



Coroner's Court
of New South Wales

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Mr Lloyd Babb SC
Director of Public Prosecutions for NSW
Locked Bag A8
Sydney South NSW 1232

07 March 2018

DPP
REFERRAL
LTR

Dear Mr Babb,

Re: Inquest into the death of Anthony Cawsey

I conducted an inquest into the death of Anthony Cawsey on 11 to 13 December 2017.

2. On 13 December 2017, I suspended the inquest pursuant to s. 78(3)(b) of the *Coroners Act 2009* ("the Act"). I am of the opinion that there is evidence capable of satisfying a jury beyond reasonable doubt that Moses Kellie (born [REDACTED] 1985) has committed an indictable offence and that there is a reasonable prospect that a jury would convict Moses Kellie of that offence. I am of the opinion that the indictable offence would raise the issue of whether Moses Kellie caused the death of Anthony Cawsey (born 26 January 1972), pursuant to s. 78(1)(b) of the Act. The indictable offence in question is manslaughter by dangerous and unlawful act.
3. The consequence of forming these opinions was that the inquest was suspended without my making findings on the manner, or circumstances, in which Anthony Cawsey sustained the stab wound which led to his death. The circumstances of Mr Cawsey's death, as disclosed by the evidence before me at the inquest, are set out in detail below. On the suspension of this inquest, I made the following findings pursuant to s. 81(1) of the Act. Anthony Cawsey died on 26 September 2009 at Centennial Park, Sydney, New South Wales. The cause of his death was Haemopericardium as a result of a stab wound to his left chest.¹

Movements and discovery of Anthony Cawsey

4. Mr Cawsey was 37 years old at the time of his death. He was employed as a rigger for a promotions company known as Show Support in which he was involved in setting up sound and lighting equipment and staging at different concert venues. His work hours were irregular and at different times of the day.

¹ Autopsy Report, Vol. 1, Tab 5

5. Mr Cawsey lived at [REDACTED] 43 Morehead Street, Redfern with his flatmate [REDACTED] 1407. He was a regular and long-term user of cannabis and methamphetamine. Mr Cawsey engaged in sexual activity with both men and women, although he was not open with friends and family about his homosexual activities. In the weeks prior to his death, he was seeing [REDACTED] by the name of [REDACTED] 1362.²
6. A detailed timeline of Mr Cawsey's movements in the day preceding his death may be drawn from CCTV footage and related evidence, and witness statements.³ Mr Cawsey spent most of the evening of 25 September 2009 at home in Redfern. At 11:56pm, Mr Cawsey left the Redfern apartment with his bicycle dressed for work.⁴ On 26 September 2009 at 12:06am, he arrived at the staff entrance of the Sydney Convention and Exhibition Centre at Darling Harbour where he worked with three other staff members until 2:28pm.⁵
7. Mr Cawsey rode his bicycle home and arrived at the Redfern apartment at 2:48am.⁶
8. At 4:24am, Mr Cawsey left the apartment and walked to Centennial Park.⁷ Mr Cawsey is believed to have arrived at the Robertson Road Gate at about 4:55am, taking the most direct route from Morehead Street to Centennial Park. It is about a 30 minute walk from the Redfern apartment to Centennial Park.⁸
9. While walking to Centennial Park he connected to a gay chat line, Mediatel Services, at 4:44am.⁹ Mr Cawsey recorded a message outlining his physical description, the fact that he was wandering through a park on the edge of the city in Sydney wearing female lingerie and that he wanted to have sex with another man.¹⁰ He remained engaged on Mediatel until about 5:07am while walking to Centennial Park.¹¹
10. At about 5:11am, [REDACTED] 1354 left a message on Mediatel. Using his landline telephone, [REDACTED] 1354 then contacted Mr Cawsey on his mobile telephone and they talked about sex while [REDACTED] 1354 masturbated. The phone call ended at 5:24am.¹²
11. At 5:56am, Mr Cawsey was found dead on a dirt track beside Busby Pond in Centennial Park by several park users who separately notified police.¹³ Mr Cawsey was lying face down on the track with his feet pointing towards Bushby Pond and his head part-way down a grass embankment. The waistband of his pants was pulled down to his mid-thigh with a pair of pink female underpants also pulled down and just visible below them. Mr Cawsey was wearing a black g-string exposing his buttocks and covering his genitals. There was a large amount of blood visible on the left side of his torso and the back of his shirt. It appears that he was stabbed close to where his body was

² [REDACTED] 1362 Vol. 2, Tab 47

³ Staples, Vol. 1, Tab 6, pp. 24-43; [REDACTED] 1407 Vol. 2, Tabs 49 and 50; Walsh, Vol. 2, Tab 51 and CCTV evidence, Vol.4, Tabs 156-160

⁴ Smith, Vol. 3, Tab 159, pp. 954-981

⁵ CCTV footage, Vol. 3, Tab 157, p. 935

⁶ Smith, Vol. 3, Tab 159, pp. 954-981

⁷ Smith, Vol. 3, Tab 159, pp. 954-981

⁸ Police time trial evidence, Vol. 9, Tabs 311 to 314

⁹ Combined CCR/RRCR for Cawsey's phone, Vol. 3, Tab 153, p. 898

¹⁰ Transcript of Mediatel message, Vol. 3, Tab 154, p. 901; Prince, Vol. 4, Tab 169

¹¹ Price annexure A, Vol. 4, Tab 170, p. 1438

¹² [REDACTED] 1354, Vol. 2, Tabs 78 and 79; Combined CCR/RRCR for Cawsey's phone, Vol. 3, Tab 153, p. 898

¹³ Long, Vol. 1, Tab 8; Keaton Stewart, Vol. 1, Tab 9; Brylan Stewart, Vol. 1, Tab 10

located as there was no trail of blood to suggest otherwise. Blood pooling was confined to the body and immediate surrounding area.¹⁴

12. Mr Cawsey was found with his wallet containing his driver's licence and phone in the back pocket of his pants. A tailor-made cigarette butt, "rollie" cigarette butt and red plastic cigarette lighter were found near his body.¹⁵
13. On 29 September 2009, forensic pathologist Dr Rebecca Irvine conducted a post-mortem investigation of Mr Cawsey. The stab wound was 2.7cm long, 0.3cm wide and approximately 10cm deep. Dr Irvine concluded that the cause of death was Haemopericardium due to the stab wound to the left chest.¹⁶ A toxicology report found the presence of alcohol, cannabinoids and methamphetamine in the post-mortem blood.¹⁷

Police investigation

14. On 26 September 2009, the Homicide Squad of the NSW Police Force established Strike Force Annand to investigate the murder of Mr Cawsey. The police investigation identified Mr Kellie as the sole person of interest in the stabbing of Mr Cawsey. Other lines of inquiry were followed during the course of the investigation as set out below.

Person known to victim

15. Statements were obtained from a large number of friends and associates of Mr Cawsey who provided their movements on 25 and 26 November 2009.¹⁸ Extensive call charge records were also obtained to explore the whereabouts of those persons known to Mr Cawsey. Further to these inquiries, volunteer DNA samples were obtained from a large number of friends, associates and co-workers. All were excluded as being contributors to the unmatched DNA samples from the G-string and rollie cigarette butt.¹⁹

Mediatel and Manhunt users

16. Mr Cawsey was a frequent user of gay chat line services, Mediatel and Manhunt. Police investigated the possibility that Mr Cawsey was killed at Centennial Park by someone with whom he had recent contact via one on these gay chat lines. During September 2009, Mr Cawsey used Mediatel on 26 occasions.²⁰
17. Of note regarding the Mediatel message that Mr Cawsey left at 4:44am is the absence of any identification of the park or suburb where he was located. The absence of specific location details lends itself to excluding the other gay chat users as alternate persons of interest. Neither Manhunt nor Mediatel could determine who Mr Cawsey may have live chatted or connected with directly through these telephone calls. It is not possible to say what arrangements or information may have been planned or discussed during such interactions.²¹

¹⁴ Autopsy Report, Vol. 1, Tab 5

¹⁵ Crimmins, Vol. 1, Tab 35

¹⁶ Autopsy Report, Vol. 1, Tab 5

¹⁷ Certificate of Analysis, Vol. 1, Tab 4

¹⁸ Vol. 2, Tabs 46 to 152

¹⁹ Leggat annexure G, Vol. 4, Tab 174, pp. 1546-1551

²⁰ Price annexure A, Vol. 4, Tab 170, pp. 1437-1438

²¹ Vol. 4, Tabs 169-174

18. Volunteer DNA samples were obtained from those male callers who were in the Sydney metropolitan area at the time of the calls made by Mr Cawsey on 26 September and using the Mediatel or Manhunt services. In total 76 volunteer DNA samples were obtained from Mediatel or Manhunt callers and no match was identified. No persons of interest have been identified from this line of inquiry.²²

Gay hate crime

19. An early line of inquiry followed by police was whether or not this was a gay hate crime or the result of anti-homosexual violence, noting that certain areas of Centennial Park are said to be known as a "gay beat". Carrington Drive and Lachlan Swamp in Centennial Park are known as homosexual/bisexual areas for sexual activity.²³ Mr Cawsey was found at Snake Bank which runs beside Busby Pond. This is not known as an area within the park for male sexual activity.
20. The expert opinion of a forensic psychologist obtained by police tends to exclude a gay hate crime: *"I think primarily the absence of excessive violence against the victim in this case would be the main factor that does not support this as being a hate crime"*.²⁴
21. Further review of the COPS entries for the local area command that covers Centennial Park indicated that there was no evidence that during the six-month period surrounding Mr Cawsey's death that any person or persons were committing bias or gay hate or transgender/transsexual targeted crimes in the area. There were no police records or internet records indicating that gay hate offending was occurring in the Centennial Park area during 2009.²⁵ There was also no record of such incidents in Centennial Park records.²⁶ Consequently, it appears that this is not a targeted gay hate attack although the sexual conduct of Mr Cawsey's life is relevant to the circumstances which precipitated the stabbing.

Moses Kellie

22. Mr Kellie immigrated to Australia from Sierra Leone in 2006 at the age of 21 years under the sponsorship of his sister [1357] and her husband. Mr Kellie lived with [1357]'s family in Doonside until late 2006 when he moved out.²⁷ At some stage, Mr Kellie lived at in rental accommodation in Marrickville and later at the Matthew Talbot Hostel in Darlinghurst in 2008.
23. Between April 2009 and November 2009, Mr Kellie was homeless and living in Centennial Park at three campsites. One of those campsites was a concrete drain pipe approximately 75 metres east of the location where Mr Cawsey was found.²⁸
24. Mr Kellie was convicted and sentenced to imprisonment for two offences that were proximate in time and place to the stabbing of Mr Cawsey. The first offence was the robbery with wounding of [1359] on 11 October 2009. [1359] was walking along Lang Road outside the fence on the perimeter of Centennial Park and talking to [redacted] friend [redacted] on the phone when Mr Kellie threatened [redacted] with a knife, stole [redacted] phone and wounded [1359]'s upper left arm with

²² Leggat annexure G, Vol. 4, Tab 174, pp. 1546-1551

²³ Centennial Park Gay Sydney Cruising Areas, Vol. 10, Tab 320

²⁴ Email from Ora, Vol. 10, Tab 323, pp. 3778-3779 and articles by Mouzos and Thomson, Vol. 10, Tab 324, pp. 3811-3820, 3827-3829

²⁵ Whitehead, Vol. 10, Tab 321 and NSW Beat Project, Vol. 10, Tab 320 pp. 3706-3721

²⁶ Maidment, Vol. 9, Tab 318

²⁷ [1357] Vol. 7, Tab 226

²⁸ Maps and legend, Vol. 1 Tab 6, pp. 108-111

the knife.²⁹ Mr Kellie pleaded guilty to the robbery with wounding. On 17 June 2011, Mr Kellie was sentenced to imprisonment for 5 years with a non-parole period of 3 years.³⁰

25. The second offence was assault occasioning actual bodily harm against [1360] on 16 October 2009 at 4:10am at Fox Studios.³¹ On 14 July 2010, Mr Kellie was found guilty of the offence by the Waverley Local Court and sentenced to 12 months imprisonment with a non-parole period of 9 months.³²
26. Mr Kellie is also suspected of committing an assault against [1361] on 23 September 2009 on Anzac Parade, Moore Park.³³ He was not charged for this assault. The three incidents and the death of Mr Cawsey occurred within a three week period and either inside or in the immediate vicinity of Centennial Park.

Evidence against Moses Kellie

27. The evidence that Moses Kellie stabbed Anthony Cawsey on 26 September 2009 consists of admissions made during a series of electronically recorded interviews ("ERISP") and circumstantial evidence.

Admissions

28. Mr Kellie provided a statement to police on 3 October 2009 and participated in four interviews on 16 October 2009,³⁴ 17 October 2009,³⁵ 17 January 2010³⁶ and 6 October 2015.³⁷ He made admissions during the interviews that are likely to be admissible in criminal proceedings.
29. On 17 January 2010, Mr Kellie was arrested in Eden on an outstanding warrant and interviewed in relation to the robbery of [1359]. During the interview, Mr Kellie described notable particulars in which he arguably conflated the stabbing of Mr Cawsey with the robbery of [1359]. The particulars described by Mr Kellie are set out below.
- a. Mr Kellie stated that he had two meetings with the victim. The first meeting took place when Mr Kellie "was entering the Park" at the "main gate" close to the "cricket ground". The cricket grounds are located within Centennial Park at McKay Sports Ground which is closest to the Robertson Road Gate on Lang Road.³⁸ Mr Cawsey is likely to have used the Robertson Road Gate to enter the park when taking the most direct route from his Redfern apartment. Mr Cawsey was known to have used the same entrance with flat mate [1407] the previous day.³⁹
 - b. Mr Kellie's encounters with the victim took place within Centennial Park. Mr Kellie marked the location on a map shown to him during the Eden interview.⁴⁰ The robbery of [1359]

²⁹ CAN and Fact Sheet for robbery charge, Vol. 7, Tabs 231 and 232; [1359], Vol. 7, Tabs 236 and 240; Reynolds, Vol. 7, Tab 241; Agreed Facts, Vol. 8, Tab 276

³⁰ Kellie criminal history, vol. 9, Tab 310, p. 3355

³¹ CAN and Fact Sheet for assault charge, Vol. 8, Tabs 278 and 279; [1360] Vol. 8, Tabs 280 to 282

³² Kellie criminal history, vol. 9, Tab 310, p. 3353

³³ [1361] Vol. 7, Tab 229

³⁴ ERISP transcript 16/10/2009, Vol. 5, Tab 204

³⁵ ERISP transcript 17/10/2009, Centennial Park, Vol. 5, Tab 206; ERISP transcript 17/10/2009 Maroubra Police Station, Vol. 5, Tab 208; ERISP transcript 17/10/2009, Centennial Park walk-through, Vol. 5, Tab 210;

³⁶ ERISP transcript 17/01/2010, Vol. 6, Tab 211

³⁷ ERISP transcript 06/10/2015, Vol. 6, Tab 213

³⁸ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q131, 165, 169, 290-294

³⁹ [1407] Vol. 2, Tab 49

⁴⁰ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q146-152

took place on Lang Road outside the fence bordering Centennial Park and close to the intersection between Lang and Mitchell Road. [1359] did not enter the park on the night of the robbery.⁴¹

- c. The victim approached him on two occasions that morning and wanted gay sex.⁴² There is evidence that Anthony Cawsey engaged in gay sex and that he was in fact engaging in gay phone sex shortly before his death. It can be inferred that Mr Cawsey was in Centennial Park for the purpose of seeking out gay sex, from the message he left on Mediatel and given that sections of the park are known to be gay beats.
 - d. Mr Kellie said that when he first encountered the man, he "start to pretend he was talking on the phone."⁴³ The phone records and Mediatel evidence establishes that Mr Cawsey made 4 calls to the gay hotline Mediatel, between 4:44am and 5.11am with the final call ending at 5.24am. That is to say, Mr Cawsey spent roughly 36 minutes between 4.44am and 5.24 am (of the 40 minutes available) on his phone after leaving his apartment block. Time trials conducted by investigating police estimated that it would take 31 minutes to walk from Mr Cawsey's apartment to the Robertson Road Gate to Centennial Park, the very gate identified by Mr Kellie as being the location he first saw the man he confronted. This leads to an overwhelming inference that Mr Cawsey was on his phone when he entered Centennial Park.
 - e. According to Mr Kellie, the man was in the park for one hour.⁴⁴ The time trials conducted by police place Mr Cawsey at the entrance to Centennial Park at about 4.55am. His body was discovered at 5.56am.
 - f. During the second meeting, the man was down in the area where Mr Kellie *used to live*. During the interview on 17 January 2010, Moses Kellie then marked on a map that area - a reference to the campsite near Busby Ponds where Mr Cawsey's body is subsequently found.⁴⁵ Again, of note is that [1359] was never within Centennial Park when [redacted] was robbed of [redacted] phone and was therefore never near Busby Pond.
 - g. During the second meeting about an hour later, the man was down near Busby Bond "the area I used to live" and close to the "cricket grounds", McKay Sports Ground, which are next to by Snake Bank.⁴⁶ Again, this is a reference to the area in which Mr Cawsey was found and not relevant to the robbery of [1359] who was never in the park.
 - h. Around the time of the second meeting the man was engaging in "sex talk" on the phone. There is unambiguous evidence that Mr Cawsey was having phone sex with [1354] [1354] whilst in Centennial Park until 5.24am.⁴⁷ [1359] was not engaged in sex talk when [redacted] encountered Mr Kellie.
30. Each of these statements by Mr Kellie is consistent with the facts known regarding Mr Cawsey's death and not relevant to the robbery of [1359]. It is clear evidence that Mr Kellie is conflating

⁴¹ [1359] walk-through transcript, Vol. 7, Tab 239

⁴² ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q132-137, 163-165

⁴³ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q162, 177-178

⁴⁴ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q290

⁴⁵ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q235-244, 274, 296-304

⁴⁶ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q165-169, 220

⁴⁷ [1354], Vol. 2, Tabs 78 and 79

two events that he was involved in. There is further evidence of Mr Kellie conflating the two events in a police interview on 6 October 2015 in relation to Mr Cawsey's murder.⁴⁸

31. Furthermore, the particulars provided by Mr Kellie during the Eden interview are not only relevant to Mr Cawsey's death but were not known to the public, having regard to the media reports of the death.⁴⁹ Those particulars are only capable of being known by someone with direct knowledge of the murder and the circumstances surrounding it. For example, during the first encounter close to the Robertson Road entrance to Centennial Park, Mr Cawsey was on a telephone call and engaging in sexual talk.⁵⁰ Mr Kellie's statements are therefore admissions which place him at the scene of the crime.
32. Mr Kellie also makes what can be regarded as an admission to being angry with the man. He said that the man repeatedly propositioned him for gay sex and that Mr Kellie told him he was not interested. This precipitated a direct physical altercation.⁵¹ Mr Kellie stated at Q187:

"Yeah, when we start to argue I said, if you don't, I said, if you don't, I said the F word, I said, I will, I will, you know I will, I will stab you ... I was not carrying a knife ----"

At Q360 Mr Kellie stated:

"I'm still not interested I didn't like force, I didn't, it did not anger me, because like people do it you know, but when he start, keep coming, that's when I get angry over this....."

33. The circumstantial evidence is that this man was Mr Cawsey who was in Centennial Park seeking homosexual sex close to the Mr Kellie's drainpipe camp. The statement provides a clear motive for Mr Kellie stabbing Mr Cawsey.
34. The reliability and truthfulness of these admissions is supported by the fact that they were unprompted. They were not the result of duress or improper or illegal conduct by police. The police, on one view, were in fact taken by surprise when Mr Kellie revealed matters unrelated to the robbery. They repeatedly took him back to the known facts concerning the robbery of [1359] [1359] while Mr Kellie kept returning to circumstances more consistent with Mr Cawsey's presence in the park.

Expert evidence regarding admissions: Dr Danny Sullivan and Dr Jonathon Adams

35. On 15 July 2010, Mr Kellie first reported having psychotic symptoms while in custody and on 21 July 2010 he commenced on anti-psychotic medication.⁵² On 17 October 2010, a psychiatrist diagnosed Mr Kellie with schizophrenia although his mental state had by that time stabilized. On 30 October 2010, Mr Kellie made a threat of suicide and was placed in under the management of the Risk Intervention Team (RIT).⁵³ On 5 November 2010, he was cleared by RIT.⁵⁴
36. Psychiatric and psychological reports in relation to Mr Kellie were prepared for his sentence for the robbery with wounding charge. Dr Jonathon Adams prepared a report at the request of Judge Finniane. Mr Kellie reported to Dr Adams that he had previously attended Blacktown Hospital in relation to his mental health and was prescribed psychiatric medication. Dr Adams stated that in

⁴⁸ ERISP transcript 06/10/2015, Vol. 6, Tab 213, Q67, 74-76, 120

⁴⁹ Media reports, Vol. 10, Tabs 325 and 326

⁵⁰ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q162-165, 176-178

⁵¹ ERISP transcript 17/01/2010, Vol. 6, Tab 211, Q187, 288-296

⁵² Justice Health records, Vol. 12, pp. 4524-4530

⁵³ Justice Health records, Vol. 12, p. 4504-4507

⁵⁴ Justice Health records, Vol. 12, p. 4492

his opinion, Mr Kellie's "account was in keeping with symptoms of a psychotic disorder, with associated mood disturbance and post traumatic features." Dr Adams noted that he had not reviewed any collateral information to clarify his presentation before incarceration.⁵⁵ Blacktown Hospital has no record of having Mr Kellie as a mental health in-patient or out-patient.⁵⁶

37. Dr Adams and another forensic psychiatrist, Dr Danny Sullivan provided expert reports and gave oral evidence at the inquest.⁵⁷ Both experts stated that on viewing the video recording of the interview on 17 January 2010 and other interviews, they could not identify any *signs* of Moses Kellie being adversely affected by a mental illness. In a supplementary report, Dr Sullivan distinguished between *symptoms* and *signs* as follows:⁵⁸

"Symptoms refer to self-reported complaints or descriptions of mental experiences, which seem abnormal to an observer. Signs refer to objectively elicited evidence or behavioural manifestations apparent to an observer.

In Mr Kelley's [sic] case, the basis of a diagnosis of psychotic illness appears related to self-report, predominantly of hearing voices (auditory hallucinations) and of descriptions of 'paranoia.' Dr Adams refers to Mr Kelley being observed to have symptoms of schizophrenia although it appears that Mr Kelley *reported* these; there is no indication on the review of Dr Adams or myself that Mr Kelley exhibited overt *signs* or behavioural manifestations of a psychotic illness."

38. In oral evidence, Dr Sullivan and Dr Adams stated that Moses Kellie exhibited no signs of schizophrenia or post-traumatic stress disorder ("PTSD") during any of the interviews that they reviewed.⁵⁹ There is no reported history that he suffered *symptoms* of a mental illness at the relevant time.
39. The expert opinions are consistent with lay opinion. Namely, none of the police officers who spoke with Mr Kellie on 3, 16 17 October 2009 and 17 January 2010 observed any signs or symptoms of mental illness. Nor did park ranger Ernest Benton observe any signs of mental illness during his encounter with Mr Kellie.⁶⁰
40. Both experts Dr Sullivan and Dr Adams stated in oral evidence that a diagnosis of schizophrenia in and of itself does not render statements made by a person suffering the illness unreliable. Dr Sullivan further stated that PTSD would not necessarily affect the reliability of statements made by someone with PTSD. Therefore, even if it were established on balance that Moses Kellie in September 2009 was suffering from schizophrenia or PTSD (although I question whether such a positive statement could in fact be made), such a finding does not render the ERISP interview(s) inadmissible.

⁵⁵ Dr Adams 2011, Vol. 14, Tab 365

⁵⁶ Fedrigo-Teijeiro, Vol. 14, Tab 372; Keill, Vol. 14, Tab 373

⁵⁷ Dr Sullivan, Vol. 14, Tabs 366 and 367; Dr Adams 2017, Vol. 14, Tabs 368 and 369; Transcript pp. 60-82

⁵⁸ Dr Sullivan, Vol. 14, Tab 367

⁵⁹ Dr Jacmon diagnosed Mr Kellie with PTSD in a psychological assessment dated 8 November 2010, Vol. 14, Tab 362

⁶⁰ Benton, Vol. 4, Tab 185

41. Dr Sullivan stated in his first report, and adhered to in oral evidence, that "*I cannot find evidence for any clear impediment to his cognitive abilities or his ability to answer questions responsively, truthfully or reliably.*"⁶¹ Dr Adams did not wish to be heard or argue against this opinion.
42. Through extensive questioning at the inquest, both experts gave no evidence that raised concerns regarding the reliability of the statements made by Moses Kellie. Conflating two incidents was not said to be a characteristic of schizophrenia or any other mental illness adversely affecting one's ability to give a truthful account. As Dr Sullivan stated, persons who are not affected by a mental illness can likewise conflate two events, which is a reflection of poor memory rather than untruthfulness per se.

Admissions to Dr Thomas Clark

43. Dr Thomas Clark prepared a psychiatric report tendered by Mr Kellie during the sentence proceedings for the robbery of [1359]. The contents of this report are in part in my opinion admissible in criminal proceedings if Dr Clarke is called to give evidence as the contents of the report and are not the subject of privilege.
44. In his consultation with Dr Clarke in April 2011, Mr Kellie repeated the statement made in his interview on 17 January 2010.⁶² Dr Clark noted what he was told by Mr Kellie as follows: "*the circumstances of the offence, he said, are that he was alone when approached by the victim who made sexual advances to him. Moses had a silver object and resisted the sexual advances. Moses took a mobile phone but did not take any money from the victim.*" Later Moses Kellie reported to Dr Clarke "*matters came to a head in the park, when a homosexual man sexually harassed him. He resisted the man's advances. Moses was aware that the park is used for nocturnal homosexual meetings. He had been attacked by youths in the past he said because of his African appearance. Following this, he became aware the police were looking for him and decided to leave Sydney.*"
45. Of note is that during a second recorded interview with police on 17 October 2009 at Maroubra Police Station, when questioned in relation to the murder, Mr Kellie stated that he had "*never been approached by any man for sex in the park*".⁶³ This interview occurred six days *after* the robbery of [1359] on 11 October 2009. This statement directly conflicts with the account of the robbery that he later gave in his interview on 17 January 2010 and is arguably a lie reflecting a consciousness of guilt. He further states that he stayed at the drainpipe campsite at Busby Pond on and off depending on the rain and that he cleaned up the campsite 4 months previously.⁶⁴

Admissions to [1357]

46. Mr Kellie's sister [1357] stated in a police statement that during a visit to her brother at Goulburn Gaol:

"Moses told me that it was his friends that did the killing but they ran away and Moses was the one that got caught. Moses said that he got caught with the man's phone. He

⁶¹ Transcript p. 64

⁶² Clark, Vol. 14, Tab 264

⁶³ ERISP 17/10/09, Vol. 5, Tab 208, Q1098

⁶⁴ ERISP 17/10/09, Vol. 5, Tab 208, Q238 and 452

denied killing and denied having knives. He said his friends did the killing in a group and he was there."

Corrective Service Records indicate that Kellie was at Goulburn Gaol from 19 January 2010 to 12 May 2010 and 30 June 2010 to 12 July 2010.

47. [1357]'s oral evidence at the inquest raised serious concerns regarding the reliability of the statement above. It was 6 years between the date of the conversation and her recording the contents of it in her statement. She was vague in evidence as to precisely what was said by Moses Kellie and was unable to recall clearly what words were used by Moses and what facts she had assumed or inferred. As such it is near impossible to discern whether in fact Moses said that his friends did the killing and whether in fact Moses said that he was present while they did the killing.
48. Little or no weight could be given to the evidence based on the oral evidence of [1357].

Circumstantial evidence

Opportunity

49. When Mr Cawsey's body was discovered a "rollie cigarette butt" was found approximately 2.2 metres from the head of the deceased and a "bloodstained cigarette was located in the grass in close proximity to the left thigh of the deceased".⁶⁵ A red-coloured cigarette lighter was also located 3 metres north-east of the deceased's feet.⁶⁶ There was partial DNA recovered from the unstained area of the filter of the cigarette, which was matched to the deceased Mr Cawsey. There was DNA recovered from the stained "blood" area on the cigarette, which was matched to the deceased. There was no DNA match between Mr Kellie and the cigarette.⁶⁷
50. Mr Kellie said in his witness statement of 3 October 2009 that he collected cigarette butts and emptied out tobacco in Tally Ho papers.⁶⁸ He repeats this in his ERISP interview of 17 October 2009 and states that on the day of the murder he was smoking "fold cigarettes", "rolling cigarettes".⁶⁹
51. The significance of the "cigarette" evidence in my opinion is that no tobacco, Tally Ho or cigarettes were located on Mr Cawsey. That leaves open the very real possibility that the deceased had contact with some individual and received a rollie cigarette. Given the evidence is that the large majority of people using Centennial Park at 5.30am – 6:00am in the morning are joggers, cyclists and people exercising, it narrows the sample group of those that might be smoking and supports a finding that Mr Cawsey may well have received a rollie cigarette from Moses Kellie.
52. Mr Kellie's three camp sites were located in close proximity to where the deceased's body was found; Mr Kellie is a smoker; there is ample evidence (based on Mr Kellie's own admissions and other offences) that Mr Kellie does not sleep well and is often up and wandering around at the

⁶⁵ Crimmins, Vol. 1, Tab 35 [12]

⁶⁶ Crimmins, Vol. 1, Tab 35 [12]

⁶⁷ Weddervang, Vol. 2, Tab 40, p. 468

⁶⁸ Kellie, Vol. 5, Tab 203 [3]

⁶⁹ ERISP 17/10/09, Tab 206, Q773-810

early hours of the morning.⁷⁰ A witness attested to a man of Mr Kellie's appearance being seen in Centennial Park at around 5.55am on the morning of the fatal stabbing.⁷¹

Campsites

53. The large maps tendered at inquest through the OIC, Detective Senior Constable Staples, give a clear picture of the proximity between where Mr Cawsey's body was found and the camp sites occupied by Mr Kellie at various points in time - and arguably - at the relevant time.⁷²
54. Mr Kellie stated that he lived in Centennial Park from April 2009 to October 2009. The investigation identified three campsites where Mr Kellie camped within Centennial Park. On 3 October 2009, Mr Kellie showed police a campsite within the park adjacent to Anzac Parade and Alison Road in Kensington ("First Campsite"). He also showed police a stone pavilion close to Grand Parade where he said he slept when it rained.⁷³ The campsite was searched on 29 October 2009.⁷⁴ The First Campsite is identified at 7 on the map annexed to the statement of OIC ("OIC's map") and it is about 500 to 600 metres away from the crime scene.⁷⁵
55. On 17 October 2009, police found Mr Kellie at a second campsite located within the drainpipe on the shore of Bushby Pond ("Second Campsite"). Mr Kellie admitted that he had sole use of the Second Campsite and owned the items found there, including [1359]'s iPhone, backpacks, knives, clothing and a black Nokia phone subscribed to Mr Kellie.⁷⁶ The Second Campsite is at 11 on the OIC's map and about 75 metres from the crime scene.⁷⁷
56. On 9 November 2009, another campsite was located in the bushes that separate the McKay playing fields ("Third Campsite"). The bushes run adjacent on either side of a drainage gully that drains from Bushby Pond through the drainpipe in which Mr Kellie was found to be residing 17 October 2009. Items seized from the Third Campsite included a backpack, newspaper dated in the period 19 to 22 September 2009 and sketch pads with Mr Kellie's name written on them.⁷⁸ The Third Campsite is at 13 on the OIC's map and about 80 metres from the crime scene. On 3 October 2009, Mr Kellie showed police the First Campsite furthest away from the crime scene but did not disclose the Second and Third Campsites so as to locate himself furthest away from where Mr Cawsey was found.
57. All three campsites are in relatively close proximity to where Mr Cawsey was found and again increase the likelihood that Mr Cawsey and Mr Kellie crossed paths on 26 September 2009. In fact, during the Eden interview in January 2010, Mr Kellie placed himself near his own campsites when he said he was propositioned by the man repeatedly for sex.

Knives

⁷⁰ Kellie, Vol. 5, Tab 203 [9]

⁷¹ Edgington, Vol. 4 Tab 177

⁷² Three maps, Exhibit 2

⁷³ Johnson, Vol. 4, Tab 187; Bishop, Vol. 5, Tabs 190, 198, 199

⁷⁴ Investigator's Note, Niederle and Exhibits List, Vol. 6, Tabs 214, 215 and 216

⁷⁵ Staples, Vol. 1, Tab 6, pp. 108-110

⁷⁶ ERISP 17/10/09, Tab 206, Q238, 310

⁷⁷ Staples, Vol. 1, Tab 6, pp. 108-110

⁷⁸ Bishop and attachment A, Vol. 5, Tab 190; Lewin, Vol. 5, Tab 194; Sheaf, Vol. 5, Tab 197; Photographs of campsites and exhibits and Exhibit List, Vol. 7, Tabs 221-223,

58. On 17 October 2009, roughly three weeks after the stabbing, five black handled knives were located at the Second Campsite (in the drain pipe) used by Mr Kellie.⁷⁹ Dr Duflou stated in his expert report that the knives found "could have caused the injury sustained to the chest of the deceased". I note however that the forensic evidence is largely equivocal on this point given that knives do not generally have unique characteristics which allow an examiner to determine whether a specific knife caused an injury to the exclusion of all others; parts of the human body are elastic and deformable and this makes the identification task difficult in addition to the fact that a stabbing is not a static event.⁸⁰

59. Nonetheless, the evidence of ownership of knives that are capable of causing the fatal stab wound is a piece of admissible circumstantial evidence.

Lies - consciousness of guilt

60. In addition to the omissions in the statements about the location of his campsites Mr Kellie made statements in relation to a range of matters during his ERISPs which can be proven to be false. The most pertinent of those relate to his movements during the early morning of 26 September 2009 (CCTV footage arguably rebuts his stated movements).⁸¹ While it is not clear that each of those statements would be accepted as lies which can be characterized as "consciousness of guilt", there is a real prospect that the lies by omission relating to the location of his campsites would be so considered.

Nature of wound/Motive

61. Mr Kellie stated in his Eden interview that he was being repeatedly propositioned by this man for sex and that it made him angry. He owned knives and as a homeless man arguably carried his possessions at times with him. The single stab wound occasioned argues strongly for a single spontaneous, unexpected act of aggression in a heated moment.

62. Please find enclosed:

- a. Exhibit 1 - 14 volume brief of evidence;
- b. Exhibit 2 – 3 maps of Centennial Park and surrounding area
- c. Transcript of inquest;
- d. Findings on decision to suspend inquest; and
- e. USB containing brief, photographs and videos.

Yours faithfully,



Deputy State Coroner Magistrate Paula Russell

⁷⁹ Exhibit list, Vol. 6, Tab 218, pp. 2244, 2256

⁸⁰ Duflou report, Vol. 14, Tab 370

⁸¹ Kellie, Vol. 5, Tab 302 [9]; ERISP 17/10/09, Tab 206, Q530-564, 665

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