

**2022 Special Commission of Inquiry
into LGBTIQ hate crimes**

**Before: The Commissioner,
The Honourable Justice John Sackar**

**At Level 2, 121 Macquarie Street,
Sydney, New South Wales**

On Friday, 2 June 2023 at 10.07am

(Day 59)

Ms Christine Melis	(Counsel Assisting)
Ms Aleksandra Jez	(Solicitor)

Also Present:

Mr Mathew Short with Mr Aurhett Barrie for NSW Police

1 THE COMMISSIONER: Yes.
2
3 MS MELIS: Commissioner, I appear to assist you.
4
5 MR SHORT: Commissioner, Short, initial M, for the
6 Commissioner of Police.
7
8 THE COMMISSIONER: Thank you very much, Mr Short.
9
10 Yes?
11
12 MS MELIS: Commissioner, this is public hearing 8 into the
13 death of Samantha Rose. Commissioner, I'll now hand up two
14 volumes of material, together with Counsel Assisting's
15 written submissions dated 2 June 2023 and some proposed
16 orders.
17
18 THE COMMISSIONER: Thank you.
19
20 MS MELIS: For the record, Commissioner, the material is
21 three volumes.
22
23 THE COMMISSIONER: Yes, thank you.
24
25 MS MELIS: Commissioner, there is just one small
26 typographical error I need to address in the submissions.
27
28 THE COMMISSIONER: Sure.
29
30 MS MELIS: At paragraph 143 in the first sentence, there
31 is a reference to "Ms Rose" there, when, in fact, it should
32 read "Ms Durward".
33
34 THE COMMISSIONER: Is it the first line?
35
36 MS MELIS: The first line, correct.
37
38 THE COMMISSIONER: All right. Just tell me again who it
39 should be.
40
41 MS MELIS: Ms Durward. So it should read:
42
43 *The evidence also suggests that Ms Durward*
44 *arrived at work ...*
45
46 THE COMMISSIONER: Thank you. Just let me have a look at
47 the redactions and the orders.

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They are agreed, Mr Short, I presume?

MR SHORT: They are, Commissioner, yes.

THE COMMISSIONER: Thank you very much.

Yes, I have made those orders. Thank you very much.

MS MELIS: May it please the Inquiry.

Commissioner, Samantha Rose was a transgender woman. She was given the name David at birth. So far as the Inquiry has been able to ascertain, she identified as female. She often wore female clothing to work and was open with others regarding her gender identity. She sometimes used the name Samantha including in correspondence with friends and when she volunteered at radio stations.

At the time of her death, she was undergoing hormone replacement therapy as part of her affirmation of her gender. Accordingly, the Inquiry will refer to Samantha Rose consistently with her own preference.

Ms Rose had one younger brother, Ian Rose, and was in regular contact with her parents, Bertha and Max Rose. She worked at Westpac Bank in Sydney as a systems programmer and volunteered at radio stations 2RPH and 2SER as a presenter, reading newspaper articles.

On 7 October 1997, Ms Rose commenced hormonal treatment prescribed by Dr Alfred Steinbeck, a medical practitioner and endocrinologist. Ms Rose told Dr Steinbeck that she had never had a sexual relationship with a male or female, and, further, that she was not attracted to men and was only attracted to women as friends.

Ms Rose's mother, Bertha, said in her police statement that, at 21 years old, Ms Rose approached her and said that she should have been a girl and that she would feel more comfortable as a girl.

Ms Rose was found deceased just before Christmas on 22 December 1997 at her home in the suburb of Kensington in Sydney. She died some time after 10am on 20 December 1997.

1 She was 41 years old.

2
3 I will now describe the circumstances of Ms Rose's
4 death. In doing so, Commissioner, it is convenient to show
5 a sketch plan of the crime scene that was produced by crime
6 scene officers who found Ms Rose. I now show that crime
7 scene sketch [SCOI.00041.0026_0001].
8

9 As can be observed, Ms Rose was found lying on her
10 back in the kitchen area of her apartment. Her arms were
11 outstretched from her body as were her legs. An unopened
12 can of plums, one side of which was dented, was located
13 between her legs. She had sustained severe head injuries,
14 consistent with heavy blows to the head with a blunt
15 object. Maggots were observed around her nose and mouth.
16

17 As can be seen from the sketch plan, Ms Rose's
18 apartment was in a state of disarray. Her furniture and
19 personal items, including bangles, glasses and earrings,
20 were scattered throughout the unit. Two plastic breast
21 inserts were located, one in the hallway and the other in
22 the lounge room. The television was lying face down in the
23 lounge room. Ms Rose's telephone was on the bench with the
24 handpiece hanging to the floor. The answering machine was
25 upside-down on the floor in the hallway. A set of keys
26 were located in the bedroom.
27

28 Officers of the NSW Police gained entry to the unit
29 through the kitchen window using a ladder. The front door
30 was locked from the inside by way of two security locks and
31 could not be opened without keys. There was no evidence of
32 forced entry.
33

34 The findings of the post-mortem recorded a pattern of
35 injuries that was strongly suggestive of an assault. The
36 direct cause of death was recorded as: head injury.
37 No-one has ever been charged with Ms Rose's murder. Her
38 death has not been reinvestigated by police since the
39 coronial inquest into her death concluded in 1999.
40

41 One key person of interest emerged from the original
42 police investigation. Her name is Sandra Durward.
43 Ms Durward died on 12 March 2006. She and Ms Rose met at
44 some stage between 1986 and 1987, whilst volunteering at
45 radio station 2RPH. They subsequently became friends and
46 Ms Rose allowed Ms Durward to stay with her in her unit in
47 Kensington from time to time.

1
2 Ms Durward was 42 years old at the time of Ms Rose's
3 death and worked as a sex worker at brothels Final Touch
4 Relaxation Centre and Bare Bunnies. Ms Durward had
5 substance abuse issues and no stable accommodation. There
6 is evidence of her drinking almost every day and some
7 documented instances of aggression and violent outbursts in
8 the lead-up to Ms Rose's death.

9
10 Her sister, Fiona Feary, said that Ms Durward had an
11 alcohol and heroin addiction.

12
13 Ms Rose's death went to inquest in 1999 with
14 Ms Durward as the primary person of interest. The Coroner
15 heard extensive evidence from Ms Durward as well as other
16 witnesses.

17
18 Coroner Abernethy all but excluded Ms Durward as the
19 person responsible for Ms Rose's death stating:

20
21 *There is thus some suspicion about*
22 *Ms Durward, largely because of some of the*
23 *peculiar things she said to those around*
24 *her after the death, but there is*
25 *absolutely nothing to link her to the*
26 *homicide of David Rose, other than a vague*
27 *suspicion.*

28
29 In his findings on 18 November 1999, the Coroner found
30 Ms Rose died on 20 December 1997 at Kensington due to head
31 injuries inflicted by a person or persons unknown.

32
33 The Inquiry has reviewed all the evidence and, despite
34 the Coroner's findings in respect of her, it is submitted
35 that Sandra Durward remains the primary person of interest
36 in Ms Rose's death.

37
38 I will return to Ms Durward and the evidence against
39 her - in particular, the peculiar things she said after the
40 death - in a moment.

41
42 It is necessary to first say something more about the
43 crime scene investigation. Crime scene officers attended
44 Ms Rose's unit and examined the scene. A number of
45 observations were made. There were no signs of forced
46 entry to the balcony doors. The front door could only be
47 closed and locked using a key. The assault appeared to

1 have commenced in the hallway, near the bathroom door, and
2 continued into the lounge room where an ironing board was
3 knocked over and shorted out the electricity to the
4 property. The assault continued into the kitchen where
5 Ms Rose was found.
6

7 The offender left the premises via the front door,
8 closing and locking the door with the key upon leaving.
9 The offender did not lock the security door, as a post-it
10 note had been placed on the front door by Ms Rose's mother
11 earlier on.
12

13 To the right of Ms Rose's foot, small pieces of broken
14 plate were observed on the floor. The pieces were mustard
15 in colour. A search of Ms Rose's fridge revealed two
16 further pieces of a broken plate, which were also mustard
17 in colour.
18

19 In explaining some further conclusions drawn by crime
20 scene officers, it is necessary to now show a photo of the
21 actual crime scene, if that photo could please be put up.
22

23 Commissioner, in this photo, the upturned television
24 can be observed, with the upturned ironing board, the
25 blue-coloured iron on the floor behind the ironing board,
26 some crates and a breast insert.
27

28 Officers concluded that the ironing board had fallen
29 and dislodged the television that had been sitting on the
30 crates. The ironing board had a shirt hanging from the
31 end, which can also be observed in the photo. The iron was
32 turned on and was face down on top of the extension lead.
33 The iron had melted the insulation on the power cord and
34 short-circuited the power supply to the unit. This might
35 suggest Ms Rose was ironing just prior to the assault and
36 may not have been expecting a visit from her assailant.
37

38 Police collected a number of exhibits from the crime
39 scene. Those comprised the can of plums found between
40 Ms Rose's legs, the artificial breast inserts, the pieces
41 of broken plate, clothing worn by Ms Rose consisting of
42 a white bra, orange mini skirt, white T-shirt and white
43 underpants, and fingernail clippings.
44

45 The police investigation was headed by Detective
46 Senior Constable Paul Thornton. His statement can be found
47 at tab 7 of the bundle. It outlines in detail the steps

1 taken by police to explore potential persons of interest.
2 A number of people were canvassed and interviewed,
3 including Ms Rose's co-workers at Radio 2RPH and Westpac.
4 They generally describe Ms Rose as a kind and well-liked
5 person. None of Ms Rose's co-workers could identify anyone
6 who would wish her harm.

7
8 Inquiries were also made with various LGBTIQ
9 establishments to ascertain whether Ms Rose attended any of
10 them. These inquiries did not suggest Ms Rose had
11 a connection with any of them.

12
13 Information was obtained from the Camera Detection
14 Unit that a relevant CCTV camera was not operating on the
15 weekend of Ms Rose's death.

16
17 Ms Rose's death was raised in the media early on,
18 including during the inquest in 1999. This article, dated
19 20 August 1999, appeared in the Daily Telegraph, if it
20 could now please be shown [SC01.10122.00002].

21
22 The photo in this article shows Ms Rose wearing items
23 consistent with those found scattered throughout her
24 apartment when she was found, including glasses, bangles
25 and earrings.

26
27 It is submitted that whilst the original police
28 investigation was thorough in the ways I have just
29 mentioned, there were omissions that have become stark in
30 light of the Inquiry's investigation, particularly after
31 the Inquiry obtained the opinion of forensic pathologist
32 Dr Linda Iles as to the manner and cause of Ms Rose's
33 death. The following matters of concern are noted:

34
35 There is no evidence to suggest the iron that was
36 found at the crime scene was ever fingerprinted, swabbed or
37 seized.

38
39 The iron may have been used as a weapon in the course
40 of the assault on Ms Rose.

41
42 The failure to at least seize it from the crime scene
43 means it cannot now be subjected to forensic testing.

44
45 There is no evidence that the television that had been
46 sitting on crates in the lounge room and that had fallen
47 off those crates was ever fingerprinted, swabbed or seized.

1
2 The failure to at least seize the television from the
3 scene means it cannot now be subjected to forensic testing.
4

5 This assumes greater significance, Commissioner, given
6 the report of Dr Iles, that some of the head injuries
7 appear consistent with Ms Rose's head being crushed by the
8 television. I will come to the detail of this shortly.
9

10 The omissions I have outlined suggest that there was
11 limited attention given by police to the area of the lounge
12 room where the ironing board had fallen and dislodged the
13 television. Indeed, the television, ironing board, iron
14 and all the furniture within the lounge room were omitted
15 from the sketch plan prepared by the crime scene officers
16 that I have shown.
17

18 Finally, other than testing for the presence of blood
19 in respect of the can of plums and the broken plate found
20 near Ms Rose's body, there was no DNA examination of any of
21 the exhibits during the original police investigation.
22

23 In order to try and piece together what may have
24 happened to Ms Rose and who may have perpetrated this
25 heinous crime, it is necessary to look at the events
26 leading up to her demise.
27

28 On 18 and 19 December 1997, Ms Rose was prescribed
29 anti-nausea medication to treat a side effect of her
30 hormonal treatment. Ms Rose usually went to the chemist on
31 Saturdays to receive her hormone treatment. Records
32 indicate, however, that she did not attend on Saturday,
33 20 December.
34

35 On 20 December at 10am, Ms Rose spoke to her mother,
36 Bertha. She indicated that she was feeling better but
37 still tired. At around 11.15, Ms Rose spoke to a friend
38 and colleague from the radio station, Stephen Becker. She
39 told him she was unwell and too tired to talk. He told her
40 that he would call her the following day and asked her to
41 "please leave your answering machine on".
42

43 Ms Rose was last seen alive between 1 and 2pm on
44 20 December by Ai Lun Gu, who lived in the same unit block.
45 Ms Rose last spoke to a friend, Louise Sadek on the
46 telephone at 2.48pm on the same day for over eight minutes.
47 Ms Rose said she was unwell and was watching TV.

1
2 Ms Rose's mother attempted to call her multiple times,
3 including at 3pm on this day, 20 December. The phone was
4 engaged and remained that way until her last attempt at 9pm
5 and the following morning. This is significant, because,
6 as will be shown, a strong inference can be drawn that
7 Ms Rose met her fate around 3pm when the phone first became
8 engaged on 20 December 1997.
9

10 At about 8.45pm, Mr Becker attended Ms Rose's unit to
11 deliver a Christmas gift. He knocked on the door and rang
12 the doorbell for about five or 10 minutes but could not
13 raise her. He also tried calling her. The lights were off
14 and Mr Becker could not hear anything in the unit. He
15 placed a Christmas greeting card and gift between the
16 screen door and the front door, which was locked.
17

18 On the morning of 21 December, between 7.15 and 8am,
19 Mr Becker made multiple attempts to contact Ms Rose by
20 telephone. Her phone was still off the hook. He made
21 contact with the Prince of Wales Hospital to inquire as to
22 whether Ms Rose had been admitted as a patient. He had
23 fears that Ms Rose may possibly have taken drastic action.
24

25 Some time between 11am and 1pm on 21 December,
26 a neighbour in the unit block, Mr Takao Asano, heard
27 a plate breaking and assumed it came from Ms Rose's unit.
28 He gave a statement to police on 22 December. He had
29 previously worked in a restaurant and was familiar with the
30 sound of breaking plates.
31

32 On the totality of the evidence, it is unlikely that
33 anyone attended Ms Rose's unit on 21 December, and that by
34 this point in time Ms Rose was already deceased.
35

36 A possibility remains that Mr Asano could have, in
37 fact, heard the plate break on 20 December. The officer in
38 charge noted that the other possibility is that part of the
39 plate had been placed in the refrigerator on 20 December
40 and the other part placed on the kitchen bench. This may
41 have been blown from the bench by the breeze coming through
42 the windows of the kitchen on the Sunday.
43

44 Somewhere between 2 and 2.30 on Sunday, 21 December,
45 Ms Rose's mother and father went to Ms Rose's home. Bertha
46 noticed the Christmas parcel left between the door and the
47 security door. She rang the doorbell until it stopped

1 working. She and her husband banged the door loudly but
2 could not raise Ms Rose. Bertha left a post-it note on the
3 door asking Ms Rose to call her.
4

5 On the morning of 22 December, Mr Becker made contact
6 with Bertha and expressed his concerns for Ms Rose's
7 welfare. This heightened Bertha's concerns for Samantha.
8 Shortly after 9.20am, Ms Rose's mother and brother attended
9 Randwick Police Station. From there, they went to the unit
10 to meet police and gain access.
11

12 In light of this timeline of events, who could have
13 fatally assaulted Ms Rose? I now turn to an exploration of
14 the person of interest, Sandra Durward.
15

16 At some stage before Ms Rose's death, Ms Durward
17 stayed with her at the Kensington unit. At that time,
18 Ms Durward had a set of keys to Ms Rose's unit.
19

20 Between around October and December 1997, Ms Feary,
21 Ms Durward's sister, spoke with Ms Rose regularly in
22 relation to Ms Durward's problems. Ms Feary's
23 understanding was that Ms Durward had left Ms Rose's unit
24 on her own accord.
25

26 However, Ms Rose provided another colleague from Radio
27 2SER, a Ms Marcia Vagg, with a differing account. Ms Vagg
28 says that Ms Rose called her and told her that a friend of
29 hers was having very serious personal problems, was
30 addicted to heroin and was an alcoholic. She also told
31 Ms Vagg that she had a conversation with the friend's
32 sister who told her she had thrown out the friend when she
33 caught her stealing to buy heroin and alcohol. The
34 friend's sister did not want Ms Rose to take her in
35 because she feared what she might do. Ms Rose said she had
36 let the friend stay with her before but had thrown her out
37 after catching her drinking turps or methylated spirits
38 which had been mixed in with cordial.
39

40 Ms Vagg advised Ms Rose to not let the friend back in.
41 Ms Rose was conflicted, saying she was her friend and it
42 was a very hard thing to do. According to Ms Vagg, Ms Rose
43 said that Ms Durward's sister described Ms Durward as an
44 opportunist who was capable of anything.
45

46 After Ms Durward left the unit, Ms Rose contacted
47 Ms Feary regarding Ms Durward returning the unit keys.

1 Ms Feary spoke with Ms Durward, who told her she would
2 organise to return them. She was of the belief they had
3 been returned but could not be 100 per cent sure.
4

5 During the course of the police investigation, several
6 people provided information about Ms Durward. Megan
7 Brownlow, a mutual friend of Ms Rose and Ms Durward, told
8 police that Ms Rose had contacted her and warned her about
9 Ms Durward's problems with alcohol and theft. Ms Brownlow
10 was under the impression that Ms Rose was afraid of
11 Ms Durward and noted that Ms Rose was much smaller than
12 Ms Durward.
13

14 Ms Durward's capacity for aggression was noted by
15 various witnesses, including one instance where she
16 admitted to kicking a friend's child. She was also
17 described as being someone who could change their
18 personality very quickly.
19

20 At the time of Ms Rose's death, there is evidence in
21 the materials of Ms Durward drinking almost every day. She
22 drank whatever was around. A flatmate said she had seen
23 her get up and have a drink to start off the day. There is
24 also evidence of her having what she herself termed "bad
25 depression".
26

27 Following Ms Rose's death, Ms Durward made a number of
28 inculpatory statements to various persons. It is necessary
29 to go into some detail about these statements.
30

31 On 24 December, two days after Ms Rose was found,
32 Ms Durward told her colleague, Irene Burrows, that she
33 thought she knew who killed Ms Rose and, relevantly, that
34 the door was locked and there was no sign of forced entry.
35 According to Ms Burrows, Ms Durward said her stepson had
36 keys to the unit.
37

38 On 26 December, Ms Durward participated in a police
39 interview. She told police that when she had been staying
40 in Ms Rose's apartment, while Ms Rose was travelling, an
41 ex-partner of hers, Paul Hilton, stayed with her.
42 Ms Durward said Mr Hilton's son Joel visited and stole CDs,
43 some tools and electrical appliances. She said that Joel
44 might have had a set of keys to the apartment made. When
45 asked about her own movements on 20 December, Ms Durward
46 stated that she could not remember but would have been at
47 work.

1
2 That same day, a search of Ms Durward's room at
3 a house she was staying in at St Clair was conducted with
4 her permission. During the course of that search an
5 incomplete letter authored by Ms Durward was located. The
6 letter is noteworthy and I now show it. It can be found at
7 tab 60A [SCOI.83402_0001] of the tender bundle. It is
8 dated 25 December 1997.

9
10 I won't read this in full, Commissioner, just some
11 aspects of it. Ms Durward wrote:

12
13 *It is with indescribable sadness that*
14 *I write to you & Hope tonight.*

15
16 She goes on to say:

17
18 *... I assume that by now you have received*
19 *the terrible news that Dave Rose was*
20 *murdered last weekend. The funeral was*
21 *yesterday.*

22
23 She notes that she is on the train whilst writing this
24 letter and says:

25
26 *My life has not been tidy or well organised*
27 *for a year or so (ever the mistress of*
28 *understatement) & I am carrying a lot of*
29 *emotional baggage, so please forgive me if*
30 *I ramble & carry on.*

31
32 Towards the bottom of the page in the last paragraph she
33 says:

34
35 *Geoff, I may as well come clean with you,*
36 *I'm sick of --*

37
38 it seems the word is "dissimulating":

39
40 *You may prefer not to know any of this, but*
41 *I'm way out there at the moment, unhinged*
42 *by horror not only at the fact that Dave*
43 *has gone forever, but by the distinct*
44 *possibility that I was responsible, however*
45 *indirectly.*

46
47 At the bottom of that first page and over the page, she

1 goes on to say:

2

3

4

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7

She says:

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When asked about the letter at the inquest, Ms Durward said the term "indirectly" involved relates to the possibility that her former partner had once stayed at Ms Rose's unit and may have been involved in her death.

17

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26

On 27 December, Ms Durward contacted police and provided further information as to her movements on 20 December. In particular, she this time stated that she had attended an Alcoholics meeting at Neutral Bay and that a Mr David Thwaites, Peter Thornton and Clive Starling were also in attendance and could provide an alibi for her. This evidence as to Ms Durward's alibi prompted further police inquiries and a second police interview of Ms Durward on 6 February 1998, which I will come to.

27

28

29

30

31

32

That same day, on 27 December, Ms Durward told Louise Clifford, a colleague from the radio station, words to the effect, "there was no sign of forced entry", "her fingerprints would be all over the place", and that she had "keys" to Ms Rose's unit.

33

34

35

36

37

38

On 31 December, whilst working at Bare Bunnies, Ms Durward spoke to a colleague, a Ms Nazmeen Nisha Hudson. She said:

39

40

41

42

43

44

I must have done it in my sleep.

When asked what she had done, Ms Durward told Ms Hudson:

45

46

47

I must have killed this guy, didn't you see it on telly, the cross dresser. I couldn't have done it. He was my best friend.

Ms Hudson told Ms Durward not to say these things if she did not kill Ms Rose, and she could be locked up. Ms Durward repeated the phrases, "I might have killed him

1 in my sleep", and "No, it couldn't have been me, I must
2 have been drinking."
3

4 Ms Hudson recalls Ms Durward attempting to make
5 a phone call a couple of times stating that it was her
6 alibi. She also recalls Ms Durward speaking on the phone
7 at a later stage and asking that person, "Have any
8 detectives come to check up?" Ms Hudson observed that
9 Ms Durward had a black eye.
10

11 On one occasion between 31 December and 1 January
12 1998, whilst working at Bare Bunnies, Ms Durward stated to
13 another colleague, a Marisa Craker, "My life has been
14 a real nightmare for the last few weeks", before falling on
15 a lounge located in the reception area.
16

17 When she awoke, she stood up, placed both hands on the
18 sides of her head and said:
19

20 *I don't know what's wrong with me. Maybe*
21 *it's not a nightmare. Maybe I did kill*
22 *him.*
23

24 Ms Craker replied:
25

26 *You're fucking kidding. You better get*
27 *your shit together, because if you did kill*
28 *someone, this' put you away for a long*
29 *time.*
30

31 Ms Feary states that Ms Durward told her that Ms Rose
32 may have died as a result of a television falling from its
33 stand. She noted that the stand was unstable. It is
34 submitted that this is damning evidence. No-one other than
35 investigating police and members of Ms Rose's family were
36 aware that signs of a struggle were evident in the unit and
37 that the television was lying screen down in the lounge
38 room.
39

40 At the inquest, Ms Durward attributed her comment to
41 Ms Feary regarding the television to one of the police or
42 someone saying something to her about the television
43 falling on Ms Rose's head and causing her death. She also
44 said the television stand was unstable and that she would
45 not have said anything about the television falling, out of
46 the blue.
47

1 Significantly, his Honour referred to Ms Durward's
2 comments as to the state of Ms Rose's television as the
3 most damaging inference connecting her to Ms Rose's death.
4 He found as follows, and I will now put on the screen
5 his Honour's words from his transcript of findings. These
6 can be found at tab 99E [SC0I.83316_0001] of the bundle,
7 and I refer particularly to page 24.

8
9 Just halfway through that first block of text, starts
10 the sentence "Perhaps":

11
12 *Perhaps the most damaging inference can be*
13 *drawn from her remarks to her sister, that*
14 *perhaps the television was knocked over and*
15 *hit him on the head. She has little*
16 *recognition of this or any of these*
17 *conversations but suggests it was just an*
18 *explanation which came into her head. On*
19 *one hand the television had been knocked*
20 *over when police found the deceased but as*
21 *Durward says it may have been on a rickety*
22 *stand, that is not really clear. On the*
23 *other hand even if Durward is blaming it on*
24 *the television because she in fact did kill*
25 *the deceased, there is no forensic evidence*
26 *that he fell or was thrown against it,*
27 *perhaps hitting his head and knocking it*
28 *over.*

29
30 In making his findings about Ms Durward, his Honour
31 noted that it was difficult to determine whether Ms Durward
32 is a witness of truth or a very clever liar.

33
34 On 28 January 1998, Ms Durward was living with
35 Irene Burrows, whom I've previously mentioned. Ms Burrows
36 said that on that day, Ms Durward was in a very angry
37 state, had urinated on the carpet, packed her bags and was
38 leaving their home. She refused to return her set of keys
39 to Ms Burrows, stating that she paid for them to be cut.
40 Ms Burrows was shocked by Ms Durward's behaviour and her
41 refusal to give back the keys. Ms Burrows observed that
42 Ms Durward's eyes were black and glazed and that, in that
43 mood, she thought Ms Durward was capable of murder.

44
45 At the inquest, Ms Durward said she had no
46 recollection of this incident but did recall disposing of
47 the keys. She said she was not a violent person.

1
2 In her second police interview on 6 February 1998,
3 Ms Durward offered the following explanations for the
4 number of inculpatory statements she made to friends and
5 colleagues that I have outlined. Her answers can be found
6 at tab 56 [SC01.00041.00102], in particular her answer to
7 question 248. She said:

8
9 *Well this would have been about the time*
10 *when I was feeling under so much pressure*
11 *that I didn't know what I was saying, what*
12 *I was doing. I certainly wouldn't have*
13 *meant it.*

14
15 As to whether she returned Ms Rose's house keys, Ms Durward
16 said:

17
18 *Look, as far as I am aware, yes, but you*
19 *know I, I was drunk through that time.*

20
21 She described Ms Rose's spare set of keys which she used
22 while living with her as having gremlins and at the bottom
23 there was a dolphin.

24
25 Ms Durward also stated that she experienced mood
26 swings and suffered from acute depression. She said she
27 bruised easily and her black eye was occasioned in the
28 course of her work by a client's clumsiness.

29
30 During the course of her oral evidence at the inquest,
31 Ms Durward attributed the inculpatory statements to her
32 macabre sense of humour. Mr Thwaites, her alibi, also gave
33 evidence of her inappropriate sense of humour. He noted
34 that she was quite stressed by Ms Rose's death and the
35 police investigation.

36
37 So what, then, of Ms Durward's movements on
38 20 December and her alibi, Mr David Thwaites? You will
39 recall that the sum of the evidence was that Ms Durward
40 told police that on 20 December she went to an Alcoholics
41 Anonymous meeting at Neutral Bay, after which she had
42 coffee with three other people at Maisys Cafe. She then
43 walked around with Mr Thwaites for an hour before getting
44 in a taxi at around 4pm to go to work at St Marys.
45 Mr Thwaites was the only person who could say that
46 Ms Durward was still in the northern suburbs of Sydney at
47 4pm on 20 December 1997.

1
2 Ms Durward told police that she and Mr Thwaites were
3 friends, having met in a detox unit at North Sydney
4 Hospital. At first, she denied that they had a sexual
5 relationship, but when pressed, she noted that it was
6 a desire on her part to have a sexual relationship with
7 David, but David was not interested.

8
9 She then admitted that there had been a couple of
10 occasions where there had been oral sex, but did not
11 consider this to mean they had a sexual relationship.

12
13 On 3 January 1998, Mr Thwaites participated in an
14 interview with police and said that he had met Ms Durward
15 six months prior at the Phoenix rehab centre at Royal North
16 Shore Hospital. They kept in regular contact after that.

17
18 He said that on the morning of 20 December, Ms Durward
19 contacted him, and he told her about an AA meeting that he
20 was attending in Neutral Bay. Ms Durward said she would
21 meet him there.

22
23 Mr Thwaites did not see Ms Durward arrive at the
24 meeting but thought she had arrived about 1.15pm. The
25 meeting concluded at 1.30. After the meeting he,
26 Ms Durward and others, went to Maisys Cafe.

27
28 At the inquest, Mr Thwaites was called to give
29 evidence. During the course of his evidence, he said he
30 left Neutral Bay and arrived at Narcotics Anonymous meeting
31 slightly after 4.30pm. He said he kept a daily journal as
32 part of his recovery and made an entry in respect of
33 20 December.

34
35 Although that entry made no specific mention of the
36 Alcoholics Anonymous meeting, he could positively say the
37 meeting occurred on that day. He referred to a great talk
38 with older members at a coffee shop, which he says occurred
39 after the Narcotics Anonymous meeting. He had absolutely
40 no doubt that coffee happened on the same day as the AA
41 meeting at Neutral Bay.

42
43 It must be stressed, Commissioner, that this diary
44 entry makes no mention at all of Ms Durward and no mention
45 of the two of them talking for about an hour after the
46 AA meeting. The diary note can be found at tab 99G
47 {SC01.83315 0001} of the bundle.

1
2 Mr Clive Starling stated that he also attended the
3 AA meeting. He arrived at 1.15pm and observed Ms Durward
4 in an agitated state, walking in and out of the meeting.
5 He also went to Maisys Cafe.
6

7 Mr Peter Thornton also attended and recalled the
8 meeting concluded at about 1.30. He also went to
9 Maisys Cafe.
10

11 Whilst at the cafe, Ms Durward said she contacted
12 Final Touch to inquire as to whether she was rostered on
13 the next day. At that time, the receptionist advised that
14 a person had called her in hysterics because her daughter
15 was missing. This person was Deidre Miles, who Ms Durward
16 had been staying with in St Clair. Ms Durward then got in
17 touch with Ms Miles, who indicated that her child had been
18 found. Evidence of call logs confirm that Ms Miles called
19 Final Touch four times between 1.05 and 2.03pm and that
20 a call was, in fact, made from Maisys Cafe to Final Touch
21 at 2.35pm.
22

23 Mr Thornton states that Ms Durward appeared to be
24 looking for accommodation and made a number of telephone
25 calls.
26

27 There is some confusing and conflicting evidence
28 thereafter as to how long everyone stayed at Maisys and
29 what happened after the 2.35pm call to Final Touch.
30

31 When interviewed by police, Mr Thwaites said that he
32 and other meeting attendees stayed until 4pm. This
33 position later changed in his signed statement dated
34 29 January 1998, where he said that they left Maisys Cafe
35 around 10 minutes after Mr Starling left, which he
36 estimated as being between 2.30 and 3pm. Mr Thwaites said
37 he and Ms Durward walked a short distance before talking
38 for about another hour.
39

40 After being at Maisys Cafe, Ms Durward said that she
41 and Mr Thwaites had some time to kill and they walked
42 around. She estimated that she left Maisys at about 2.15
43 or 2.30, suggesting they walked for over an hour and
44 a half. She then caught a taxi and train to work at
45 St Marys. She said she would have arrived at Final Touch
46 at about 6 .20pm.
47

1 Mr Thwaites confirmed that shortly after the
2 AA meeting, Ms Durward contacted him and said that he
3 could be an alibi for her in respect of Ms Rose's death as
4 they were at the same meeting on the weekend of her death.
5

6 In his findings, the Coroner found Mr Thwaites to be
7 a witness of truth and accepted his evidence.
8

9 With all this evidence in hand, the Inquiry went about
10 investigating Ms Rose's death by, firstly, reviewing all
11 the records held by NSW Police and the Coroners Court.
12 A number of lines of inquiry were identified and pursued by
13 the Inquiry. I will now outline these.
14

15 At the request of the Inquiry, a comparative
16 examination of unidentified fingerprints found in Ms Rose's
17 apartment was made, both manually and against the National
18 Automated Fingerprint Identification System, known as
19 NAFIS.
20

21 This examination was conducted by the NSW Police. The
22 full results are outlined in paragraphs 61 to 63 of the
23 written submissions. The balance of the findings are not
24 of any significant forensic utility to the investigation of
25 Ms Rose's death. Ms Rose's fingerprints were found in a
26 number of locations within her own unit, including the
27 telephone handset and archway of the unit. This is
28 unsurprising.
29

30 The fingerprints on the breast insert could not be
31 identified. However, Ms Durward's fingerprints were
32 excluded. This does not, however, render futile the
33 possibility that the insert was displaced during the course
34 of the assault on Ms Rose.
35

36 The Inquiry sought DNA analysis over the exhibits
37 collected from the crime scene as well as exhibits that
38 were stored by the Forensic and Analytical Science Service.
39 Unfortunately, testing was either unsuccessful or DNA
40 matched Ms Rose's profile, or at least she could not be
41 excluded.
42

43 Several hair samples were retrieved from the white
44 T-shirt. Testing of two hair samples returned a DNA
45 profile for Ms Rose. Three of the hair samples were
46 identified as originating from an animal. Mitochondrial
47 DNA testing may be able to determine the type of animal.

1 The Inquiry has requested that this testing be performed on
2 the animal hairs.

3
4 As to the likely manner and cause of Ms Rose's death,
5 the Inquiry sought the expert opinion of Dr Linda Iles.
6 Dr Iles's report is at tab 105 [SC0I.83339] of the bundle.
7 Dr Iles says that Ms Rose's cause of death is best
8 described as "blunt head injuries". She cannot exclude
9 that Ms Rose's head injuries are due to blows to the left
10 and right side of the head with an object or weapon.
11 However, it is possible that the spectrum of injuries may
12 represent a significant crush-type injury from a heavy
13 object.

14
15 The only object that Dr Iles can see in the crime
16 scene photos that may cause such an injury is the
17 toppled-over television, the very item that Ms Durward said
18 may have killed Ms Rose.

19
20 Dr Iles observes from the crime scene photos that the
21 vents of the upturned television have a linearity similar
22 to an extent to the linear patterning of intradermal
23 bruising to the left side of Ms Rose's face. However,
24 Dr Iles cannot determine from the photographs the profile
25 of this part of the television, nor can she accurately
26 compare this to the injury on the left side of her face.

27
28 The Inquiry has reviewed all the material available to
29 it and has been unable to find information relating to the
30 make and model of the television. As mentioned, the
31 television was never treated as an exhibit and was never
32 subjected to any forensic examination.

33
34 Dr Iles considers that Ms Rose's traumatic injury is
35 highly suggestive of rapid unconsciousness following
36 injury.

37
38 She considers that the scattered objects and disturbed
39 furniture raise the possibility of an altercation. The
40 television may have fallen on Ms Rose's head during that
41 altercation. Whilst speculative, the scenario can account
42 for the spectrum of pathological findings in the case.
43 Significantly, Dr Iles cannot readily construct a scenario
44 that does not involve another individual in Ms Rose's
45 death.

46
47 As to the possible motive of Ms Rose's killer, the

1 Inquiry sought the expert opinion of forensic psychiatrist
2 Dr Danny Sullivan. His report is at tab 103 [SC0I.83317]
3 of the bundle. Dr Sullivan considers that there were no
4 aspects of the offence that suggest that the death was
5 associated with Ms Rose's transgender identity and that no
6 elements of the crime scene appear clearly associated with
7 a hate crime.
8

9 As to possible motivations of the perpetrator,
10 Dr Sullivan notes that the can of plums between Ms Rose's
11 legs may have had a symbolic sexual meaning to the killer,
12 but this cannot be confirmed and there was no indication of
13 sexual interference.
14

15 Dr Sullivan's opinion highlights, it is submitted, the
16 inherent limitations of attempting to ascertain motive in
17 circumstances where the offender is unknown.
18

19 Commissioner, on the totality of the evidence, the
20 following submissions are put to you: there is cogent
21 circumstantial evidence that Ms Durward may have been
22 involved in the death of Ms Rose. The evidence against her
23 can be mounted in this way:
24

25 First, the lack of evidence of any forced entry
26 suggests that Ms Rose knew her assailant.
27

28 Second, at the time of the murder, Ms Durward was
29 living an itinerant lifestyle and was seeking
30 accommodation. At the inquest, she said she was not
31 looking for accommodation on 20 December, but was looking
32 for it a few days later. This is open to doubt. It is
33 possible that she went to Ms Rose's unit with the intention
34 of seeking accommodation. Once there, Ms Rose may have
35 told her she could not stay, or told her that she had
36 warned others not to take her in. At hearing this,
37 Ms Durward may have flown into a rage, violently assaulting
38 Ms Rose. This might explain the upheaval of the unit.
39 Such behaviour is not inconsistent with the descriptions of
40 her volatile personality given by various witnesses. It is
41 possible, although speculative, that in the course of this
42 assault, Ms Rose fell to the ground and the television was
43 pushed or knocked on to her head, leading to the injuries
44 observed by Dr Iles.
45

46 Ms Durward's initial approach to the police saying she
47 thought her stepson Joel may have something to do with

1 Ms Rose's death might be regarded as somewhat suspicious.
2 The police investigation did not identify anything to
3 connect Joel with the crime scene and nor has this Inquiry.
4 This raises the possibility that Ms Durward may have
5 thought she had to explain how someone might have keys to
6 Ms Rose's apartment.

7
8 Fourthly, it is possible that Ms Rose's assailant may
9 not have appreciated that they had killed her. If the
10 assailant was Ms Durward, this could be an explanation for
11 her later comments that maybe she "had killed him". These
12 comments are equally consistent with Ms Durward having
13 blacked out following alcohol consumption so that she came
14 to think she may have been the assailant, conscious that
15 she did not recall what she did that afternoon after coffee
16 at Maisys. In other words, Ms Durward's inculpatory
17 statements and her considerable efforts to ensure she had
18 alibi evidence might indicate a consciousness of guilt, but
19 might equally indicate someone who was afraid they might be
20 guilty but did not remember either way.

21
22 It was never established whether the second set of
23 apartment keys belongs to Ms Rose had been returned by
24 Ms Durward.

25
26 The combined evidence of the telephone call logs and
27 the recollections of Mr Starling and Mr Thornton confirm
28 that Ms Durward was at the AA meeting and then Maisys Cafe
29 until at least 2.35pm. However, the weight of the
30 evidence, it is submitted, suggests that she left
31 Maisys Cafe at or shortly after this time. It is submitted
32 that Mr Thwaites may not be a reliable alibi witness for
33 the following reasons.

34
35 First, he had a close and at least occasionally sexual
36 relationship with Ms Durward and may have been protecting
37 her.

38
39 Secondly, Mr Thwaites appears to first have told
40 police that they were at Maisys until around 4 and then
41 later made a statement that they left the cafe between 2.30
42 and 3, the latter calling for an explanation of what they
43 did during the hour between 3 and 4.

44
45 Thirdly, Mr Thwaites made no reference in his diary
46 entry to having spent any time with Ms Durward. While that
47 might not be surprising if he simply had a casual coffee

1 with her and two other people at Maisys, it might be
2 regarded as somewhat more surprising if he then spent over
3 an hour having a one-on-one conversation with her.
4

5 Assuming that the assault on Ms Rose occurred when her
6 telephone became engaged at about 3pm on 20 December,
7 Ms Durward had opportunity to attend Ms Rose's unit from
8 the time she left Maisys, likely by taxi, to the time she
9 attended work at St Marys at around 6.30.

10
11 The evidence also suggests that there were several
12 train services running to St Marys, which offers further
13 support for the theory that Ms Durward went to Kensington
14 and from there to Final Touch using public transport.
15

16 Critically, Commissioner, Ms Durward appeared to have
17 special knowledge of the crime scene. She volunteered
18 information suggesting she knew of Ms Rose's television
19 having fallen over. This assumes even greater significance
20 as I have said, given the findings of Dr Iles.
21

22 The friendship between Ms Rose and Ms Durward had been
23 known at times to involve conduct which led to Ms Rose
24 holding concerns or fears regarding Ms Durward. These
25 concerns were often associated with Ms Durward's heavy use
26 of alcohol.
27

28 Indeed, Ms Durward's heavy use of alcohol may have
29 been a factor in her not remembering whether she had
30 something to do with Ms Rose's death, yet simultaneously
31 thinking she may have. As Mr Starling told police, it is
32 not uncommon for alcoholics to have blackouts and not
33 remember certain things.
34

35 Further, the evidence as to Ms Durward's dark or
36 macabre sense of humour sits at odds with the way
37 Ms Burrows, Ms Hudson and Ms Craker describe the apparent
38 inculpatory comments made by Ms Durward.
39

40 There are some features of the scenario that I have
41 described which are, nevertheless, surprising. In
42 particular, the absence of forensic evidence connecting
43 Ms Durward to the crime scene is significant. Even taking
44 into account the gaps in fingerprinting and DNA tests at
45 the time, there is no reason to expect Ms Durward to have
46 been a particularly sophisticated criminal. If Ms Durward
47 was involved in Ms Rose's death, it could not have been

1 premeditated and Ms Durward would presumably have been
2 heavily under the influence of alcohol.

3
4 Without more to link Ms Durward to Ms Rose's death,
5 the scenario involves an unavoidable element of
6 speculation.

7
8 While her involvement might be regarded as more likely
9 than any other particular hypothesis, the Inquiry should be
10 conscious of the strictness of proof called for, including
11 in civil proceedings, when considering a finding as to the
12 Commission of a serious crime. The Inquiry must feel an
13 actual persuasion of the occurrence or existence of fact
14 proposed. The various threads of evidence point indirectly
15 towards Ms Durward's guilt but are insufficient to conclude
16 on the balance of probabilities that Ms Durward was
17 involved in Ms Rose's death.

18
19 I now turn to my submissions as to bias. There are
20 some factors which indicate the possibility that Ms Rose
21 was killed in the context of LGBTIQ bias, including the
22 location of the plastic breast inserts, raising the
23 possibility that they were forcibly removed from Ms Rose's
24 body, the potential significance of an unopened can of
25 plums located between Ms Rose's legs, and possible
26 interference with her body, and the scant evidence
27 suggesting another motive for the crime.

28
29 The original police investigation could not discount
30 that this may have been a hate crime. However, Ms Rose was
31 open with her friends and colleagues regarding her
32 transition. She openly wore women's clothing. She had no
33 enemies. There was no evidence that she frequented gay or
34 transgender establishments. There was no evidence that she
35 had been sexually active and it is unlikely, it is
36 submitted, that she would invite a sexual partner to her
37 unit.

38
39 Strike Force Parrabell concluded there was
40 insufficient evidence to establish a bias crime. Given the
41 lack of forensic evidence linking any person to the crime,
42 coupled with the opinion of Dr Sullivan, there is not
43 sufficient evidence to ground a finding that Ms Rose's
44 death was one in which LGBTIQ bias was a factor.

45
46 Moreover, if Ms Durward was involved, it is highly
47 unlikely that the death was motivated by LGBTIQ bias. It

1 appears much more probable that if Ms Durward was involved,
2 then Ms Rose's death occurred in the context of
3 a friendship with Ms Durward and a possible dispute
4 regarding accommodation.

5
6 Before submitting on manner and cause of death,
7 Commissioner, and concluding my oral submissions, I would
8 like to take a moment to read out some words given by
9 Ms Rose's father, Max, at the conclusion of the inquest in
10 1999. Attempts to contact family members have been
11 unsuccessful. Nevertheless, the sentiments the family
12 expressed for Samantha at the inquest remain and it is
13 appropriate that they be shared.

14
15 If the photo of Samantha could please be now put on
16 screen.

17
18 I won't read everything that Max Rose had to say,
19 Commissioner, only some parts of it. He said this:

20
21 *I find it difficult still to realise that*
22 *David is dead. I go to the city quite*
23 *often and every now and again I think that*
24 *I see him sort of coming round a corner.*
25 *He had an unusual straw hat that he used to*
26 *wear and he always had a radio on his belt,*
27 *but when I turn round it's always someone*
28 *else who is walking about, and I think*
29 *that's possibly because I just find*
30 *difficulty in accepting the fact that he*
31 *won't ever be there again. He had an*
32 *unconventional lifestyle but really he was*
33 *a very sincere and caring person.*

34
35 He went on to say:

36
37 *And his employees and associates have shown*
38 *their appreciation and respect for him in*
39 *some very appropriate ways. The bank*
40 *employees put together and donated a seat*
41 *in the Botanical Gardens with a plaque just*
42 *to show that, you know, they knew him and*
43 *they liked him very much. The radio*
44 *stations 2SR and 2RPH have established an*
45 *annual award in his name for people*
46 *learning to use radio technology. To me he*
47 *was a friend and someone to whom I could*

1 *turn and get an honest and frank*
2 *opinion. ... He was very independent and he*
3 *accepted no charity from anyone, although*
4 *he did in fact give charity to lots of*
5 *organisations.*

6
7 Mrs Rose also said a few words. In particular, she
8 said this to the person responsible for Ms Rose's death:

9
10 *David was the most decent, honest and*
11 *loving human being you could ever hope to*
12 *meet and you not only abused his trust but*
13 *took away his life. You will rot in hell.*

14
15 Commissioner, it is submitted that an appropriate
16 finding in this case as to manner and cause of death would
17 be that Ms Rose died on 20 December 1997 at some time after
18 2.48pm at Kensington as a result of head injuries inflicted
19 by a person or persons unknown.

20
21 THE COMMISSIONER: Yes.

22
23 MR SHORT: The Commissioner seeks to reserve her position.

24
25 THE COMMISSIONER: Thank you. All right, thank you,
26 Ms Melis. I will now adjourn the proceedings. Thank you

27
28 **AT 11.07AM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
29 **ACCORDINGLY**

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