piece of gravel' had been collected at the time of the post mortem examination conducted by Dr Duflou and retained by investigating police. This piece of debris was examined by Inspector Brady, who opined that the debris did not appear to be organic/plant material and did not appear to be gravel. He mentioned metallurgical properties (referring to it being magnetic) and suggested further analysis to definitely conclude the nature of the debris.

Further examination was performed by Professor Roux, as outlined below.

c) Expert report of Professor Claude Roux re debris

Professor Roux reports that test results indicated the debris to be a small fragment of man-made primarily metallic material, possibly galvanised steel. It is mentioned that this material *may* have originated from one of the metallic structures relevant to the scene of Mr Miller's death, including the steel fence at the top of the cliff. The reporter cautions that the presence of the material on Mr Miller's hand may not be reflective of direct contact with the object the material originates from, but may be present as a result of secondary transfer.

Whilst the findings by Inspector Brady and Professor Roux are not conclusive in terms of relevance as to how Mr Miller's injuries occurred, they could be consistent with Mr Miller falling off the cliff after having climbed the fence, the piece of metal representing direct transfer from the fence.

If feasible, it may be helpful to obtain a sample from the fence for comparative analysis.



Dr V. B. Kueppers MBBCh (Wales) FRCPA
Forensic Pathologist

18-Sept-2023

JBK

Dr Victoria Barbara Kueppers
MBBCh FRCPA

Date of Birth [REDACTED]-1984

Higher Education

2016	FRCPA Admission to Fellowship of The Royal College of Pathologists of Australasia (RCPA), Specialty: Forensic Pathology MBBCh with Commendation
2003- 2008	Wales College of Medicine, Cardiff University, Wales, UK

Employment

Feb '16- Present	Consultant Forensic Pathologist, PathWest Laboratories WA
Nov '13- Feb '16	Registrar in training, PathWest Laboratories WA, Forensic Pathology
Jan '11- Nov '13	Registrar in training, PathWest Laboratories WA, Anatomical Pathology
Sept '10- Jan '11	Registrar, Rockingham General Hospital, Anaesthetics
Oct '09- Sept '10	PGY2 Doctor (Resident), Rockingham General Hospital, Emergency Department and General Surgery
Aug '08- Aug '09	FPY1 Doctor (Intern), NHS Wales (Urology, General Medicine, Colorectal Surgery)

Courses and Conference Attendance

- Advanced Trauma Life Support certified (2011)
- Pre-hospital Advanced Trauma Life Support certified (2011)
- RCPA Short Course in Forensic Pathology, Hobart, November 2011
- Australia and New Zealand Forensic Science Society (ANZFSS) Symposium, Hobart, November 2012
- RCPA Forensic Interim Meeting, Hobart, November 2012
- RCPA Forensic Interim Meeting, Perth, October 2013

- RCPA Pathology Update, Melbourne, February 2014
- RCPA Forensic Interim Meeting, Adelaide, August 2014
- RCPA Short Course in Forensic Toxicology, Hobart, November 2014
- RCPA Pathology Update, Melbourne (speaker), February 2015
- RCPA Forensic Interim Meeting, Queenstown NZ, September 2015
- RCPA Pathology Update, Melbourne, February 2016
- 'A Heart with Mary Sheppard'; RCPA Short Course in Cardiac Pathology, Sydney, July 2016
- VIFM/Monash University Post Mortem CT Interpretation Course, Melbourne, September 2016
- RCPA Forensic Interim Meeting, Adelaide, November 2017
- RCPA Pathology Update, Sydney, March 2018; presented a poster in the category 'Forensic Pathology'
- RCPA Forensic Interim Meeting, Queensland, NZ, November 2019
- Virtual attendance RCPA Pathology Update 2021
- Virtual attendance RCPA Pathology Update 2022
- RCPA Pathology Update, Melbourne, 2023

Publications

Published in Forensic Science International, 2015:

V.B. Kueppers, C.T. Cooke, *25I-NBOMe related death in Australia: A case report*, Forensic Sci. Int. 2015 Apr; 249: e15-8.

Poster presentation at RCPA Pathology Update 2018 (Sydney, Australia) titled *Genital Injury? Clinical Forensic Medicine and Forensic Pathology Collaboration Distinguishes Artefact from Suspicious Injury*, VB Kueppers et al; abstract published in Pathology The Journal of the Royal College of Pathologists of Australasia, Vol 1 Supplement 1, S98.