

**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 Tuesday, 20 June 2023 at 10.15am
(Day 62)**

Re: Death of Crispin Dye

Mr Peter Gray	(Senior Counsel Assisting)
Ms Meg O'Brien	(Counsel Assisting)
Mr Enzo Camporeale	(Director, Legal)
Ms Kate Lockery	(Principal Solicitor)
Ms Jacqueline Krynda	(Senior Solicitor)

Also Present:

Mr Mathew Short with Mr Patrick Hodgetts for NSW Police

1 THE COMMISSIONER: Yes, thank you.

2

3 MR GRAY: Commissioner, at 10 o'clock today there was
4 scheduled the documentary tender in the case of Crispin
5 Wilson Dye.

6

7 Unfortunately, for reasons that I will come to
8 shortly, that documentary tender will not be able to
9 proceed today and it will have to be postponed.

10

11 First, there are some matters of background that
12 I need to outline.

13

14 This Inquiry was established, as you know,
15 Commissioner, in late April last year. The death of Mr Dye
16 is one of the many cases which fall within the Inquiry's
17 Terms of Reference.

18

19 On 18 May last year, 2022, the Inquiry issued its
20 first summons, summons number 1, to the NSW Police Force.
21 That summons sought production of all documents relating to
22 investigations by the NSW Police of various deaths falling
23 within category (a) of the Inquiry's Terms of Reference,
24 including the death of Mr Dye. That summons was returnable
25 on 1 June 2022.

26

27 On 8 June 2022, nine boxes of material in relation to
28 Mr Dye were produced.

29

30 Over the course of the last 12 months, the Inquiry has
31 issued numerous additional summonses to the NSW Police for
32 more documents and material relating to many cases.
33 Unfortunately, for whatever reason, the Inquiry has been
34 hampered by delays in producing documents and by documents
35 being produced very late, at a time when the Inquiry's work
36 on a case had otherwise, so it was thought, been completed.

37

38 Mr Camporeale, the lead solicitor from the team of
39 solicitors from the Crown Solicitor's Office assisting the
40 Inquiry, has written to the police about this problem on
41 a number of occasions, most recently, a week ago on 13 June
42 2023.

43

44 I hand up physically the original of an affidavit by
45 Mr Camporeale sworn today. It has been served on my
46 learned friend Mr Short - whose appearance I probably
47 should pause to allow him to announce - just a few moments

1 ago, electronically.

2

3 MR SHORT: Short, for the Commissioner of Police.

4 I understand it has been served electronically. I haven't
5 seen it yet, Commissioner, but --

6

7 THE COMMISSIONER: All right. Thank you, Mr Short.

8 Thank you, yes.

9

10 MR GRAY: Now, may I go to that affidavit, please,
11 Commissioner.

12

13 Mr Camporeale covers a couple of the matters that
14 I have just been speaking about and at paragraph 8 he
15 refers to a letter he wrote last week on 13 June, being
16 annexure A to his affidavit.

17

18 I would ask the Commission to take note of the letter,
19 annexure A. I won't go through all of its contents but,
20 Commissioner, you will see that the topics addressed are
21 delay and late production in response to summonses.

22

23 Mr Camporeale points out on the second page of the
24 letter that the production of material at a late stage can
25 require the Inquiry to revisit matters otherwise ready to
26 proceed to tender and sometimes to reschedule cases due to
27 documents being located which one would have thought should
28 have been located and produced much earlier.

29

30 The case of Mr Dye today, unfortunately, is an example
31 of this problem.

32

33 Mr Camporeale's letter gives a number of examples, in
34 the cases of Mr Jones, Mr Slater, Mr Malcolm and Mr Miller,
35 where documents sought a long time ago are only being
36 produced much later.

37

38 Then, on the last page of his letter, Mr Camporeale
39 requests the police to conduct further searches in relation
40 to some 14 matters which were due to proceed to documentary
41 tender in the next week or so, one of those being the case
42 of Crispin Dye, where a request was made that the searches
43 be carried out by 15 June, which was last Thursday.

44

45 Now, I will come in a minute to the response which
46 came in yesterday, which is annexure B to the affidavit
47 but, for the moment, may I observe that the nature of the

1 difficulties that have been caused to the Inquiry in these
2 ways is clear enough.

3
4 In the case of Mr Dye, the precise date on which the
5 documentary tender would be presented has been the subject
6 of some variations in recent weeks. But it has been known
7 for months that all documentary tenders, including in the
8 case of Mr Dye, would need to be completed by the end of
9 this month or very early next month - that is, July.

10
11 Until last week, the documentary tender for Mr Dye was
12 scheduled for yesterday, 19 June. That is the date,
13 19 June, when the letter from the police was received by
14 the Inquiry, which is annexure B to the affidavit, and
15 which I will come back to.

16
17 First, may I indicate the particular background to the
18 need for today's documentary tender being postponed.
19 Mr Dye died in hospital on Christmas Day 1993. He had been
20 bashed with a blunt instrument near Taylor Square in
21 Darlinghurst in the early hours of the morning two days
22 previously.

23
24 On 28 September 2022, nine months ago, the Inquiry
25 wrote to the police in relation to identifying and locating
26 the physical exhibits held by the police in relation to
27 Mr Dye's case.

28
29 On 7 October, the NSW Police provided a list of eight
30 exhibits that the police had managed to locate. That list
31 of eight included five items of Mr Dye's clothing,
32 including his jeans and his denim shirt. One of the other
33 three items has since been established not to have been
34 a crime scene exhibit at all. Other exhibits, beyond the
35 eight, could not be found and appear to have been lost many
36 years ago.

37
38 One of the eight items, a blood sample, was sent to
39 DAL, which is the acronym for Division of Analytical
40 Laboratories, for analysis at the time of the initial
41 investigation. DAL is now known as FASS, which stands for
42 Forensic & Analytical Science Service.

43
44 None of the other exhibits, including the jeans and
45 the shirt, was ever sent for forensic analysis, either in
46 late 1993 or at any time prior to the establishment of this
47 Inquiry.

1
2 Earlier this year, the Inquiry arranged to have the
3 clothing, including the jeans and the shirt, provided to
4 FASS for analysis. This is, as I say, the first time that
5 these exhibits have ever been submitted for forensic
6 testing in the nearly 30 years since Mr Dye was killed.
7

8 On 14 February this year, FASS informed the Inquiry
9 that it had found two pieces of paper in Mr Dye's denim
10 shirt, folded inside the top left front pocket. One was
11 a yellow post-it style note that contained a handwritten
12 name and phone number on it. The other was a thick white
13 piece of paper with "Davidoff Cool Water" written on it,
14 and which contained a brown mark that FASS thought might be
15 a bloodstain or potentially even a fingerprint.
16

17 Subsequent work by FASS this year has established that
18 that mark is confirmed to be a bloodstain. Evidently,
19 these pieces of paper had never previously been noticed.
20 They were found folded in the front top left pocket of the
21 exhibit, the shirt, and never separately catalogued.
22

23 Obviously the failure by the police up to now to find
24 these pieces of paper is very unfortunate, to say the
25 least. We will have more to say about that when this
26 documentary tender in due course does proceed.
27

28 However, for the moment, I move on to say that, of
29 course, the Inquiry, once being informed of this discovery,
30 requested that forensic testing and fingerprinting
31 procedures be carried out in relation to these two pieces
32 of paper. That testing has produced certain results which
33 will be the subject of submissions on that next occasion.
34

35 Meanwhile, as a separate matter, FASS also informed
36 the Inquiry in February this year that an area of the back
37 right pocket of Mr Dye's Jeans had blood on it.
38

39 That blood contained a mixture of DNA originating from
40 two individuals, one being Mr Dye and the other being an
41 unknown male, to whom I will refer as "Unknown Male A".
42 Due to the degradation of the exhibit over time, testing
43 this exhibit was difficult and protracted. By April this
44 year, FASS informed the Inquiry that all markers, DNA
45 markers, that could be recovered from the Unknown Male A
46 profile had been recovered.
47

1 In May this year, the Inquiry arranged for the sample
2 to be examined by the Institute Of Environmental Science
3 and Research in New Zealand, with a view to ascertaining
4 whether they were able to extract further markers from the
5 Unknown Male A profile by using a particular technology
6 available to them. As it has transpired, no further
7 markers have been able to be recovered due to the
8 degradation of the exhibit over time.

9
10 Meanwhile, FASS also located trace DNA elsewhere on
11 other parts of the jeans. This trace DNA also originated
12 from at least two individuals. Unknown Male A could not be
13 excluded as one of the contributors.

14
15 The Inquiry was informed that Unknown Male A, the
16 profile, did not match any profile already on the national
17 database. That was the state of play until yesterday
18 afternoon.

19
20 Yesterday afternoon, two separate communications were
21 received by the Inquiry. Firstly, in the letter received
22 from the police yesterday afternoon, which is annexure B to
23 Mr Camporeale's affidavit, the police informed the Inquiry
24 that what the letter described as "a further three
25 documents" were going to be produced relating to Crispin
26 Dye.

27
28 In fact, those documents, which were produced during
29 the course of yesterday afternoon and which Inquiry staff
30 have begun to assess overnight, comprise some 261 pages of
31 material. Many of the documents, I am instructed, have
32 never been previously produced to the Inquiry. Some of
33 them, I am instructed, appear to be of considerable
34 potential significance. Those documents need to be fully
35 considered and any additional investigative steps taken in
36 relation to them before the documentary tender proceeds.

37
38 Separately, also yesterday afternoon, the Inquiry was
39 informed that the DNA profile obtained by this Inquiry,
40 Unknown Male A, matches a profile obtained from another
41 crime scene. That information was not provided to the
42 Inquiry by the NSW Police. I will say no more for the
43 moment about the nature of the communications involved.

44
45 The possible significance of such a DNA match is
46 immediately apparent. Whether that possible significance
47 translates in the future to actual significance is not

1 known as of today.

2
3 The Inquiry was not told yesterday afternoon anything
4 about this match, including the location of the other crime
5 scene or the persons known or believed to be involved.

6
7 The Inquiry issued a summons later yesterday seeking
8 more information about such matters. Late last night, some
9 further documents have been produced in response to that
10 summons. Those documents will need to be reviewed and
11 assessed closely. It seems likely, on my present
12 instructions this morning, that a further summons or
13 summonses will need to be issued for the production of
14 further related material.

15
16 Commissioner, in the circumstances, the documentary
17 tender for today in relation to the case of Crispin Dye
18 should not proceed and it should be adjourned to a date to
19 be fixed as soon as all possible further inquiries can be
20 carried out, in my submission.

21
22 THE COMMISSIONER: Mr Short?

23
24 MR SHORT: Yes, Commissioner. The Commissioner of Police
25 seeks to reserve her position on those matters, including
26 potentially putting on some evidence as to some of those
27 inquiries and steps that were taken to locate documents.
28 Unfortunately, I'm not in a position to respond
29 substantively this morning, Commissioner.

30
31 THE COMMISSIONER: All right. I understand your position,
32 Mr Short, but this is not the first time this problem has
33 arisen. I don't expect you, at the minute, to answer me,
34 but I would like you to convey through your solicitor to
35 the highest levels within the Police Force how concerned
36 I am. You and others on behalf of your client realise that
37 I have a finite period in which to inquire into these
38 matters and issue my report. As you probably know, that
39 time has been recently extended, but only for a short time,
40 to 30 August.

41
42 These events, some of them, have necessitated work
43 being done over and over again, and it is the public that
44 is paying for this in relevant terms, so I want to make
45 that position very clear to those instructing you and, as
46 I said, the higher echelons of this force, the Police
47 Force, as to how unsatisfactory some of these things are

1 and have become.

2
3 All right. I will say no more about it. I will
4 adjourn these proceedings - that is, the public aspect of
5 these proceedings - now, to a date to be fixed.

6
7 But Mr Short, I do want, at some point, a response in
8 writing, or otherwise formally, because one inference that
9 is open is that the Police Force clearly are somewhat in
10 disarray in relation to their records.

11
12 If what has been happening is anything other than
13 simply records being all over the place, which is one
14 inference, because it is hard to believe that if nine boxes
15 of documents were produced some time ago and for some
16 extraordinary reason 260-odd pages come in yesterday, the
17 overpowering inference is that those documents were in some
18 other place. That must mean that the record-keeping of the
19 police is, on one view, somewhat questionable and this is
20 not the first time that this has happened.

21
22 I don't expect you to answer now but I would like some
23 serious attention to be given because at the moment, it is
24 just bordering on shambolic, the way the police apparently
25 keep some of their records, and that is, seemingly, not
26 only inconveniencing this Inquiry, but it does affect the
27 public interest, Mr Short. It will be something about
28 which I may have to say something in due course.

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30 MR SHORT: Thank you, Commissioner. The Commissioner of
31 Police would embrace the opportunity to respond in writing.

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33 THE COMMISSIONER: All right. Thank you. I will now
34 adjourn, thank you.

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