

**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, 9 June 2023 at 10.10am
(Day 60)**

**Re: Death of Waine
Ms Kathleen Heath (Counsel Assisting)
Ms Caitlin Healey-Nash (A/Principal Solicitor)
Mr Rhys Carvosso (Solicitor)**

Also Present:

Mr Aurhett Barrie for NSW Police (Re Waine)

2 THE COMMISSIONER: Yes, Ms Heath?

3

4 MS HEATH: Commissioner, I appear to assist.

5

6 THE COMMISSIONER: Thank you.

7

8 MR BARRIE: Commissioner, my name is Barrie, B-A-R-R-I-E.
9 I appear for the Commissioner of Police.

10

11 THE COMMISSIONER: Thank you.

12

13 Yes, Ms Heath?

14

15 MS HEATH: Commissioner, this is a documentary tender in
16 relation to the death of Ms Wendy Waine. Before you, there
17 should be two volumes of material. A copy of the tender
18 material has been handed to Madam Associate for the purpose
19 of tender. Commissioner, that will be exhibit 30.

20

21 **EXHIBIT #30 TENDER BUNDLE**

22

23 MS HEATH: Commissioner, I also hand up short minutes of
24 order. These are in relation to the orders that the
25 parties seek the Commission make pursuant to section 8 of
26 the Special Commissions of Inquiry Act. These orders
27 relate to various redactions that are sought to documents
28 in the tender bundle and pseudonym orders for particular
29 witnesses.

30

31 THE COMMISSIONER: I take it they're by consent, are they?

32

33 MR BARRIE: They are, Commissioner, yes.

34

35 THE COMMISSIONER: Thank you. Yes, very well. I've made
36 those orders, thank you.

37

38 MS HEATH: Thank you, Commissioner.

39

40 Commissioner, the next document that I tender is
41 a statement from the family of Ms Waine. That will be
42 exhibit 31 and I will touch upon that in just a moment.

43

44 **EXHIBIT #31 STATEMENT FROM THE FAMILY OF MS WAINÉ**

45

46 THE COMMISSIONER: Thank you.

47

1 MS HEATH: Finally, Commissioner, there is a copy of my
2 written submissions of today's date. Those submissions set
3 out in some detail the evidence pertaining to Ms Waine's
4 death. I rely on those submissions, in addition to my oral
5 submissions, which will be a summary only.

6
7 THE COMMISSIONER: Thank you.

8
9 MS HEATH: Commissioner, I wish to commence by providing
10 some background to Ms Wendy Waine, and there is
11 a photograph that is appearing of her on the screen now.

12
13 Wendy Waine was a transgender woman and, by all
14 accounts, a much-loved member of the LGBTIQ community in
15 1980s Sydney. She was a well-known entertainer and at the
16 time of her death was performing at Pete's Beat on Oxford
17 Street, a place considered one of the bastions of the drag
18 scene in the 1980s.

19
20 The shows that she produced have been described as
21 highly professional, extremely colourful and lavish, and
22 Ms Waine's stage personality was described as dazzling.
23 She was also a renowned costume designer and one obituary
24 spoke about her producing some 400 costumes during the time
25 that she worked at Pete's Beat for the many shows that she
26 produced there.

27
28 I would like to read a short extract from one of the
29 tributes to Ms Waine that was published after her death and
30 it was said that on stage, as in real life, she gave all
31 she had to offer. Humour, colour and an honest performance
32 were her trademark. She took great pride in being a member
33 of the gay community, an attitude which won her great
34 respect and friendship from that community in general.

35
36 She was remembered as a generous friend and the type
37 of person who would throw open her home at Christmas to
38 make sure that those who otherwise would have spent the
39 holiday alone had somewhere to be.

40
41 After her death, a memorial show was held at the
42 Paddington Green Hotel in tribute to Ms Waine and it was
43 described as a true entertainer's send-off.

44
45 One of the people who was at that tribute was
46 Ms Waine's sister, Ms Betty Ernst, and I would like to
47 start by acknowledging Ms Ernst, who is in the back of the

1 courtroom today.

2
3 Ms Ernst has provided a family statement to this
4 Inquiry and we are very grateful for that statement. Her
5 family statement echoes so many of the sentiments about the
6 personal qualities of Ms Waine, her open-door policy, her
7 humour and how well-liked and respected she was.

8
9 The statement touches not only upon the close
10 relationship that Ms Ernst had with Ms Waine but also that
11 Ms Waine had with Ms Ernst's children, who loved visiting
12 during the school holidays, and in that vein, I would also
13 like to acknowledge that there are other members of
14 Ms Waine's family who are in these proceedings today.
15 There is Jade, Jason, Ci-Anna and Jo-Anne, who are all
16 present.

17
18 In her statement, Ms Ernst describes how devastating
19 it has been not knowing why Ms Waine was killed and how she
20 still misses her today, and I take this opportunity to
21 express sincere condolences on behalf of the Inquiry to
22 Ms Waine, Ms Waine's family and her friends.

23
24 Commissioner, I turn to describe the circumstances of
25 Ms Waine's death so far as it can be obtained from the
26 objective material. Ms Waine was found deceased at about
27 midday on Tuesday, 30 April 1985 in her unit on
28 Darlinghurst Road. She was found by a friend who became
29 concerned when Ms Waine's friends realised that no-one had
30 heard from her since that Sunday. Her body was naked and
31 lying face-down on the floor at the side of the bed. She
32 had been shot at close range from behind and also had
33 bruising to the back of her head consistent with some blunt
34 force trauma. Her front door had been left open and both
35 the television and the heater were left running.

36
37 Commissioner, I have set out in my written submissions
38 some detail about the information that is available as to
39 Ms Waine's last known movements. I don't propose to go
40 through that all orally. For the purpose of this summary,
41 I note that the last confirmed sighting of Ms Waine was
42 leaving a laneway named Premier Lane where she used to
43 solicit as a sex worker. She was seen by another sex
44 worker that night leaving that lane with a young man with
45 medium-length brown hair and a tattoo on the back of his
46 left hand.

47

1 Two friends of Ms Waine went to her house on the
2 Monday but found that the door was slightly open and that
3 no-one was responding to their knocks.
4

5 Commissioner, the post-mortem examination of
6 Ms Waine's body is found at tab 3 of the tender bundle. It
7 described the gunshot wounds that Ms Waine had suffered.
8 There were three entrance wounds. The first was to the
9 back of her neck; the second was on her upper back at the
10 base of her neck; and the third was on her left hand.
11

12 Importantly, Commissioner, each entrance wound had
13 a corresponding exit wound, so the significance of that is
14 that no bullet remained lodged in Ms Waine's body.
15

16 The Inquiry sought the opinion of Dr Linda Iles,
17 a forensic pathologist, to review the post-mortem report as
18 well as photographs from the autopsy and the crime scene
19 and provide further opinion as to how each gunshot may have
20 been inflicted.
21

22 In relation to the bullet wound on Ms Waine's upper
23 back, Dr Iles observed a distinct muzzle abrasion. This is
24 consistent with the muzzle of a gun being held in close
25 contact with the skin at the time of discharge.
26

27 The abrasion around the bullet wound on the back of
28 Ms Waine's neck was less clear and that was likely because
29 that was on the scalp where there was hair, but
30 nonetheless, there was the outline of a recoil spring
31 guard. So both of those bullets were shot at close range.
32

33 In relation to the wound on Ms Waine's hand, at the
34 time of the original investigation, this was believed to
35 have been a secondary wound, so that is, it was believed
36 that Ms Waine's hand had been in line with the trajectory
37 of one of the first two bullets. Dr Iles couldn't exclude
38 that possibility, but she favoured the view that it was, in
39 fact, caused by a third and separate bullet. So that is,
40 in Dr Iles's opinion, Ms Waine was likely shot three times
41 rather than twice.
42

43 Commissioner, one of the remarkable features of
44 Ms Waine's case is that no ballistic evidence was ever
45 found at the scene. On the same day that Ms Waine's body
46 was found, an officer attached to the Ballistics Unit
47 completed what was said to be a thorough search of the

1 apartment. He found no spent bullets and no fired
2 cartridges.

3
4 I might ask that tab 49 [SCOI.00014.00017] and page 3
5 be put on the screen. If it's scrolled down slightly so
6 the paragraph starting with "From my examination" can be
7 seen.

8
9 Commissioner, this, in effect, summarises the opinion
10 of the police ballistics expert as to what occurred. In
11 his opinion, the first shot was fired on the bed and
12 a bullet was removed from the bedspread underneath where
13 that shot was fired; that the second shot was on the floor
14 and that a bullet was removed from the carpet; and that
15 a search of the room was conducted and all cartridge
16 casings were removed.

17
18 Commissioner, the removal of the ballistics evidence
19 gives Ms Waine's death the hallmarks of a professional hit.
20 It supports an inference that she was killed by a person
21 who had knowledge of the value of ballistics evidence to
22 investigators and, moreover, that whoever conducted the
23 killing did so in a planned and methodical way, taking the
24 time and care to search for and remove the evidence.

25
26 One consequence of the lack of ballistics evidence is
27 that it is impossible to know now the type, make, model or
28 calibre of the firearm, or potentially firearms, that were
29 used. The only knowledge is that which can be inferred
30 from the bullet wounds themselves.

31
32 Unfortunately, as Dr Iles has noted in her review of
33 the original autopsy report, there were no detailed
34 measurements taken of those bullet wounds. At the time of
35 the original investigation, a ballistics officer expressed
36 the opinion that the bullets were consistent with a large
37 calibre firearm, possibly a .45 calibre, so that is
38 a firearm with a gun barrel 0.45 inches in diameter.

39
40 To test and further this opinion, the Inquiry engaged
41 an independent ballistics expert, Mr Frank Lawton, to
42 review the material. His report, which is dated 26 May
43 2023, is located at tab 81 [SCOI.00014.00017] of the brief.

44
45 Mr Lawton commented that because skin stretches and
46 contracts when hit by a bullet, it is difficult to estimate
47 from the size of a bullet wound the calibre of the firearm.

1 However, in his opinion, the size of the bullet wounds
2 were clearly larger than those expected from a .22 or
3 .32 calibre firearm.

4
5 He also observed that the muzzle abrasion that,
6 Commissioner, you will recall was observable on Ms Waine's
7 back, was consistent with having been caused by an
8 automatic pistol and he was able to exclude some models or
9 makes of firearms based on the shape of that abrasion.

10
11 However, beyond these broad observations as to the
12 nature of the firearm that was used, the absence of
13 ballistics evidence makes it difficult to know more about
14 the firearm.

15
16 At the time of the crime scene examination and at
17 autopsy, a number of exhibits were retained and some were
18 tested in the course of the original police investigation.
19 Commissioner, at my written submissions paragraph 21,
20 there's an outline of some of the exhibits that were taken.

21
22 If I could, for the purpose of oral submissions, jump
23 to the most critical of these: hairs were found on the
24 left hand of Ms Waine and at autopsy these hairs were
25 retained for matching purposes. It does not appear from
26 the material that the Inquiry has that these hairs were
27 ever examined.

28
29 The Inquiry issued a summons to the NSW Police Force
30 in an attempt to obtain the exhibits in this matter, but
31 despite extensive searches, the whereabouts of the hairs
32 and other exhibits is unknown. So, Commissioner, this is
33 regrettably another case before this Inquiry where critical
34 exhibits have been lost.

35
36 Mr Bruce, of the Forensic and Analytical Science
37 Service, has provided a statement to the Inquiry to outline
38 what testing could be conducted now, particularly in
39 respect of the hairs. If there was cellular material at
40 the root of the hair, autosome or DNA profiling would have
41 been possible. If there was no cellular material,
42 mitochondrial DNA sequencing would have been possible, and
43 in either event, there would have been a possibility to
44 compare any profile to the national DNA database.

45
46 The hairs on Ms Waine's hand may well have originated
47 from the person involved in her homicide and the loss of

1 those exhibits was an avoidable loss of an opportunity to
2 make progress in Ms Waine's case.

3
4 Commissioner, I now turn to examine the original
5 police investigation into Ms Waine's death. I start by
6 making these comments. The Inquiry summonsed the totality
7 of the police records relating to Ms Waine's case. There
8 was no assertion in this case by the NSW Police Force that
9 any material was missing and these submissions proceed, as
10 they must, on the footing that all police records relating
11 to the death of Ms Waine have been produced to the Inquiry.

12
13 That being the case, the absence of some material from
14 the police file is both striking and troubling. There were
15 a number of theories that were pursued by police as to who
16 killed Ms Waine and why. Each of these theories pointed to
17 a different person of interest. However, as will become
18 apparent throughout my submissions, the police
19 investigation into Ms Waine's murder left many loose ends.
20 There is ground for serious concern as to why various lines
21 of inquiry were either not pursued at all or not pursued to
22 finality.

23
24 Commissioner, you'll see at paragraph 41 of my written
25 submissions a summary of the apparent deficiencies in the
26 police investigation and I will come to each of those as
27 I outline the various strands of the police investigation.

28
29 This Inquiry has tried to tie some of those loose ends
30 but the passage of time has proved of great hindrance. In
31 many cases, the Inquiry has been told that records have
32 been destroyed or that key persons of interest or key
33 witnesses cannot be located, and the result of that is
34 that, regrettably, we are today no closer to knowing the
35 identity of Ms Waine's killer or, potentially, killers.

36
37 So what I propose to do, nonetheless, is set out five
38 of the lines of inquiry or five of the theories in relation
39 to how Ms Waine met her death and outline the nature of the
40 police investigations and any steps that the Inquiry took
41 to try and further those investigations. There will be no
42 submission at the end that any one or other of those
43 theories is the plausible or likely theory as to how
44 Ms Waine was killed.

45
46 Commissioner, the first of those five theories relates
47 to an association or relationship that Ms Waine had with

1 a police officer. I will ask that tab 92 [SC01.82926_0001]
2 be put on the screen.

3
4 Commissioner, this is an article from 13 June 1985, so
5 not long after Ms Waine's death, and as this headline
6 reveals, it was no particular secret at the time of
7 Ms Waine's murder that there were rumours circulating that
8 she had been in a relationship with a police officer.

9
10 This article refers to one such report, but as I've
11 outlined in my written submissions, investigating police
12 were, in fact, told by at least 13 witnesses that Ms Waine
13 was in a relationship with a police officer. One witness
14 recalls doing laundry for Ms Waine and washing a police
15 shirt.

16
17 That can be taken down now.

18
19 Commissioner, at least four, and possibly five of
20 these witnesses purported to have seen the police officer
21 that Ms Waine was in a relationship with.

22
23 Now, I've set out in my written submissions the
24 accounts of each person, and it is acknowledged that some
25 of the information that is provided is vague and also some
26 of the witness accounts are inconsistent about the person
27 who was seen. But it is noted that several of the
28 witnesses said that Ms Waine referred to the officer as
29 "David", with a surname that sounded like "Brown" or
30 "Brawn" or "Bowen". Of course, it cannot necessarily be
31 assumed that this is the real name of the person that
32 Ms Waine was seeing.

33
34 Further, several witnesses said that this was an
35 officer attached to the Darlington Police Station.

36
37 Two witnesses described that the police officer had
38 been "hassling" Ms Waine, and there is one witness account
39 that is of particular note.

40
41 If I could ask that tab 62 [SC01.82924_0001] at
42 page 85 be placed on the screen. Commissioner, this is
43 a running sheet of an interview of a woman who has been
44 given a pseudonym and I will refer to that person as "MR"
45 in the course of my oral submissions.

46
47 MR described that on one occasion in October

1 or November 1984 - I will ask that be scrolled down so it
2 can be followed - she was at Ms Waine's apartment and
3 a police officer who had been hassling her entered.
4 Ms Waine picked up the telephone to call Internal Affairs.
5 When she did this, the police officer hit her in the face
6 and then went into the kitchen where he broke a glass.
7 Eventually the argument was calmed.

8
9 MR added that she had seen this police officer in a
10 police truck in Darlingtonhurst.

11
12 Now, I wish to be clear when making this submission
13 that there is no evidence at this time that could link any
14 police officer who Ms Waine may or may not have been in a
15 relationship with to her murder. However, it was
16 undoubtedly a matter of some importance that a police
17 officer, who may have had access to a firearm and knowledge
18 about ballistics, was reported to have both been in a
19 relationship with Ms Waine and acting violently towards
20 her.

21
22 Commissioner, I ask that that now be scrolled down,
23 and you'll see in the final paragraph there that, in this
24 police note, it's recorded that MR identified the
25 photograph of a particular police officer as being the
26 person that she saw.

27
28 Now, of significant concern, there is no statement
29 that has been taken from the witness MR, and there is no
30 documentation about the photo identification process or the
31 photograph that she was apparently shown.

32
33 Commissioner, the Inquiry has now summonsed material
34 relating to the person apparently identified by MR, and
35 I'll just note at this time that records would indicate
36 that he was a person with fair hair and green eyes. I also
37 note that he was not attached to the Darlingtonhurst Police
38 Station.

39
40 Commissioner, I then wish to take you to the interview
41 with a witness who's been given a pseudonym and who I will
42 refer to as "CS". At tab 26 [SC01.00014.00012_0001] there
43 is a statement from CS. I'll ask that that be scrolled to
44 paragraph 7. CS claimed to have met David from the
45 Darlingtonhurst Police Station on two occasions. She provided
46 a description to police, and it is as follows:
47

1 *I would describe him as a male, about*
2 *33 years of age, possibly of Greek or*
3 *Italian origin, well built, dark short hair*
4 *but not close cropped.*

5
6 So I note that it is very different to the description of
7 the person whose photograph was identified by MR.

8
9 I then turn to tab 62 [SC01.82924_0001] at page 84.
10 So that was a statement taken from the witness CS, but
11 there is further an interview with the witness CS. That
12 was tab 62, when that's available, and at page 84, which is
13 the previous page.

14
15 Now, witness CS was shown the photograph that was
16 identified by witness MR and she said that this was
17 definitely not the policeman, David, who she had seen and
18 with whom Ms Waine was having an affair.

19
20 What is not indicated in this particular police note
21 was whether CS was shown other possible photographs that
22 may have helped identify the police officer that she saw.

23
24 Commissioner, I will next ask that tab 47
25 [SC01.00014.00008_0001] be placed on the screen. This is
26 a coronial statement by the officer in charge at the time
27 of the coronial inquest, who was Detective Sergeant McCann,
28 although I note that Detective Sergeant McCann was not,
29 throughout the investigation, the officer in charge.

30
31 I will ask that it be scrolled to paragraph 10 of that
32 statement. That paragraph deals with inquiries made about
33 policemen named David. What is noted towards the end, the
34 final lines, is that that constable was questioned and it
35 was established that he had never been attached to the
36 Darlinghurst Police, nor that he had been in any police
37 truck in that area, therefore, it is felt that this line of
38 inquiry has been exhausted. That's referring to the
39 officer that was identified by witness MR.

40
41 Now, the Inquiry has not been able to locate any
42 contemporaneous record of that officer being questioned,
43 including in the material summonsed in relation to the
44 officer identified by MR. What is submitted here,
45 Commissioner, is that to call this line of inquiry
46 "exhausted" may have overstated the position. As I've
47 mentioned, there are no records that would indicate that

1 CS was shown other photographs to help identify the officer
2 that she may have been speaking about, nor, indeed, any of
3 the other witnesses who said that, at some point, they saw
4 this police officer.
5

6 There were also other details about the apparent
7 police officer who Ms Waine was seeing that emerge from the
8 various witness accounts, including his rank, his station,
9 where he was residing, apparent injuries that he sustained
10 and cars that he may have driven. All of these features
11 could have been used to identify police officers matching
12 the descriptions given by witnesses, and at least on the
13 material available to the Inquiry, there are no records to
14 indicate that those sorts of checks were conducted. So
15 it's submitted that further steps should have been taken to
16 exhaust this line of inquiry.
17

18 That can be now taken down.
19

20 Commissioner, I've already referred to some of the
21 records that have been summonsed by this Inquiry in an
22 attempt to now, some more than 30 years down the track,
23 further develop this line of inquiry, and I wish to mention
24 one additional step.
25

26 The Inquiry received information as to the name of
27 a person who was suspected at the time of being the person
28 said to be a police officer who witnesses identified as
29 being in a relationship with Ms Waine, and this person was
30 summonsed to a private hearing before the Inquiry.
31

32 The content of that private hearing is and will remain
33 confidential and will be the subject of the confidential
34 part of the report of this Inquiry. However, it is
35 considered appropriate to state, on the basis of the
36 evidence obtained, that that person was not considered to
37 be the person who was in a relationship with Ms Waine, nor
38 a person of interest in relation to Ms Waine's death.
39

40 I further note that the gun that this officer was
41 issued was inconsistent with the muzzle abrasion on
42 Ms Waine's skin. So accordingly, the position as of today
43 is that the identity of the police officer, if any, who was
44 in a relationship with Ms Waine, remains unknown.
45

46 Commissioner, that was the first line of inquiry which
47 I wish to refer to. I turn now to the second line of

1 inquiry in relation to who may have killed Ms Waine.
2

3 In addition to Ms Waine being rumoured to be in a
4 relationship with a police officer, other witnesses
5 described that she was "keeping company" with a security
6 guard who worked for MSS Security. Much like a police
7 officer, a security guard was likely to have access to
8 firearms and also to have an understanding of ballistics.
9

10 Now, of significance was that a neighbour of Ms Waine
11 who resided in the same building as her on Darlington Road
12 saw an MSS Security guard walk into her building on
13 either the Sunday or the Monday of Ms Waine's death. Now,
14 regrettably, his statement is not clear as to whether it
15 was the Sunday or the Monday. If it was the Sunday, it
16 would be a sighting of very little significance given that
17 Ms Waine was later seen early on Monday morning. However,
18 if it was on the Monday, that would be a sighting of some
19 considerable significance.
20

21 Now, in this case, police did ultimately identify and
22 interview a security officer who provided a signed
23 statement in which he accounted for his movements over the
24 night of Ms Waine's death. He also stated that he had
25 access to a firearm through work but that it had been
26 signed back in to MSS Security over the relevant time
27 frame.
28

29 Commissioner, I don't propose to go through that
30 statement in any detail orally, but what I will comment on
31 is that there is a lack of information before this Inquiry
32 that would show that any of the people that were nominated
33 by this person to be an alibi witness - none of them were
34 spoken to; there were no records sought from MSS Security
35 to confirm whether or not his account of having signed his
36 pistol in were correct; there were no records sought from
37 MSS Security as to whether his employment schedule matched
38 what he claimed; and the neighbour who saw an MSS Security
39 officer enter the building was never shown a photograph of
40 this person.
41

42 Now, the Inquiry sought to take some of those steps by
43 issuing summonses to MSS Security and other agents that
44 might have had information about access to firearms,
45 however, it was determined that because of the passage of
46 time, those records were destroyed and we are now unable to
47 confirm those accounts.

1
2 Further, Commissioner, an attempt was made to find the
3 neighbour who saw the MSS Security officer, and that person
4 is now deceased. So again, the opportunity to test that
5 security officer's account has now been lost.
6

7 That was the second of the lines of inquiry. Turning
8 to the third line of inquiry as to who may have killed
9 Ms Waine, on 5 January 1986 two police officers from the
10 Darlinghurst Police Station interviewed a man named Danny
11 Robert Shakespeare.
12

13 Commissioner, I will ask that tab 45
14 [SC01.10034.00009_0001] be put on the screen. This is
15 a copy of that interview, and you will see that the
16 question is asked:
17

18 *Do you have any knowledge of who murdered*
19 *Wendy Wayne [sic]?*
20

21 And the answer was "Yes". In this typed interview,
22 Mr Shakespeare claimed to have known Ms Waine through
23 a woman, who has been provided a pseudonym and who I'll
24 refer to as "MF".
25

26 Now, he claimed - that is, Mr Shakespeare claimed -
27 that MF had made a detailed confession to him as to her
28 involvement in the murder of Ms Waine. According to
29 Mr Shakespeare, MF told him about the background to the
30 dispute which motivated Ms Waine's murder.
31

32 Now, I will set this out. This is Mr Shakespeare's
33 account of what Ms MF had said. MF was involved in the
34 sale of heroin. MF had been staying at Ms Waine's
35 apartment and while there, she and another sex worker,
36 known only as "Sammy" were bagging heroin to sell.
37

38 When Ms Waine came home and saw what they were doing,
39 an argument started. MF said that she would get rid of the
40 heroin and she went to make a phone call, but when she
41 returned, both Sammy and the drugs were gone.
42

43 The following day, MF found out that Ms Waine had
44 flushed the drugs. MF told Ms Waine that she needed to pay
45 back the money, being some \$500 or \$600, and Ms Waine said
46 that she wasn't going to. Ms Waine also apparently told
47 MF that she knew who MF was selling drugs for and that if

1 MF didn't leave her alone, she would "drop them".

2
3 Now, Mr Shakespeare would later reveal that MF was
4 apparently selling drugs for Neddy Smith, who is, of
5 course, a notorious Sydney underworld figure. MF believed
6 that she had no choice, that either Wendy copped it or that
7 she would cop it.

8
9 So Mr Shakespeare went on and said that MF described
10 the manner of Ms Waine's murder. So again, this is
11 Mr Shakespeare's account of what MF had said.

12
13 Apparently, MF and a man named Ian waited across the
14 road from Ms Waine's apartment. A third man, whose name
15 is unknown, acted as a customer and picked up Ms Waine and
16 took her back to her apartment. MF and Ian waited for
17 10 to 15 minutes before entering the apartment, went
18 inside, MF pushed her to the ground while Ian shot her.
19 MF grabbed her belongings and left. Ian stayed at the
20 flat, because "he was going to make sure that no-one knew
21 how or what she was shot with." The three of the offenders
22 then reconvened and got rid of the gun.

23
24 According to MF, the murder was organised by
25 Neddy Smith and Ms Waine was murdered because she "knew
26 too much".

27
28 Now, I pause here to note that some aspects of this
29 account are consistent with the objective circumstances
30 known about Ms Waine's death, however, a media review
31 conducted by this Inquiry discloses that, at the time that
32 Mr Shakespeare was giving this interview, many of the
33 circumstances about Ms Waine's death were public knowledge
34 and all the relevant circumstances including that the
35 ballistic evidence was missing.

36
37 Now, at question 24 of the statement, it was asked:

38
39 *Are you prepared to attend Court and give*
40 *evidence in this matter?*

41
42 And Mr Shakespeare apparently said "Yes". Despite this,
43 there is no evidence that any statement was ever taken from
44 Mr Shakespeare.

45
46 Now, nearly six months after the interview with
47 Mr Shakespeare, on 30 June 1986, investigating police

1 spoke to another witness, who has been given a pseudonym
2 and who I will refer to as "SR". Now, that is at tab 35
3 [SC01.10040.00044_0001] of the brief.
4

5 Now, I won't go through this in great detail. SR said
6 that she had a conversation with Mr Shakespeare and, in
7 broad terms, SR's account is consistent with what
8 Mr Shakespeare had told police. So, namely, that MF was
9 involved in the killing of Ms Waine, that Ms Waine was
10 killed because of an argument over a quantity of heroin
11 that Ms Waine had flushed down the toilet, and that the
12 heroin had come through Neddy Smith.
13

14 However, Commissioner, there are other quite notable
15 discrepancies between Mr Shakespeare's account in his
16 record of interview and the version attributed to him by
17 SR, so details such as the street value of the heroin.
18

19 Commissioner, it is submitted that SR's whole account
20 must be treated by this Commission with great caution.
21 It's second-hand hearsay and it's of a very imprecise and
22 speculative nature. Commissioner, I would invite you at
23 a later time to read that interview in its full. It is
24 sometimes ambiguous, difficult to follow and not altogether
25 clear.
26

27 Nonetheless, police were now in possession of two
28 versions from Mr Shakespeare where he provided information
29 about the murder of Ms Waine, said to have come through the
30 person MF.
31

32 Commissioner, looking at Mr Shakespeare's versions
33 today, there is serious reason to doubt his credibility and
34 the veracity of his accusations. Mr Shakespeare has a long
35 public history as a conman and a liar. He has been
36 comprehensively and repeatedly discredited as a witness of
37 truth.
38

39 Commissioner, I will take you to two examples that
40 indicate the view of judicial officers about his
41 credibility. The first is that Mr Shakespeare was a key
42 prosecution witness in the case against Mr Garry Nye for
43 the murder of a Mr Roy Thurgar. Mr Nye was acquitted and
44 after his acquittal he successfully sued the State of New
45 South Wales for malicious prosecution. Justice O'Keefe, in
46 his judgment, described Mr Shakespeare as an "obvious liar"
47 and said that his account was "so shot through with

1 recantations, contradictions, discrepancies and like
2 indications of untrustworthiness as to be ludicrous", and
3 that he was "making a good deal of his story up as he went
4 along."

5
6 The second example is in 1996, when Mr Shakespeare
7 gave evidence before the New South Wales Coroner that he
8 had witnessed a police officer murder the notorious hitman
9 Christopher Dale Flannery. Mr Shakespeare's account was
10 thoroughly discredited.

11
12 In his findings as to the death of Mr Flannery,
13 Coroner Greg Glass commented that Mr Shakespeare "displayed
14 an extraordinary ability to stand his ground, to
15 persistently lie under oath with a straight face". His
16 evidence was described as a "systematic and calculated
17 attempt by him to mislead police, coronial investigators,
18 Counsel Assisting, the court and even his own legal
19 advisers on a grand scale", and Mr Shakespeare would later
20 plead guilty to a charge of making a knowingly false
21 accusation against Mr Davidson.

22
23 So, Commissioner, accordingly, with the benefit of
24 these two findings, both in circumstances where
25 Mr Shakespeare has made allegations of information about
26 another murder, the Inquiry would not place great weight on
27 the account given by Mr Shakespeare.

28
29 However, what is less clear from the material is
30 whether Mr Shakespeare's unreliability and his
31 untruthfulness would have been known to investigating
32 police in 1986. So the two instances that I took you to,
33 Commissioner, were from the 1990s, and at the time, while
34 Mr Shakespeare had convictions for violent property
35 offences such as robbery and demanding money with menaces,
36 he did not yet have any convictions for dishonesty. So it
37 is unknown to what extent police were aware of his
38 dishonesty.

39
40 The central feature of Mr Shakespeare's version was
41 that MF had some involvement in the murder of Ms Waine and
42 knew who it was that, in fact, shot the gun. There is no
43 evidence on the material available that police made any
44 attempt to locate or to interview MF or to otherwise
45 investigate the claims that were made by Mr Shakespeare,
46 and the failure to do so remains unexplained.

47

1 I might ask that tab 39 [SC01.10040.00041_0001] be put
2 on the screen. Commissioner, this is a running sheet that
3 has been prepared by a police officer, and if you scroll to
4 the bottom of that page, you'll see that it was prepared in
5 1991, so that is some five years after the investigation
6 and Mr Shakespeare's allegations.

7
8 If we scroll back to the narrative, what it records is
9 that MF was spoken to at Kings Cross on 26 January 1986 -
10 that is, after Mr Shakespeare's statements. At the time,
11 the interviewing officer did not realise that she was
12 a suspect in the murder and only recorded the details as
13 a matter of course.

14
15 Attached to this running sheet is an intelligence
16 report which records simply a routine interaction between
17 police and MF. So this running sheet would suggest that
18 someone as at 26 January 1986 considered MF a suspect in
19 the matter, and yet this is the only record of any
20 consideration being given to speaking to MF.

21
22 Commissioner, I will return to tab 47
23 [SC01.00014.00008_0001] which is the statement that was
24 provided to the Coroner in this matter, and I'll go to
25 paragraph 11 of this statement.

26
27 The first thing I note is that there is no mention in
28 this statement of the alleged confession by MF or indeed
29 any of the claims that were made by Mr Shakespeare or SR.
30 Now, at paragraph 11 it is said that extensive media
31 coverage was given to the murder and consequently a number
32 of lines of information were received, however, nothing of
33 any constructive value has come to light.

34
35 Now, it may well be the case that police, perhaps not
36 unreasonably, considered that Mr Shakespeare's evidence was
37 of no constructive value, knowing what we now do about
38 Mr Shakespeare. However, the submission, Commissioner, is
39 that Mr Shakespeare's credibility was properly a matter to
40 be considered by the Coroner, and in any event, the real
41 issue was what MF might have said in response to these
42 allegations, and a Coroner could have taken steps to
43 summons MF as a witness.

44
45 Commissioner, the Inquiry has made extensive efforts
46 to ascertain the whereabouts of MF and in the statement of
47 Mr Carvosso, which is in the brief, the number of summonses

1 that have been sent in relation to MF are set out. This
2 has included summonses to the Registry of Births, Deaths &
3 Marriages in every state and territory of Australia; the
4 Police Forces of every state and territory; the Department
5 of Housing; the Department of Health; the Department of
6 Foreign Affairs and Trade; and staff members of the Inquiry
7 went to the last reported address of MF.

8
9 The upshot of those investigations is that they were
10 unsuccessful and that the last confirmed record of MF was
11 in May 1986 in relation to petty charges. Since then,
12 there is no reliable record of her anywhere in Australia.
13 So this is a case where a key witness and possibly person
14 of interest now cannot be located and we have been unable
15 to advance this line of inquiry.

16
17 Commissioner, I turn now to the fourth of the lines of
18 inquiry, and this one can be dealt with in a shorter
19 fashion. On 1 May 1985, so, Commissioner, that was the day
20 after Ms Waine's body was discovered, Alan Baskin, who was
21 a journalist at 2UE radio station, received a call from an
22 unknown person. This person had a male voice and told
23 Mr Baskin that he was from the Coven of Mercy for Fate.

24
25 The next day, on 2 May 1985, Mr Goulden, from the Gay
26 Counselling Service of New South Wales, received a recorded
27 telephone message, again this was from a person with a male
28 voice who claimed to be from the Coven of Mercy for Fate.

29
30 Now, that recorded telephone message stated:

31
32 *We have got Wendy and you're going to pay.*
33 *This is the Coven of Mercy for Fate.*

34
35 And in the first call, Commissioner, to the radio station,
36 the person stated:

37
38 *We got Wendy and hope to get all Sydney*
39 *gays. This is a public announcement.*

40
41 So there were two calls by a person or persons claiming to
42 be from the Coven of Mercy for Fate claiming responsibility
43 for Ms Waine's murder and, further, making threats towards
44 other members of the LGBTIQ community.

45
46 Now, the material produced to the Inquiry by the
47 NSW Police Force contains no indication that any steps were

1 taken to request call records or otherwise identify the
2 caller or callers who made those phone calls. The
3 Inquiry's own investigations have not uncovered any
4 information about a group or an organisation called the
5 Coven of Mercy for Fate.

6
7 Commissioner, other than those phone calls, there is
8 no evidence to substantiate any link between Ms Waine's
9 death and an unidentified coven, and it may well be that
10 the unknown caller or possibly callers were
11 opportunistically and somewhat sadistically taking
12 advantage of Ms Waine's murder to sow fear amongst the
13 LGBTIQ community. But at this stage there is no knowledge
14 as to who that person was.

15
16 But I take this moment now to acknowledge here the
17 fear and distress that Ms Waine's murder undoubtedly would
18 have caused amongst her friends and other members of the
19 LGBTIQ community.

20
21 Commissioner, the fifth and the final line of inquiry
22 involves a fingerprint match that was made in July of 1989
23 to a fingerprint that was found in Ms Waine's unit.

24
25 Now, July of 1989 is about four years after the death
26 of Ms Waine, and the fingerprint match was made after
27 a person, who has been given a pseudonym, had a criminal
28 conviction that lead their fingerprints being uploaded into
29 the NSW Police database.

30
31 Now, the fingerprint was said to have been on a phone
32 that was located in Ms Waine's apartment, however, the
33 precise location of that fingerprint cannot be ascertained
34 from the materials that have been provided to the Inquiry.

35
36 The police file does not contain any statement from
37 the crime scene officer who examined Ms Waine's unit for
38 fingerprints. It is unknown where the telephone itself was
39 located within the unit, or where on the telephone the
40 fingerprint was placed. It's also unknown if there are
41 other unidentified fingerprints that were found at the
42 time. There is a dearth of information in this respect.

43
44 Now, the match was to a man who, as I have said, has
45 been given a pseudonym and who I will refer to as "MG". MG
46 was interviewed by police in January of 1991. So by that
47 time, that was a year and a half after the fingerprint

1 match had been made.

2
3 MG admitted to knowing Ms Waine. He admitted to
4 having engaged her services as a sex worker in 1984, and
5 initially he denied ever having gone to her premises.
6 However, when he was confronted with the evidence that his
7 fingerprint was located in her unit, he said that he had
8 been to her apartment when it had been occupied by another
9 sex worker, a woman named Ms Rupe.

10
11 Now, there is some reason to consider that this
12 explanation might be plausible because the evidence
13 suggests that Ms Waine had only moved into the apartment in
14 about November of 1984, and prior to that time there is
15 evidence that the unit was frequently being used for sex
16 work.

17
18 However, again, from the investigative file, it does
19 not appear that any inquiries were made at all to verify
20 MG's account. Most notably, police never sought to contact
21 the sex worker that MG said that he had known, and to
22 confirm her association with MG, and the Inquiry has
23 confirmed that Ms Rupe is now deceased.

24
25 Further, the lack of information that we have as to
26 where the fingerprint was located makes it very difficult,
27 forensically, to test the plausibility of whether his
28 fingerprint could have persisted on the telephone from, at
29 the latest, November 1984, until the time of Ms Waine's
30 death. So again, the lack of information stands as an
31 impediment to advancing this line of inquiry further.

32
33 So, Commissioner, that concludes what I wish to say
34 about the five lines of inquiry or five theories that were
35 pursued, to greater or lesser extent, by police at the time
36 of the original investigation.

37
38 I will briefly comment upon the history of this case
39 with relation to the Unsolved Homicide Team. The Unsolved
40 Homicide Team has provided to the Inquiry two case review
41 documents in relation to Ms Waine. Now, these documents
42 were said to have been prepared by participants in a
43 homicide course at the Goulburn Police Academy in 2004.

44
45 Now, notably, each of these case screening forms
46 contains extensive recommendations for reopening the
47 investigation and further investigative steps that could be

1 taken. Many of those steps parallel what I have suggested
2 in my submissions today, including interviewing MF or
3 confirming the alibi of the security guard that Ms Waine
4 had been in a relationship with. However, there has never
5 been a reinvestigation into the death of Ms Waine by the
6 Unsolved Homicide Team.

7
8 I have set out in my written submissions some of the
9 correspondence and steps that the Inquiry took to try to
10 understand what function, if any, reviews that were
11 prepared by participants in a homicide course were to play
12 in the context of the Unsolved Homicide Team's operations,
13 and the answer, Commissioner, is that that still has not
14 been satisfactorily explained.

15
16 I also make the following comment: in one of the
17 review documents produced in 2004, there is a comment that
18 there were fired bullets that were retained as exhibits.
19 Of course, this would seem to completely contradict the
20 information in the investigative file that no bullets were
21 found either lodged in Ms Waine's body or recovered from
22 the crime scene. Now, that, of course, caused considerable
23 confusion. There was correspondence between the Inquiry
24 and the Police Force. The position appears to be, as set
25 out earlier, that no bullets or casings were ever located
26 or retained, but again, there's no explanation as to how it
27 came to be that that notation was included in a review
28 document prepared for or by the Unsolved Homicide Team.

29
30 So, Commissioner, the circumstances of Ms Waine's
31 death leave no doubt that she was a victim of homicide.
32 However, despite the multitude of theories about who killed
33 Ms Waine, none can be put any higher than a theory.

34
35 It is submitted that the original finding at the
36 coronial inquest remains appropriate - and that is that
37 Ms Waine died on 29 April 1985 of the effects of bullet
38 wounds of the neck and thorax, inflicted there and then by
39 a person or persons unknown.

40
41 Commissioner, I conclude by considering whether
42 Ms Waine's case was one of LGBTIQ bias. As outlined at the
43 opening of my submissions, Ms Waine was a prominent and
44 visible member of the LGBTIQ community. Widespread
45 hostility to members of that community, including
46 transgender persons, gives rise to a realistic possibility
47 that her murder involved LGBTIQ hate, and the anonymous

1 caller that claimed responsibility for Ms Waine's murder
2 and threatening further violence against the LGBTIQ
3 community may provide some evidence about that hostility
4 and fear that existed at the time. So while the identity
5 of Ms Waine's killer or killers remains unknown, the
6 possibility of LGBTIQ bias or hate motivating her murder
7 cannot be excluded.

8
9 However, although that cannot be excluded, there are
10 features of her murder to which I have taken this Inquiry,
11 Commissioner, including the large calibre firearm that was
12 used and the removal of the ballistics evidence, that bears
13 all the hallmarks of a professional hit rather than a hate
14 crime. So ultimately, there is no sufficient basis for
15 a conclusion as to whether or not Ms Waine's murder
16 involved LGBTIQ bias.

17
18 So, Commissioner, those are my submissions in relation
19 to Ms Waine's death.

20
21 THE COMMISSIONER: Thank you. Do you wish to say anything
22 at this stage?

23
24 MR BARRIE: The Commissioner of Police wishes to reserve
25 her position.

26
27 THE COMMISSIONER: All right, thank you. I will await the
28 submissions from the police and I will report on this in
29 due course.

30
31 Can I just also extend on my behalf and on behalf of
32 all members of the Inquiry to the family here today, Betty
33 and the other members of the family, our sincere
34 condolences for your loss, and thank you very much for
35 attending. I will now adjourn, thank you.