

(B) B. (F.)

40

IVAN Brought the WHISKY (3.A.)  
From Duty Free THAT DAY  
2-2-15

[13] Mr Sutcliffe then identifies a number of matters that he says are relevant to the assessment including:

" THIS VITAL EVIDENCE WAS NEVER DISCLOSED AT TRIAL BY THE CROWN OR DEFENCE!

- (a) (Two unidentified prints on items of interest removed from the scene including liquor bottles, drinking glasses, dishwashing liquid and scrubbing brush, jug, meat cleaver and kitchen knife.)
- (b) (The defendant's fingerprints were not located on the knife or the meat cleaver.)
- (c) (Mr Ballantyne's DNA was not located on either the knife or the meat cleaver.)
- (d) (Despite significant blood loss suffered by the victim, there is relatively little blood transfer on the defendant.)
- (e) (The police checked fluctuation in power supplied utilised by the defendant and this did not disclose any surge in power supply consistent with someone using the hot water supply to shower.)

if there are fingerprints there is DNA

[14] Mr Sutcliffe also emphasised that the defendant has now been in prison for almost six months and he has been compliant in every respect and that counsel is not aware of any concerns that are raised about his mental health or risk to others while in prison. He noted that at most, even on the theory of the police case, Mr Ballantyne's highest risk factors are associated with alcohol consumption and he says this can be managed through conditions and Mr Ballantyne has every reason to comply.

[15] Mr Sutcliffe also highlighted problems with access to Mr Ballantyne for the purposes of instructions, including restricted hours of visiting and other fetters such as an inability to take a recording device into the prison.

[16] Mr Sutcliffe then refers to the bail addresses. The preferred address at Mr Carson's motel was not considered as suitable for EM bail, so it has been decided to apply for conventional bail on conditions. Mr Carson's address, however, does

B

(4.)

**MR DOUCH CALLS**

**BARRY SMITH (AFFIRMED)**

Q. Mr Smith is your full name Barry Smith?

A. It is, yes.

5 Q. And you're a fingerprint officer stationed at the fingerprint section of the New Zealand Police here at Hamilton?

A. That's right.

Q. Now how long have you been involved in duties as a fingerprint officer with the police force either here or overseas Mr Smith?

10 A. Over 24 years.

Q. And whereabouts did you begin your work?

A. I started with the Metropolitan Police in London.

Q. And?

A. Then I moved to New Zealand 17 years ago.

15 Q. And your duties with the Metropolitan Police at New Scotland Yard?

A. Yes.

Q. And what were they?

A. They were examining fingerprints from crime scenes and exhibits and the identifications of people by means of their fingerprints.

20 Q. Moved to New Zealand 17 years ago?

A. Yes.

Q. Commenced with the New Zealand Police at that time?

A. Yes.

Q. And been involved in that work with the New Zealand Police since?

25 A. Yes.

Q. All right. Now you on the 3<sup>rd</sup> and 5<sup>th</sup> days of February 2015, as I understand it, attended at 202 Achilles Ave in Whangamata to undertake an examination of the scene with the focus of obviously upon what we'll call generic fingerprints?

30 A. That's correct, yes.

Q. Now the jury might benefit from a brief summary please Mr Smith of the theory behind fingerprint examination and how you examine and obtain evidence for subsequent comparison?

B

D

A. That's right, yes.

Q. That's not an exclusionary finding is it?

A. No.

Q. Now in addition to those items we had more significantly the knife and the meat cleaver which are exhibited here for us, correct?

(5)

A. Yes.

Q. And you examined both of those carefully?

A. I did, yes.

Q. What did you find in respect of the meat cleaver exhibit?

(10)

A. There were no identifiable fingerprint, in fact no fingerprints at all on it.

Q. How would you describe it?

A. Clean.

Q. So when you say no prints at all does that include partial prints or areas of ridge detail?

15 A. Yes, that's correct, nothing that I could look at and say that it had been handled, sometimes you don't get any ridges at all but you can see a shape of a finger but there was nothing like that at all.

Q. Now reverting back to where we began, is it a necessity however that the contact of a ridge with the sweat glands onto an object will necessarily leave a print?

20

A. No, it won't necessarily leave a print, it would depend on things that you've handled before and how much sweat was on your hand, whether you had something else on your hand that was contaminating it, that would prevent you from leaving, leaving a sweaty print, you can leave prints from other substances that are on your hands such as blood for example, or ink or whatever, if that's on the surface of the skin and you touch something you will leave a print.

25

Q. Are some surfaces more receptive than others?

A. Yes.

(30)

Q. What about the metal of the cleaver?

A. Metal is usually a fairly good surface, smooth and shiny, non-porous surfaces are the best, the meat cleaver I believe is not totally shiny but it has a smooth surface and will hold a fingerprint.

Q. Turning then to the knife, the outcome of your examination of it?

B

A. There were no identifiable fingerprints on it.

Q. Were there any areas of impression that constituted fingerprints albeit not suitable or unidentified?

A. No.

5 Q. So is that the same outcome as in respect of the cleaver?

A. No, the smaller knife was covered in blood, whether a fingerprint remains on the surface will depend on how that surface has been treated after the print has been left there. Obviously I'm not, I don't know the circumstances but if it's rubbed or wiped or the print will more often than not be removed. The handle of the knife as well is a rough texture which won't hold a print good enough to identify usually because of the pattern on the handle.

10

Q. But in respect of each the ultimate conclusion is that there were no prints which could be identified and allocated to a particular individual?

15

A. No, that's correct.

Q. Now subsequently Mr Smith did you receive sets of prints relating to two people who will be Crown witnesses and that is Mr Graham Dowling and Mr Daniel Heaney?

A. Yes I did.

20 1558

Q. And utilising those prints did you compare them with any of the unidentified fingerprints you'd obtained during your examination of 202 Achilles Ave?

A. Yes I did compare them with the unidentified prints.

25

Q. And were they responsible for leaving any of the unidentified prints?

A. No they weren't.

Q. Did it extend to the soles of their feet, the information you were provided or just the palms and fingers?

A. I just had the palm, fingers and palms.

30

Q. All right, thank you.

**EXHIBIT 23 PRODUCED – FINGERPRINT PHOTOGRAPH BOOKLET**

B

# J O B S H E E T

Due \_\_\_\_\_  
File \_\_\_\_\_

Offence: Operation TIGER  
Directional # 27

DATE and  
TIME

First plan your inquiry then set out the action taken, inquiries made, oral statements of persons seen and information gained, etc.

## BRANNEN/HEANEY:

I first enquire in regards to Andrew BRANNEN and Daniel HEANY and contact details for those two persons.

Graham advises me that Andrew is his brother-in-law who was up visiting his very ill father. He believes Andrew has returned to Nelson. He provides a contact phone number for Andrew of

He provides a contact number for Daniel HEANY of

## POWER Co:

I subsequently question Graham in regards to the power company he sources his electricity from. He identifies that it is Genesis Power. He doesn't think he has a Smart Meter at his home.

## TIMINGS:

In respect of the timings he has indicated in his statement, I question Graham as to whether he made any phone calls, sent any texts or had any computer type activity (i.e. social networking) when he had woken after midnight on the 3rd of February. He advises that he didn't.

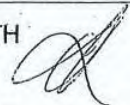
## MEDICATION:

I then canvass DOWLING in regards to the medication that he is currently prescribed for his Parkinsons Disease and he produces the medication bottles for me and identifies the dosages he takes and frequency.

- The first medication is Sinemet 100mg - 25mg tablets. He identifies that he takes 12 of these tablets a day; this being two tablets every three hours, six times. The prescription on the bottle identifies that the medication is prescribed by Dr Sandie MOSS. DOWLING explains that he takes the tablets religiously

Name: Chris SMITH

Rank: Detective



QID CSH045

11-1-01

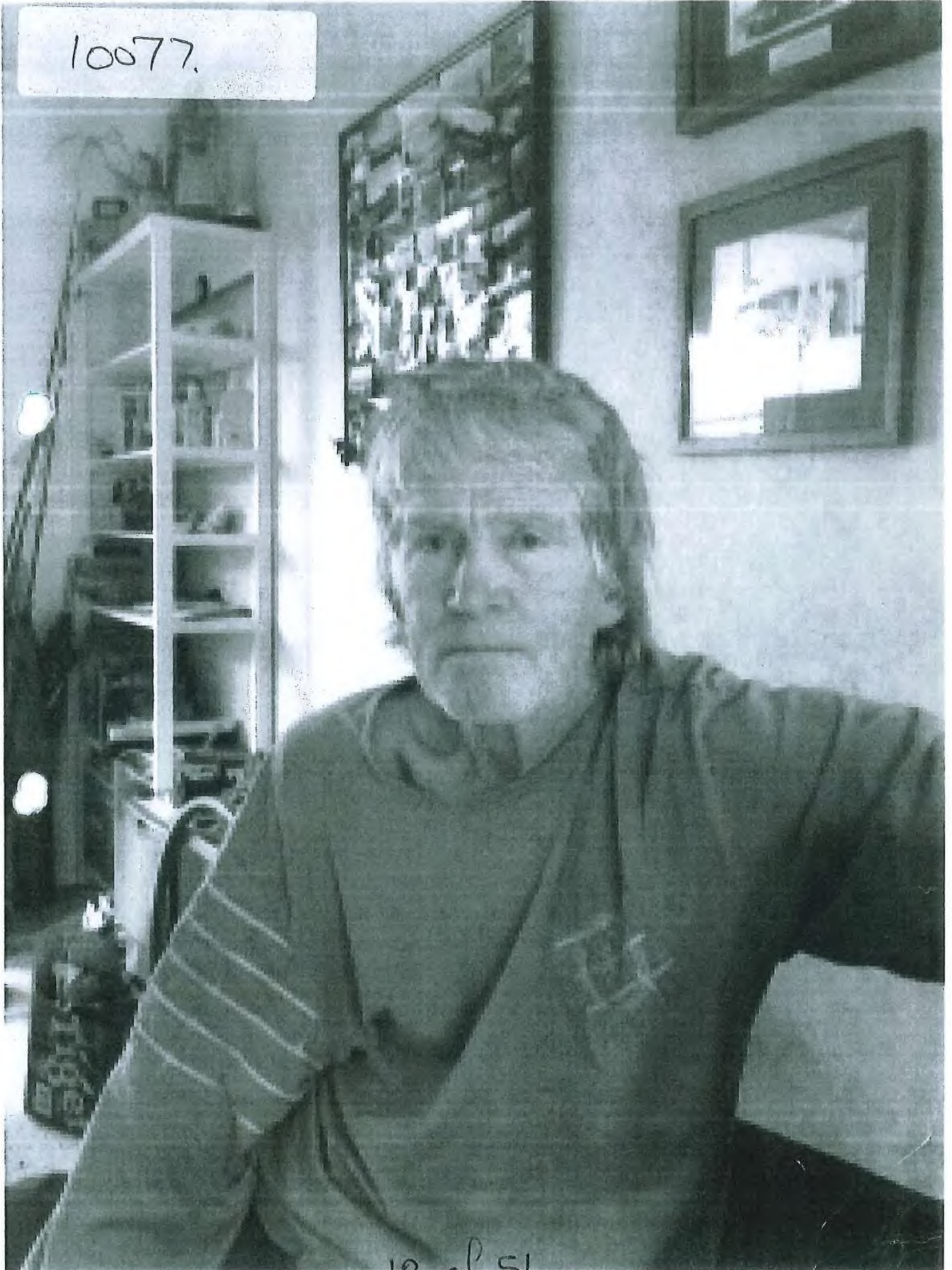
Name:

Rank:

QID

photo..DOWLING. WALKER. Brian. CSHO45. 100215 (6.)

10077.



12. of 51.

Photograph viewed by Brian Walker @ 150000 10/21/15 photo CS-174

10037.

(D.)

JS.HEANEY.Daniel.PRF880.040215  
N.Z. POLICE

Police 29  
11/97

### J O B S H E E T

Due \_\_\_\_\_  
File \_\_\_\_\_

Offence: Operation TIGER 1

DATE and  
TIME

First plan your inquiry then set out the action taken, inquiries made, oral statements of persons seen and information gained, etc.

**03/02/2015**

#### Introduction:

Working Early Shift on Operation TIGER 1, homicide in Whangamata.

Tasked with completing area enquiries in Ajax Road, Whangamata.

**(13:02 hrs)**

**Approached by a member of the public, details of:**

**HEANEY/Daniel/Steven**

**DOB: 31/07/1988**

**ADD: 109 St Patricks Row, Whangamata**

**PHM:**

**OCC: Builder, currently working on a site corner of Otahu and The Drive, Whangamata**

He states that he has heard about the homicide through the media and seen the Police caravan parked outside the address of the person of interest, Tony BALLANTYNE.

He states that he knows Tony, he's been around to his place a few times and met him through a mate of his, Graham DOWLING. He met Tony in about mid-last year and last spoke to him **(about one month ago)** when he dropped off some ??? for him.

*Sea cucumber*

He describes Tony as being a good guy and that Tony was working an invention to do with perpetual motion machines.

He states that Tony's wife left him a few years ago and he got quite down over that.

He gives me the details of **(Graham DOWLING)** whom he states knows Tony better. He doesn't know Graham's address but he has the phone number of 027 4948695. He states that Graham is hard to understand on the phone because **(he has Parkinsons.)**

Name: Peter READ

Rank: Senior Constable

QID PRF880

Name:

Rank:

QID

80

2-Feb-15	17:56:32	4	Y	0:00:00	274948695	272212215	internet-postpaid	272212215	internet-postpaid	53005	10115	10115	101
2-Feb-15	19:13:38	6	Y	6:30:00	274948695	internet-postpaid	internet-postpaid	272212215	internet-postpaid	53005			GSAE01
3-Feb-15	1:43:38	6	Y	17:30:00	274948695	internet-postpaid	internet-postpaid	internet-postpaid	internet-postpaid	53005	3143	1069	GSAE01
3-Feb-15	7:28:20	6	Y	0:01:03	220120165	274948695	274948695	274948695	274948695	1060	3143	3143	WCSAK2
3-Feb-15	9:08:32	4	Y	0:00:00	274948695	220120165	220120165	220120165	220120165	10115	10115	10115	101
3-Feb-15	9:26:17	6	Y	0:00:17	274948695	21493008	21493008	21493008	21493008	3143	1031	1031	WCSAK2
3-Feb-15	9:26:17	6	Y	0:00:17	274948695	21493008	21493008	21493008	21493008	3143	1031	1031	WCSAK2
3-Feb-15	10:06:38	6	Y	0:00:26	274948695	83083210	83210	83210	83210	3143	1069	1069	WCSAK2
3-Feb-15	11:03:48	4	Y	0:00:00	21504906	274948695	274948695	274948695	274948695	10115	10115	10115	102
3-Feb-15	11:03:49	4	Y	0:00:00	21504906	274948695	274948695	274948695	274948695	10115	10115	10115	102
3-Feb-15	11:10:58	4	Y	0:00:00	220120165	274948695	274948695	274948695	274948695	10115	10115	10115	101
3-Feb-15	11:15:30	4	Y	0:00:00	274948695	220120165	220120165	220120165	220120165	10115	10115	10115	101
3-Feb-15	11:31:33	4	Y	0:00:00	274948695	21504906	21504906	21504906	21504906	10115	10115	10115	101
3-Feb-15	11:38:37	4	Y	0:00:00	220120165	274948695	274948695	274948695	274948695	10115	10115	10115	101
3-Feb-15	11:55:43	6	Y	0:00:36	274948695	83200000	83200000	83200000	83200000	1061	1069	1069	WCSAK2
3-Feb-15	11:58:57	4	Y	0:00:00	274948695	220120165	220120165	220120165	220120165	10115	10115	10115	102
3-Feb-15	12:01:31	6	Y	0:00:17	274948695	279591686	279591686	279591686	279591686	3143	3143	3143	WCSAK2
3-Feb-15	12:01:31	6	Y	0:00:17	274948695	279591686	279591686	279591686	279591686	3143	3143	3143	WCSAK2
3-Feb-15	12:03:05	6	Y	0:02:08	274271428	274948695	274948695	274948695	274948695	3143	3143	3143	WCSAK2
3-Feb-15	12:03:05	6	Y	0:02:08	274271428	274948695	274948695	274948695	274948695	3143	3143	3143	WCSAK2
3-Feb-15	12:21:10	6	Y	0:00:04	21924322	274948695	274948695	274948695	274948695	1061	3143	3143	WCSAK2
3-Feb-15	12:21:34	6	Y	0:00:05	274948695	83200000	83200000	83200000	83200000	1060	1069	1069	WCSAK2
3-Feb-15	12:22:10	6	Y	0:00:04	274948695	83200000	83200000	83200000	83200000	1061	1069	1069	WCSAK2
3-Feb-15	15:41:29	6	Y	0:00:37	274948695	83200000	83200000	83200000	83200000	1060	1069	1069	WCSAK2
3-Feb-15	15:42:07	4	Y	0:00:00	6483083210	274948695	274948695	274948695	274948695	10115	10115	10115	101
3-Feb-15	15:49:47	6	N	0:00:00	78582541	274948695	274948695	274948695	274948695	4011	3143	3143	WCSAK2
3-Feb-15	15:50:14	6	Y	0:01:18	78582541	274948695	274948695	274948695	274948695	1068	3143	3143	WCSAK2
3-Feb-15	15:53:26	6	Y	0:01:13	274948695	83083210	83210	83210	83210	3143	1069	1069	WCSAK2
3-Feb-15	16:06:47	6	Y	0:00:14	274948695	2102606952	2102606952	2102606952	2102606952	3143	1031	1031	WCSAK2
3-Feb-15	16:06:47	6	Y	0:00:14	274948695	2102606952	2102606952	2102606952	2102606952	3143	1031	1031	WCSAK2
3-Feb-15	16:08:00	6	Y	0:04:01	275134515	83200000	83200000	83200000	83200000	3143	1069	1069	WCSAK2
3-Feb-15	16:08:00	6	Y	0:04:01	274948695	275134515	275134515	275134515	275134515	3143	1069	1069	WCSAK2
3-Feb-15	16:57:15	6	N	0:00:00	211922791	274948695	274948695	274948695	274948695	4011	3143	3143	WCSAK2

15 of 14



6

3-Feb-15	16:57:42	6	Y	0:00:29	211922791	274948695	83200000	274948695	1030	4013	WCSAKL
3-Feb-15	16:57:42	6	Y	0:00:29	274948695	83200000	83200000	83200000	1030	1069	WCSAKL
3-Feb-15	16:58:18	4	Y	0:00:00	211922791	274948695	274948695	274948695	10115	10115	101
3-Feb-15	17:01:38	6	Y	0:01:00	274948695	83083210	83210	83210	3143	1069	WCSAK2
3-Feb-15	17:09:00	6	Y	0:03:37	274948695	83083210	83210	83210	3143	1069	WCSAK2
3-Feb-15	17:13:20	4	Y	0:00:00	211922791	274948695	274948695	274948695	10115	10115	102
3-Feb-15	17:17:48	6	Y	0:00:49	274948695	211922791	211922791	211922791	3143	1031	WCSAK2
3-Feb-15	17:17:48	6	Y	0:00:49	274948695	211922791	211922791	211922791	3143	1031	WCSAK2
3-Feb-15	17:23:11	4	Y	0:00:00	274948695	211922791	211922791	211922791	10115	10115	101
3-Feb-15	17:44:48	6	N	0:00:00	78232635	274948695	274948695	274948695	4011	3143	WCSAK2
3-Feb-15	17:45:07	6	Y	0:00:08	78232635	274948695	274948695	274948695	1030	4013	WCSAKL
3-Feb-15	17:45:07	6	Y	0:00:08	274948695	83200000	83200000	83200000	1030	1069	WCSAKL
3-Feb-15	17:56:29	6	N	0:00:00	274948695	21924322	21924322	21924322	3143	1061	WCSAK2
3-Feb-15	18:00:18	6	Y	0:00:26	274948695	83083210	83210	83210	3143	1069	WCSAK2
3-Feb-15	18:02:06	6	Y	0:00:07	274948695	83083210	83210	83210	3143	1069	WCSAK2
3-Feb-15	18:03:05	6	Y	0:00:07	274948695	83083210	83210	83210	3143	1069	WCSAK2
3-Feb-15	19:13:44	6	Y	2:11:45	274948695	internet-postpaid	internet-postpaid	internet-postpaid	53005		GSAE01
3-Feb-15	20:31:44	4	Y	0:00:00	276510222	274948695	274948695	274948695	10115	10115	101
3-Feb-15	20:34:49	4	Y	0:00:00	276510222	274948695	274948695	274948695	10115	10115	102
3-Feb-15	20:35:46	6	N	0:00:00	276510222	274948695	274948695	274948695	4011	3143	WCSAK2
3-Feb-15	20:36:11	6	Y	0:00:30	276510222	274948695	274948695	274948695	3141	4013	WCSAKL
3-Feb-15	20:36:11	6	Y	0:00:29	274948695	83200000	83200000	83200000	3141	1069	WCSAKL
3-Feb-15	20:36:48	4	Y	0:00:00	276510222	274948695	274948695	274948695	10115	10115	101
3-Feb-15	20:45:15	6	Y	0:00:02	274948695	83200000	83200000	83200000	1061	1069	WCSAK2
3-Feb-15	20:48:41	6	N	0:00:00	275134515	274948695	274948695	274948695	3143		WCSAK2
3-Feb-15	20:56:25	6	Y	0:00:16	274948695	83200000	83200000	83200000	1060	1069	WCSAK2
3-Feb-15	20:56:41	4	Y	0:00:00	21924322	274948695	274948695	274948695	10115	10115	101
3-Feb-15	21:24:25	6	N	0:00:00	274948695	21924322	21924322	21924322	3143	1061	WCSAK2
3-Feb-15	21:24:56	6	Y	0:00:12	274948695	83083210	83210	83210	3143	1069	WCSAK2
3-Feb-15	21:25:16	6	Y	0:00:13	274948695	83083210	83210	83210	3143	1069	WCSAK2
3-Feb-15	21:31:37	6	Y	4:08:39	274948695	internet-postpaid	internet-postpaid	internet-postpaid	53005		GSAE01
3-Feb-15	21:59:17	6	N	0:00:00	274948695	276510222	276510222	276510222	4013	3141	WCSAKL
3-Feb-15	21:59:17	6	N	0:00:00	274948695	21924322	21924322	21924322	3143	1060	WCSAK2

15 of 15

## J O B S H E E T

Due \_\_\_\_\_

File \_\_\_\_\_

OFFENCE: OPERATION TIGER

DATE and  
TIME

First plan your inquiry then set out the action taken, inquiries made, oral statements of persons seen and information gained, etc.

(1530hrs)

A male approaches the cordon. (He is riding a push bike. He appears upset / agitated.)

He gives his details as:

DOWLING / Graham  
Dob: 28/07/1946  
206 Belona Road, WHANGAMATA  
Ph: (

He tells me:

- He is a family friend of the people at the address
- He knows Joy the ex-wife
- (He was last at the house 2 weeks ago)
- He knows that 'he' was having a friend stay from the Philippines, a Pakeha guy married to a Philipino lady that lives there.
- He was an older guy than us
- Could have been in his early 70's
- He doesn't remember his name
- He can not give me Joy's details at the moment.

DOWLING apologises about his speech saying he has Parkingsons Disease.

I still understand him when he speaks.

I tell DOWLING that we are interested in talking to him again and tell him that someone will be in contact soon.

1535hrs Fingerprints and ESR exit the scene.

1550hrs I speak with Fingerprints and ESR and discuss a plan for the following days.

ESR decide that they will finish sampling the lounge and kitchen area and then finish for the day. They will start again early in the morning and will uplift the supplies they need and bring them with them.

ESR are happy for the Deceased to be uplifted for removal.

Fingerprints will finish for the day and will return on Thursday so that ESR can finish their examination tomorrow.

Name: Richelle BROWNLIE

Rank: Detective

Date: 08/02/2015

QID RBJ103

Checked by:

Rank:

Date: 08/02/2015

QID



19 May 2020

Mr A Ballantyne  
C/- Waikeria Prison  
Waikeria Rd  
Otorohanga 3874

Dear Mr Ballantyne

Re: Your letters dated 11 January and 23 February 2020 to Assistant Commissioner (now Commissioner) COSTER

Commissioner COSTER provided me with your letters and supporting documentation in regard to your conviction and asked me to review the material and comment on:

- Is there anything here that points to a possibility that the court has been misled or that the conviction may be unsound?

Following a preliminary review of the material you provided I tasked a senior investigator to obtain access to the original investigation file, court transcripts and briefs of evidence and the material recently provided to the Court of Appeal, also their findings and judgement, and conduct a review of that material in regard to matters you raised in your letters.

The investigator reviewed each point that you make in your first letter. They concluded that the majority of the points you raised were extensively covered at the trial or in the subsequent Court of Appeal decision.

Matters not raised or commented on during the trial or Court of Appeal hearing related to the computer activity of Mr Dowling. Records were produced and disclosed to defence prior to trial showing there were 17 minutes of computer activity at Mr Dowling's home at around the same time as the 111 calls made by you. Neither the Crown nor defence raised this at trial even though both parties had the records prior to trial.

An acquaintance of Mr Dowling's, who was with him on the night prior to the murder, stated that Mr Dowling's mobility was severely inhibited due to his Parkinson's illness. This was canvassed at trial.

The investigator was of the opinion that the computer usage was irrelevant, and furthermore Mr Dowling was questioned in depth about being at your house during the

**Tasman Police District Headquarters**

Monro Building, 186 Bridge Street, Nelson, New Zealand.





NEW ZEALAND  
**POLICE**  
Ngā Pirihimana o Aotearoa

murder which he denied. His ability to get to the house would have been difficult in that he had trouble walking and did not drive.

Emails between Detective Everson and Rian Morgan Smith (ESR), are in the opinion of the investigator, irrelevant as they were disclosed and the redactions have no bearing on the outcome of the trial. All issues regarding DNA, blood spots, hair etc were well canvassed by both the Crown and Defence at trial. Additional forensic matters were raised and covered by the Court of Appeal decision.

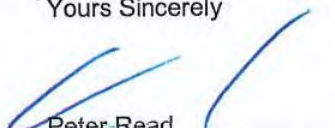
In your second letter the points raised all relate to forensic analysis. The investigator determined that all of these matters were addressed at the original trial and secondly in the decision handed down by the Court of Appeal.

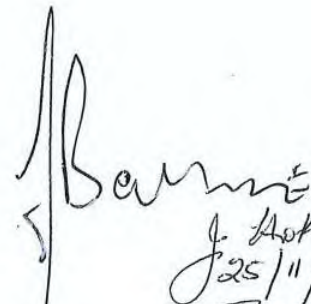
Following a comprehensive review the investigator determined that "After having read the trial transcript, the Court of Appeal decision and the material supplied by Ballantyne, I believe that the conviction is sound and that there is no evidence to support Mr Ballantyne's view that the court had been misled.


*There is nothing to suggest that the court was misled or the conviction is unsound on any of these points."*

A copy of this letter will be sent to the Independent Police Conduct Authority. The Authority is entirely independent of Police. If you are dissatisfied with the outcome you can advise the Independent Police Conduct Authority the reasons for this by either of the following two methods: By letter to the Independent Police Conduct Authority, P O Box 25221, Wellington 6146, or by email to [complaint.management@ipca.govt.nz](mailto:complaint.management@ipca.govt.nz)

Yours Sincerely

  
Peter Read  
Detective Superintendent  
South Island & Wellington

  
J. Hoko  
25/11/2022  
Joyce Hoko  
Witness of signature



NOTE: PAGE (11) RE: LETTER  
ANDREW COSTER

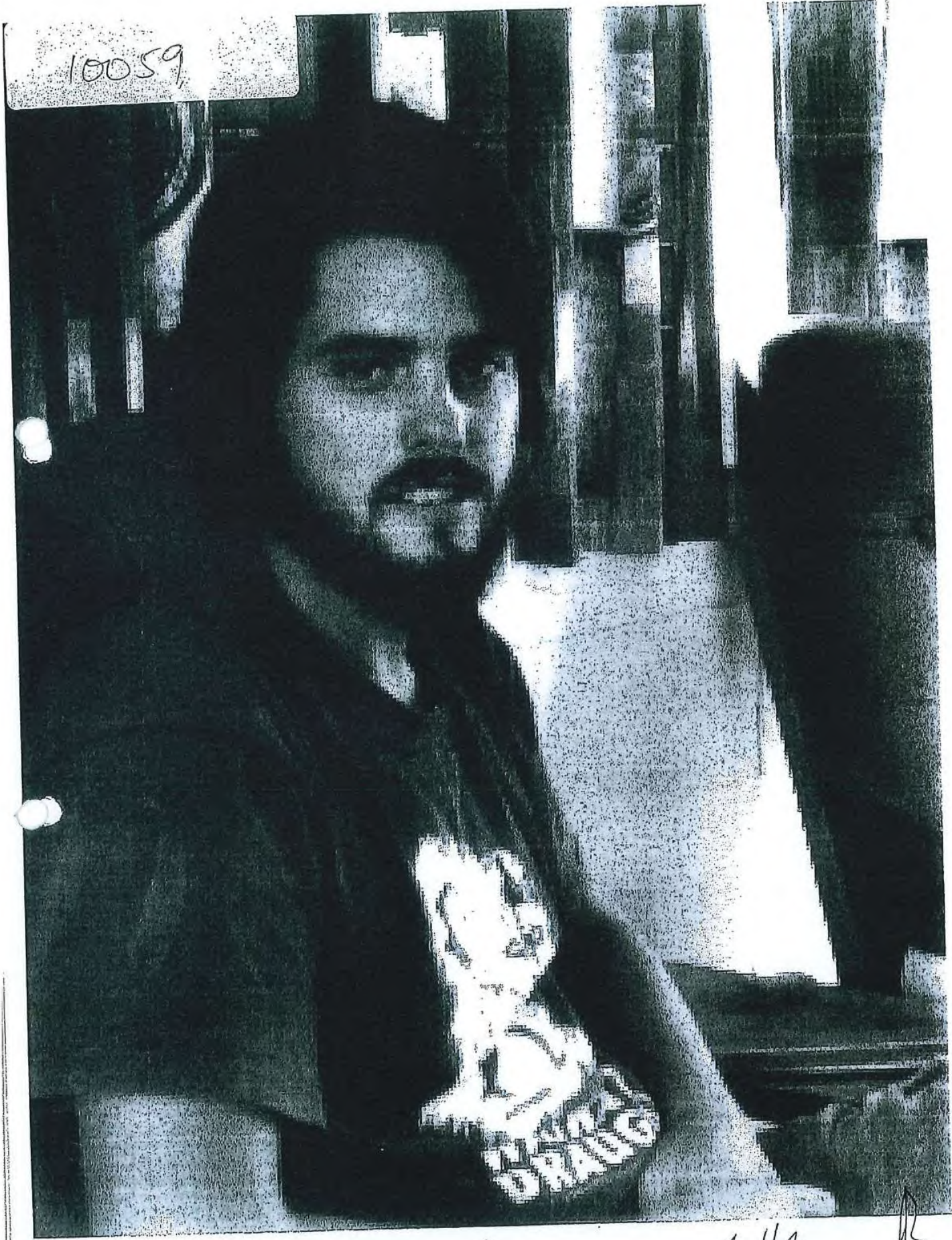
PARA (1) A MALE : GRAHAM DOWLING  
(IS RIDING A PUSH BIKE)

**Tasman Police District Headquarters**

Monro Building, 186 Bridge Street, Nelson, New Zealand.

(12. K.)

10059



19. of 51.

142

B

2: B:

(35)

**Rian Morgan-Smith**

00044

**From:** Rian Morgan-Smith  
**Sent:** Tuesday, 10 February 2015 9:26 a.m.  
**To:** 'BROWNLIE, Richelle'  
**Subject:** RE: ASC15546 - Operation Tiger - ESR Scene sample list  
**Attachments:** ASC15 556 Op Tiger ESR scene sketches.pdf

Richelle,

No problem, I have scanned some of the sketches in and attached them. Might not have one or two (eg missing hair on meat cleaver) but they are nearly all there.

And in general practice there is no real need for you to record where my samples come from. That's what my notes are for. And the last thing we need is for our notes to differ slightly over which particular blood spot was taken and cause an issue in court.

Regards  
Rian

**From:** BROWNLIE, Richelle [mailto:Richelle.Brownlie@police.govt.nz]  
**Sent:** Saturday, 7 February 2015 11:44 a.m.  
**To:** Rian Morgan-Smith  
**Subject:** RE: ASC15546 - Operation Tiger - ESR Scene sample list

Hi Rian

Thank you for the sample list, I have forwarded it to D/S/S Pitkethley and understand that we will make a decision about what we need tested on Tuesday (10 Feb) next week.

D/S/S Pitkethley has asked that I plot the obtained samples on my scene diagram. Are you able to send me a copy of your diagram or can I please organise a time to meet up with you so that can be done? In hindsight I should have probably recorded them as they were being done.

Thank you and speak to you soon.

Richelle BROWNLIE  
Detective RBJ103  
Thames CIB

M: 021 190 4013



**From:** Rian Morgan-Smith [mailto:Rian.Morgan-Smith@esr.cri.nz]  
**Sent:** Thursday, 5 February 2015 09:12  
**To:** BROWNLIE, Richelle  
**Cc:** PITKETHLEY, Graham  
**Subject:** FW: ASC15546 - Operation Tiger - ESR Scene sample list

Rochelle

**COPY**

1  
48 of 51

Morgan B

ACCESS 826 (36)

He also wants one of your bosses to sign it certifying that it is a full correct record of the file.

Give me a ring to talk about it.

Cheers

Simon

**Detective Simon Everson**

Coromandel/Hauraki CIB | New Zealand Police  
P +64 7 863 3711 Extn: 78711 | M +64 021 1912438 | E [simon.everson@police.govt.nz](mailto:simon.everson@police.govt.nz)  
55 Kenny Street Waihi, P O Box 54, Waihi 3610, [www.police.govt.nz](http://www.police.govt.nz)

Safer Communities Together

COVER-UP

From: Rian Morgan-Smith [<mailto:Rian.Morgan-Smith@esr.cri.nz>]  
Sent: Tuesday, 30 April 2019 3:20 PM  
To: EVERSON, Simon <[Simon.Everson@police.govt.nz](mailto:Simon.Everson@police.govt.nz)>  
Subject: RE: Ballantyne v R appeal [CLO-Docs.POL093.1153.FID365526]

Hi Simon,

Yes, no problems with giving him the whole document. Our processes are set up knowing this is a likely outcome in any/every case.

Rian

From: EVERSON, Simon <[Simon.Everson@police.govt.nz](mailto:Simon.Everson@police.govt.nz)>  
Sent: Tuesday, 30 April 2019 8:05 AM  
To: Rian Morgan-Smith <[Rian.Morgan-Smith@esr.cri.nz](mailto:Rian.Morgan-Smith@esr.cri.nz)>  
Subject: FW: Ballantyne v R appeal [CLO-Docs.POL093.1153.FID365526]

Hi Rian

As per the below email from Crown law in relation to Mr Ballantyne and his appeal, can you have a look at your 214 report and confirm that you are happy for it to be disclosed in its entirety. I do not have a copy of the report as I have sent my file to Crown Law. From memory the only things that were redacted in it was your personal information as in direct dials and emails etc.

Can you let me know your thoughts on this. I am of the opinion that we just give him the whole document as he is now in jail and cannot email or make phone calls.

Any problems give me a yell by email or on my cell phone.

Cheers

Simon

**Detective Simon Everson**

Coromandel/Hauraki CIB | New Zealand Police  
P +64 7 863 3711 Extn: 78711 | M +64 021 1912438 | E [simon.everson@police.govt.nz](mailto:simon.everson@police.govt.nz)  
55 Kenny Street Waihi, P O Box 54, Waihi 3610, [www.police.govt.nz](http://www.police.govt.nz)

Safer Communities Together

COPY

Handwritten initials and a scribble.

3  
49 of 51

Anthony was seen by Dr Kumar & RN Carly Anderson for a review.

On entering the room he asked is who we were and what organisation we were from, after being informed of this he then asked who pays our wages. Once he established we were not part of corrections or the government he agreed to speak with us but had to first collect his paperwork to support his discussion. He Returned with a large envelope containing letters and magazine articles.

Dr Kumar informed him of why we were speaking with him and enquired about what Anthony has said previously in regards to Donald Trump releasing him from prison. He smiled and stated "thats not accurate". He went on to explain that if Donald Trump was made aware of what he has invented he would be removing him from prison as his invention has the potential to cause world war. He stated he could arrange meetings with "Mr Trump" through his ambassadors about his technology. He then stated he is "innocent" and has been wrongly imprisoned for the past 4 years and has endured all sorts of abuse including loosing 5 teeth, 2 attempts at his life and numerous assaults.

He is adamant that there is no forensic evidence to link him to the murder of his friehd and is appealing his charge by representing himself to prove the DNA samples found under the victims finger nails are unrelated to him. He has copys of the ERS reports that state Brown/Black hairs 4cm long were found under the victims nails. He has also enlisted fellow prisoner Arthur Taylor to help him with his cause who he stated is the "Jail house Lawyer".

When asked about his invention/technology he stated he has worked on this self funded project for the last 30 years. He has re created nature by building a cyclone using 3d imaging and animation. The cyclone will replace fossil fuel as an energy source, "no more energy plants, its clean green".

He then showed us a letter from the NZ Intellectual Property Office which accepts his proposal. He reports he has been offered a substation amount of money but has not accepted it as money is not important to him.

He then acknowledged that although his story is "extrodanairy" he is "competent and not mentally deranged".

Dr Kumar spoke respectfully to Anthony and thanked him for speaking with us. He asked if he would see us again in a month and he agreed. Anthony said he would like us to stay in touch and acknowledged that he has been affected by his situation and what he has endured in prison.

RISK:

Anthony appeared to be of low risk to himself and others at the time of the review.

PLAN:

- 1) Dr Kumar to see in 1 month

16-Jan-2019 Referral received from Focused Physio for Xray & USS of right shoulder under ACC claim # AU12141. Contacted ACC and approved for Xray & USS. Contacted Hamilton Radiology re appt 24/01/19 @ 12.15pm. Referral faxed to Hamilton Radiology today on 07 8395780. Unti Nurse informed and schedule updated.

15-Jan-2019 Dx: Refer for X-Ray (8HQ1.00) WXNW  
Physio JXAW  
Shoulder- hurt shoudler in springhall - does alot of walking at a fast pace adn a couple of days playing touch and ot hit an went in the arm and landed on back and head hit on ground and landed on right shoulder  
Then transfered priion and was throwing a ball and felt rip in the right shoulder.

Since this injury no imprvoement, if anything getting worse, shoulder is really restricted in



BALLANTYNE reports that last night he started to have cramping pains in his abdomen and then had several episodes of "explosive" diarrhoea. He described this as being a mix of watery fluid and undigested food. He has taken Loperamide as directed with minimal effect. He reports this morning that he is still having abdominal cramps and is starting to feel nauseated. He has been sipping boiled water and is trying to eat bland food as he is Diabetic. He reports he has been taking his medication as charted but has no nausea medication - is awaiting the d/c script to arrive from Clendon pharmacy.

On assessment: Skin pale and dry with poor skin turgor. Temperature 36.5, Pulse 63 and regular and SaO2 99 % on room air. He denies any allergies to medication.

Plan: Returned to clinic and retrieved APSO Buscopan and Maxalon. Also provided with x 3 sachets of Enerlyte on discussion with nurse NXMS. Advised to withhold his Metformin while he is not tolerating oral food/fluids as this may have adverse affect on his symptoms. Advised BALLANTYNE to continue to sip at fluids (boiled water) on a regular basis. Will discuss at handover and request him to be reviewed in clinic this afternoon.

09-Jul-2016  
09-Jul-2016

Rx: 0 - Maxolon 10mg Tab - 1 tabs, Immediately as require CXMS  
 Rx: 2 - Buscopan 10mg Tab - Take 2 tablets - as per standi CXMS  
 Scn: Blood Pressure (BP) - 120 - 76 - Post Medical Escort SMMS  
 VCG NXMS

Patient seen in the clinic @ 0940 after a call from the unit advising that patient dehydration has gone worse. Patient unable to stand unsupported, patient feeling dizzy and reported spinning sensation when being stood up. last time vomitted last night had only X4 slices of bread the whole day yesterday. Went to the toilet passed out gas, no solids no fluids stomach cramps on and off since Sunday night  
 OB's  
 \BSL 4.9  
 temp 36.4  
 \BP 110/70  
 RR 13/min  
 HR 66/min  
 Spo2 96%  
 Patient exhibiting shrunken eyeball, dry skin, capillary refill 2-3 seconds, minimal abdomina skin tenting observed.  
 X 2 Enerlyte sachettes given as per MO advise  
Ambulance to Waikato ED for early signs of dehydration under routine priority.

08-Jul-2016

OBx: HCP Referral Letter NXMS  
 Scn: Blood Pressure (BP) - 110 - 70 NXMS  
 Scn: Blood Sugar Level (BSL) - 4.9 NXMS  
 Seen on triage. JXTS

Patient stated that he feels much better today. 1 X vomiting and 1 X diarrhoea last night as reported. Denied any nausea or abdominal cramps when asked. Patient has been drinking water, black coffee and also been eating toast as stated, same tolerating well. Skin turgor intact. unable to sent faecal sample as the patient couldn't produce same now. Plan: continue monitor, to increase fluid intake and to contact health if the problem persists or

S.K. Green QC APPEAL LAWYER No 1

Summary of Issues Antony Ballantyne. Homicide conviction on appeal, from the High Court at Hamilton.

The Appellant raised with me principally two issues: that he had, post his trial, disclosure of some evidence that the fingernail clippings and hairs found with those cuttings, were of a hair colour that may show another party was there who caused the death of the deceased. He says two Russians were present on the night who had a fight with the deceased. He also raised a conspiracy as between the police I think, and another to get some documents which were an application for a patent.

~~I have seen the e.s.r. photos of the nail cuttings and hairs and put these to the expert that was engaged by Mr Sutcliffe for a preliminary opinion~~

I have had her opinion by phone that there are several difficulties with this theory of the Appellant's: the first is that the hairs are either too small or ~~do not have roots~~. As such it can be difficult if not impossible to test this for DNA. The 2<sup>nd</sup> is that supposing an expert could examine these cuttings/hairs, given the sample as it looks in the photos, it appears it would be swamped by the DNA of the deceased. This is since the hairs and fingernail clippings are heavily blood stained and encrusted. The DNA is more than likely to give a match to the deceased and his DNA would swamp the clippings and hairs to shroud out any other DNA, even should an expert be able to test them. Finally, there would need to be a comparison to a DNA sample from the third party. We do not have that and nor does it appear Mr Sutcliffe and the expert from the Forensic Group had it. The questions and answers can be found at pp208, 209.

I have read the report from the Forensic Group. I have spoken with them. They have provided an opinion as a preliminary to a full grant of aid being sought. While the report from the FG does raise some issues about the scene examination, a lot of those points were in fact dealt with in the trial. For instance she says in her report pre trial (the FG report) that it is not known if the Appellant was examined as she did not have any information about this. The Appellant was examined. The point about the blood staining on his feet and legs was also gone into by his counsel questioning the examiners of the Appellant and also the scene forensic Mr Morgan.

The fact that the scene was swamped with DNA from both parties – but particularly from the deceased, means that it is hard to see where this point might take an appeal. The injuries to the deceased were extensive and there

UW  
R

---

**Subject:** FW: Ballantyne C.04

**Sent:** 10 November 2018 11:49 a.m.  
**Subject:** FW: Ballantyne C.04

OFFENSE  
COPY

Reply from XXX in regards to Ballantynes request for info.

Thanks

**Cedar 2 Unit**  
Tongariro Prison | Department of Corrections *Ara Poutama Aotearoa* |



---

**From:**  
**Sent:** 07 November 2018 7:35 a.m.  
**To:**  
**Subject:** RE: Ballantyne C.04

Hi

I have checked the camera footage and can confirm the following

At approximately 1459hrs Prisoner Ballantyne did uplift a thick document from the desk in front of him. It appears the lawyer attempts to take this item back by leaning over the table and attempting to obtain back, however Prisoner Ballantyne retains the document by then placing under his other documentation and crossing his hands over the top in what appeared to be a proprietary fashion.

It appears further discussion ensued whereby after approximately 1 minute Prisoner Ballantyne then returns the documentation in question to the lawyer.

Regards

**Receiving Office/Gatehouse**  
Tongariro Prison | Department of Corrections *Ara Poutama Aotearoa* |



---

**From:**  
**Sent:** 06 November 2018 6:14 p.m.  
**To:**  
**Cc:**  
**Subject:** Ballantyne C.04

Hi

Please can you look into this C.04 (attached). This was held at the GH. We are not sure how long footage is kept for. Ballantyne understands there is no audio but there is visual.

Thanks

**Cedar 2 Unit**  
Tongariro Prison | Department of Corrections *Ara Poutama Aotearoa* |

N.Z. POLICE  
JOBSHEET

(17)

Police 29  
11/97

Due \_\_\_\_\_  
File \_\_\_\_\_

OFFENCE: OPERATION TIGER

DATE and TIME	First plan your inquiry then set out the action taken, inquiries made, oral statements of persons seen and information gained, etc.
---------------	-------------------------------------------------------------------------------------------------------------------------------------

Sergeant GILBERT takes AO KERR to the rear of the address and he stays there as the scene guard.

0500hrs It begins raining and Sergeant GILBERT tells me that there is an area of blood on the deck area.

He takes me to the decking area. We walk along the right hand side fence.

There are large droplets of blood on the edge of the deck. I locate a large plastic sharps canister in the rear of my vehicle. I place the open end over the droplets to prevent them being washed away.

There are lights on at the house at 204 Achilles Avenue. Sergeant GILBERT tells me that the ladies next door would like to speak to police with some information.

0510hrs Constable Simon WALLACE of Waihi arrives at the address.

I task Constable WALLACE as the front scene guard.

I explain his responsibilities and ask him to record details of anyone walking past and registrations of any vehicles driving past.

0525hrs Detective Sergeant SINGER arrives and I brief him as to actions taken so far in relation to the scene.

Detective Sergeant SINGER asks me to speak to the occupants of 202 Achilles Avenue and determine the information they have for us.

0535hrs I make an inquiry at 204 Achilles Avenue, Whangamata.

I am met by two females and I ask that I can speak to them each individually.

I sit in the lounge with Robyn VETTORI while the other female waits in the other end of the house.

VETTORI gives me her details as:

( VETTORI / Robyn Patricia )  
Dob: 14/10/1952  
204 Achilles Avenue, Whangamata  
Home: 77



Name: Richelle BROWNLIE	<i>R.B.</i>	Checked by:
Rank: Detective	QID RBJ103	Rank: QID

C.04.Form.01 Prisoner request for personal information



Register # \_\_\_\_\_

Surname BALANTYNE  
 First name ANTHONY  
 Prison TONGARIRO Unit CEDAR 2  
 Case officer Loker

**OFFENDER**  
 PRN 42581582  
**COPY 50**

I request information about myself as follows (tick one and detail the information you want):

- confirmation that Department of Corrections has specific information about me
- access to the information held about me
- copy of information about myself
- information about me to be corrected (detail the incorrect information):

To ensure you get the correct information as quickly as possible, please be as specific as you can (e.g. the type of information you want and the time period you want it for, such as: Incident Reports for the past 3 months or files notes for the past month).

At the visitors "Lawyer visit Room" date 31-10-18  
aprox 2-15 pm with lawyer "MR GONATHAN TEMM QC."

Copy of that recording or written confirmation that  
ANTHONY BALANTYNE DID PICK UP A THICK DOCUMENT FROM  
THE SIDE TABLE, LOOK THROUGH IT AND ATTEMPTED TO RETURN

I authorise the following to receive the information requested above: that document by  
 Authorised agent: \_\_\_\_\_  
 Signature Balantyne Date 5/11/18  
 (Prisoner) placing it with my other document  
in front of me!

Officer acknowledgement - form received

Officer's name Squair Tag No. 170  
 Signature \_\_\_\_\_ Date 19/11/18 Time \_\_\_\_\_  
 (Officer)

- Original handed to PCO
- Copy to prisoner
- Request file noted in IOMS

Information Request Action (PCO to complete)

Information requested has been:  Reviewed pursuant to C.04.03 (Prohibited information deleted).  
 A decision made to release  full or  partial information or the request has been  refused (C.04.04/05).  
**Note** - if the request has been refused the prisoner must be advised of their right to complain to the Privacy Commissioner to seek an investigation/review to refuse/disclose all or part of the personal information sought.

Information provided Must be within 20 working days of acknowledgement date above if approved Date \_\_\_\_\_ Time \_\_\_\_\_  
 Officer's name L. ROBINSON Signature \_\_\_\_\_  
PCO  
TONGARIRO PRISON

Request refused Reasons for refusal must be provided in writing by the Prison Director within 20 working days Date \_\_\_\_\_ Time \_\_\_\_\_  
 Prison Director - name \_\_\_\_\_ Signature \_\_\_\_\_

- Original updated on prisoner file
- Prisoner given written reason for refusal
- Actions file noted in IOMS

16 NOV 2018

(A)

RETRACTED COPY

ALTERED COPY

02987

10420

<b>ESR</b>	Laboratory reference: <u>ASC15546</u>	Page
	<b>CASE SUMMARY</b>	

00061  
**COPY 1**

Case name	Operation Tiger	Police station	Whangamata Police Station
Docloc no.	150203/5731	Report to	( Detective Sergeant G Pihkethly ) MORINGSVILLE
Case type	Homicide	Telephone no.	07 865 0300
Date registered	03 February 2015	Email	
Case manager	Rian Morgan-Smith	Offence code	1100, Homicide

Secondary laboratory references TOX151470, BIO15691

Related laboratory references

Digital images may be available for this case

Number of pages in file	Other items	Date	Signature
140		24/4/15	JM
155 156		5/5/15	JM
181		5-5-15	JM
189		27/7/15	JM
192		27/7/15	JM
207 214	→ Completed →	06-08-2015 01-09-15	JM

210  
AGES

MEK feedback sent to DSAC	Case Manager Initials/Date
ESRlab - Scene time entered	Case Manager Initials/Date
ESRlab - Samples status updated (screening) Examined/Not examined/Urgent/Completed	Case Manager Initials/Date
ESRlab - Test results updated	Case Manager Initials/Date
ESRlab - Reporting time entered	Case Manager Initials/Date
ESRlab - Subcontracted charges entered	Case Manager Initials/Date
ESRlab - Financial summary verified	Case Manager Initials/Date
ESRlab - Case closed	Case Manager/Admin Initials/Date
ESRlab - Court - Police entered	Case Manager Initials/Date

*[Handwritten signature]*

10420

<b>ESR</b>	Laboratory reference	ASC15546	Page
	<b>CASE SUMMARY</b>		<b>COPY</b>

<b>Case name</b> Operation Tiger	<b>Police station</b> Whangamata Police Station
<b>Docloc no.</b> 150203/5731	<b>Report to</b> Detective Sergeant G Pithkethly
<b>Case type</b> Homicide	<b>Telephone no.</b> 07 865 0300
<b>Date registered</b> 03 February 2015	<b>Email</b>
<b>Case manager</b> Rian Morgan-Smith	<b>Offence code</b> 1100, Homicide

**Secondary laboratory references** TOX151470, BIO15691

**Related laboratory references**

**Digital images may be available for this case**

Number of pages in file	Other items	Date	Signature
140		22/4/15	[Signature]
155-156		[Signature]	5/5/15
181		5-5-15	[Signature]
189		27/7/15	[Signature]
192		27/7/15	[Signature]
207 2147		06-08-2015 01-09-15	[Signature]

MEK feedback sent to DSAC	Case Manager Initials/Date
ESRlab - Scene time entered	Case Manager Initials/Date
ESRlab - Samples status updated (screening) Examined/Not examined/Urgent/Completed	Case Manager Initials/Date [Signature] 22/4/15
ESRlab - Test results updated	Case Manager Initials/Date
ESRlab - Reporting time entered	Case Manager Initials/Date
ESRlab - Subcontracted charges entered	Case Manager Initials/Date
ESRlab - Financial summary verified	Case Manager Initials/Date
ESRlab - Case closed	Case Manager/Admin Initials/Date
ESRlab - Court - Police entered	Case Manager Initials/Date

[Handwritten signature]

10420

<b>ESR</b>	Laboratory reference	ASC15546	Page
	<b>CASE SUMMARY</b>		<b>COPY</b>

<b>Case name</b> Operation Tiger	<b>Police station</b> Whangamata Police Station
<b>Docloc no.</b> 150203/5731	<b>Report to</b> Detective Sergeant G Pithkethly
<b>Case type</b> Homicide	<b>Telephone no.</b> 07 865 0300
<b>Date registered</b> 03 February 2015	<b>Email</b>
<b>Case manager</b> Rian Morgan-Smith	<b>Offence code</b> 1100, Homicide

**Secondary laboratory references** TOX151470, BIO15691

**Related laboratory references**

**Digital images may be available for this case**

Number of pages in file	Other items	Date	Signature
140		26/4/15	[Signature]
155 156		[Signature]	5/5/15
181	ALTERED COPY	5-5-15	[Signature]
189		27/7/15	[Signature]
192		27/7/15	[Signature]
207 214		06-08-2015 01-09-15	[Signature]

MEK feedback sent to DSAC	Case Manager Initials/Date
ESRlab - Scene time entered	Case Manager Initials/Date
ESRlab - Samples status updated (screening) Examined/Not examined/Urgent/Completed	Case Manager Initials/Date [Signature] 26/4/15
ESRlab - Test results updated	Case Manager Initials/Date
ESRlab - Reporting time entered	Case Manager Initials/Date
ESRlab - Subcontracted charges entered	Case Manager Initials/Date
ESRlab - Financial summary verified	Case Manager Initials/Date
ESRlab - Case closed	Case Manager/Admin Initials/Date
ESRlab - Court - Police entered	Case Manager Initials/Date

B



10420

<b>ESR</b>	Laboratory reference	ASC15546	Page
	<b>CASE SUMMARY</b>		

**COPY**

<b>Case name</b> Operation Tiger	<b>Police station</b> Whangamata Police Station
<b>Docloc no.</b> 150203/5731	<b>Report to</b> Detective Sergeant G Pithkethly
<b>Case type</b> Homicide	<b>Telephone no.</b> 07 865 0300
<b>Date registered</b> 03 February 2015	<b>Email</b>
<b>Case manager</b> Rian Morgan-Smith	<b>Offence code</b> 1100, Homicide

**Secondary laboratory references** TOX151470, BIO15691

**Related laboratory references**

**Digital images may be available for this case**

Number of pages in file	Other items	Date	Signature
140		20/4/15	[Signature]
<del>155</del> 156		[Signature]	5/5/15
181		5-5-15	[Signature]
189		27/7/15	[Signature]
192		27/7/15	[Signature]
207 214	<b>REAL</b>	06-08-2015 01-09-15	[Signature]

**FALSE**  
212  
214

<b>MEK feedback sent to DSAC</b>	<b>Case Manager Initials/Date</b>
<b>ESRlab - Scene time entered</b>	<b>Case Manager Initials/Date</b>
<b>ESRlab - Samples status updated (screening) Examined/Not examined/Urgent/Completed</b>	<b>Case Manager Initials/Date</b> [Signature] 20/4/15
<b>ESRlab - Test results updated</b>	<b>Case Manager Initials/Date</b>
<b>ESRlab - Reporting time entered</b>	<b>Case Manager Initials/Date</b>
<b>ESRlab - Subcontracted charges entered</b>	<b>Case Manager Initials/Date</b>
<b>ESRlab - Financial summary verified</b>	<b>Case Manager Initials/Date</b>
<b>ESRlab - Case closed</b>	<b>Case Manager/Admin Initials/Date</b>
<b>ESRlab - Court - Police entered</b>	<b>Case Manager Initials/Date</b>

[Handwritten signature]

## MR DOUCH CALLS

## RIAN KIER MORGAN SMITH (SWORN)

- Q. Your name is Rian Kier Morgan Smith?
- A. That's correct.
- 5 Q. And you live and work in Auckland where you're a forensic scientist employed by the Institute of Environmental Science and Research which we all know as ESR?
- A. Yes.
- 10 Q. And you're a scientist who has been with the ESR for now a lengthy period of time?
- A. I was initially employed as a technical officer in 1993 and then promoted to scientist in 1996.
- Q. And the qualifications you had obtained Mr Morgan Smith?
- 15 A. I have a New Zealand Certificate in Science majoring in chemistry, a Bachelor in Applied Science also majoring in chemistry, both from the Auckland Institute of Technology. A Graduate Diploma in Higher Education from the Auckland University of Technology and a post Graduate Diploma in Forensic Science from the University of Auckland.
- 20 Q. And ESR is a Crown research institute which provides an independent forensic testing and advice service?
- A. To the New Zealand Police, that's correct.
- Q. Yes. And what accreditation does ESR and –
- 25 A. ESR is a forensic section and has been accredited through the American Society of Crime Laboratory Directors, Laboratory of Accreditation Board and we've held that since 1995.
- Q. Now over the 20 years since you embarked upon your career path as a forensic scientist what sort of work have you essentially undertaken?
- 30 A. The work I undertake in the service centre in the Auckland forensic section of ESR involves attending crime scenes to provide the New Zealand Police with advice and services relating to the identification and collection of a variety of types of evidence, primarily biological evidence such as blood or semen as well as other types of

- Q. And what do you mean by dilute in simple terms?
- A. In simple terms the sample's been diluted down with a liquid which makes it a lot less intense in its appearance and means that it's been or has come in contact with another liquid to dilute down the bloodstaining.
- 5 Q. And in this case is the fact of overnight rain something that you would relate to that particular stain?
- A. That would certainly explain its appearance, yes.
- Q. Nevertheless you're able to sample it for analysis purposes?
- A. Yes we did.
- 10 Q. I think that was sample identifier 21?
- A. That's correct.
- Q. ~~And Ms Melia reports?~~
- A. The DNA profile corresponded with Mr Ballantyne.
- Q. Now because of the dilute nature is there the definition that we have in the first, beg your pardon, the definition that we have in respect of the
- 15 the first, beg your pardon, the definition that we have in respect of the blood drops shown in photograph 1 of exhibit 17?
- A. No, the characteristics are a bit irregular so I wouldn't make a comment as to how it was deposited on the surface.
- Q. ~~Mr Morgan Smith~~ as you examined that deck area did you come across any items capable of inflicting injury through accident for example and I'm specifically referring to whether you found any broken glass?
- 20 ~~A. There was certainly no broken glass in that area that I noticed.~~
- Q. Now we have the deck comprising as we can see from the photographs, the alcove area and if we look at photograph 8 on page 8 in conjunction with photograph 7 extending out to the cobbles and down towards the
- 25 rear of the house, right?
- A. That's correct.
- Q. ~~Did you examine that entire area?~~
- A. It was given a visual examination, yes.
- 30 Q. ~~And no glass?~~
- A. ~~No, that's correct.~~
- Q. The cobbled area in the foreground as we look at photograph 8?
- A. ~~Again nothing out of the ordinary which would include broken glass.~~

Q. And that tip end is the tip end where you found the diluted blood along the edge of the cleaver?

A. That's correct.

5

Q. And what conclusions are you able to draw from that about the means by which that dilute bloodstain came to be there?

A. There are probably two primary mechanisms in which I would expect the blood to get there. Either there was blood on the meat cleaver which has been incompletely washed off or ~~the meat cleaver's~~ in the sink when something else is washed that has blood on it.

10

Q. And the hairs adhered to which part of it?

A. They were on the top surface I believe.

Q. Meaning?

A. The upper surface as its sitting in the sink.

15

Q. So as we look at photograph 40, the flat of the cleaver on the side that's facing the photographer?

A. I believe so, I don't actually have a note of that in my file.

Q. I think you confirmed did you that Ms Melia reports that the profile obtained from your sampling 17 from the cleaver corresponded with that of Mr Kaplugin?

20

A. That's correct.

Q. ~~Was there bloodstaining evident along the cutting edge of the cleaver at all Mr Morgan Smith?~~

A. ~~No.~~

Q. ~~And did you swab that at all bearing that in mind?~~

25

A. ~~No I did not.~~

1040

NOTE: ESR NO: ASC15546/17

Q. Right. Now moving back then from the sink area, can I ask you in a general sense whether you can assist us with an explanation for the presence of smeared blood on the floor within the kitchen from the area at the entrance to the laundry across towards the sink/bench area. And if you look, for example, at photograph 35 we can see, 35, 36 and 37 of exhibit 1 we can see examples of that smearing you speak of can't we?

30

A. Yes. The contact transfers of blood smears that were on the floor in the kitchen were primarily in the area between the doorway to the laundry

SEE: ESR LISA MARIE MELIA ; STATEMENT.

PAGE: 3 OF 15.

Handwritten signature and initials.

Q. Yes, now I think your evidence earlier on was that it wasn't possible that those hair samples that were discovered, it was not possible to get any sort of reading as to what or whose DNA or where they came from, is that right?

5

A. ~~The only way we can do a nuclear DNA analysis on hairs is if they have been forcibly pulled from the hair and still have sheath material around the roots.~~ these hairs I didn't believe fit into that category, it's not uncommon to find hairs in a residential environment so as to whether those particular hairs would allow us to answer a specific question about the sequence of events wasn't really evident so ~~no real examination was done on those hairs.~~

10

Q. Now notwithstanding the fact that they weren't perhaps suitable for conventional testing is it nevertheless possible to subject them to a form of testing to determine whether or not DNA can be extracted from those hairs?

15

A. There is a technique offered overseas known as mitochondrial DNA analysis which you can use to determine a maternal line in hair samples as in you'll have the same maternal, sorry, you'll have the same mitochondrial DNA as your mother through that maternal line, it's not a service that's offered in New Zealand.

20

Q. Was that considered in this case, that it wasn't considered is what you're saying?

A. Again it would be difficult to figure out what exactly the probative question would be to be answered by doing that analysis given that hairs do accumulate in residential environments. In this case we also know that Mr Kapluggin has a wound to his head and there is potential for hair to be shed in the general area where he is present so I'm not sure what the question would be that we would answer by doing that analysis.

25

Q. Well perhaps it might lead to the identity of the person who was involved in some sort of struggle or conflict with Mr Kapluggin, is that the possibility?

30

A. The difficulty we would have is that to make that conclusion you would have to make a number of leaps as to why the hair is in the

*Handwritten notes:*  
A  
B

ON OATH Police Fingerprint EXPERT  
312  
MR. Barry Smith

- A. Used fingerprint powder.
- Q. So they would've been powdered. And so that was done in this instance?
- A. Yes.
- 5 Q. What about the edges of the table was, –
- A. Table and the top –
- Q. – would that have been done?
- A. - of the table as well.
- Q. And obviously from what we know no identifiable prints were located
- 10 on –
- A. No there was nothing.
- Q. On those chairs?
- A. Nothing identifiable.
- Q. Would you have done the upper arms of the chair as well as underneath
- 15 the arm?
- A. Yes the top, top and bottom surfaces where you're likely to grip.
- Q. Right. Now I note that one of the items that was handed to you was a dish wash brush, was that dusted at all do you recall?
- A. I'm sorry can you repeat that?
- 20 1605
- Q. There was a red and white scrubbing brush?
- A. Yes.
- Q. And a dishwashing liquid bottle?
- A. Yes there was.
- 25 Q. And they were both dusted were they?
- A. No, they were taken by the exhibits officer and they were given to me at a later date, I have super glue fumed them and they were taken from me and sent to ESR for examination.
- Q. Okay but you, so you didn't examine them?
- 30 A. So I haven't finished, the super glue fuming process is a two stage process, after the fuming you wait 24 hours and then you have to stain the glue with a fluorescent dye so you can see the prints that have developed if any, it's customary that if it exhibits are going to go to ESR to be tested for DNA that the fuming is done before they're sent. Once

Court of Appeal of New Zealand  
Wellington

2. February. 2020

Re: A. Ballantyne V Queen. CA438/2017/ (2019) NZCA 596 (28.11.19)

Attention: His Hon Justice STEVENS. ELLIS. PETERS. JJ

Council: ~~APPELLANT.~~ REBUTTAL

Ref: Judgement of the Court. (Given by Ellis J)

Grounds for Dismissal: Dated (28.November.2019)

Item: *FINGERNAILS.*

(100): As Noted earlier Mr. Kapluggins "Fingernails Clippings" were **NOT Forensically tested.**

Note: ( a ).

See Attachments (Police Disclosure Documents Pages 03117 & 03118). TECHNICAL REVIEW FORM, Lab ref: ASC15546 Dated (5.5.2015 Case Manager, Signed by Mr. Rian Morgan-Smith. Ref: Recommended action (1) to (7).

Recommend action: item: (6) Add "**RESULTS**" for left hand fingernail clippings.

Recommend action: Item: (7) Plucked head hair.

Note: ( b ).

See Attachment (ESR Disclosure Document Page 00006). APPENDIX 01. Items seized from deceased: Ivan Kapluggin.

15028- Left fingernail clippings and hair.

15029- Plucked head hairs.

Grounds for Dismissal: Dated (28 November.2019)

(101): DNA under the fingernails would only be present if Mr. Kapluggin had managed to make some contact with the Killer.

Note: ( c ).

See Attachments (ESR Disclosure Documents Pages 00138 & 00124. ESR Lab reference ASC15546/63. Date: (5.3.15) Client description Fingernail clippings and hair, Dr. Fintan Garavan. Specimen container: 211X7T 15F0078 Date (4/2/2015) Examination Several hairs "Dark Brown/**Black**".

1 of 33



ASC15546/62. Client description Fingernail clippings & hair, Dr. Fintan Garavan. Specimen Container Date: 4/2/1015 AYF0281 Examination 3 x hairs 2 x fragments "Dark Brown/**Black**", 1 x telogen hair ROOT encased in blood flake hair length **(4cm) long**,

Note: ( d ).

See Attachment: Page: (209) (On Oath Statement Mr. Rian Morgan –Smith ESR Scientist Q v A. Ballantyne-CRI-2015-019-001150-(2.May.2016).

Para: (4). Mr. T. Sutcliff QC, Was that a long "black hair" that was located in his, **UNDER HIS FINGERNAILS**, it was approximately **four centimetres in length**. Ref: ESR Lab Ref No **ASC15546/62**.

Mr. R. Morgan-Smith, "YES" The majority of the hairs in both samples from the left and right *FINGERNAIL CLIPPINGS* were noted as fragments, *there was ONE hair four centimetres long in the RIGHT FINGERNAIL CLIPPINGS of the RIGHT hand*.

Note: ( e ).

See Attachment (Police File note, ( First Responder ) Alister HILL Detective Constable, Date: (5.2.15)

Time (0757) With Ballantynes FULL CONSENT Has: **(SHORT "GREY" HAIR)**. See: item: (c). ESR Lab reference **ASC15546/62**. Dark Brown/BLACK Telogen hair 4cm in length. Item: **(d). On oath statement Rian Morgan –Smith, "Black Hair" FOUR CENTIMETERS IN LENGTH:**

Date of Murder (2.2.15)

Grounds for Dismissal: Dated (28. November.2019)

Bottom Para (33)

The DNA profile on the right hand swab...ASC15546/67 (COULD NOT HAVE ORIGINATED FROM MR. BALLANTYNE)" *while this issue WAS NOT ADDRESSED BY MR. BALLANTYNE IN HIS SUBMISSIONS TO US.*

Note: ( f ).

See: **Notarised Legal SUBMISSIONS**. Date (29.July 2019) Copy attached.

Item: (3) ESR Forensic Report Date (14.4.16) Formal Written Statement By Ms. Lisa Marie Melia, Page: 15. of 15. Ref: BIO15691/ASC15546.

2 of 33





Page: 3. of 15. Ref: Blood stain SWAB from Right Han of Deceased, Mr. Kapluggin, item 15032, ASC15546/67.

With RESPECT the Appeal Courts decision to Dismiss, was based on unsubstantiated documentation provided by Crown Law, whom have a vested interest in protecting the Guilty, but there actions of attempting to cover up the truth, has only resulted in exasperating their plight.

NZ is a Commonwealth Country and as such we are a Democracy, Ruled by Law and the NZ Courts are our very corner stone of our Society, the DAY Corruption or Coercion is allowed to enter or influence our Courts is the day our Justice System collapses, and NZ is subject to World Shame.!

I RESPECTFULLY request, you three HONEST Judges to do what Justice Demands and Grant my Appeal of Innocence Based ON MERIT, and the TRUTH, Failure to do so will have far reaching ramifications for our Country and its REPUTATION!

I urge you please, your good names are linked to my Appeal and unlawful dismissal, and I beg you not to wait till you read your names in the WORLD MEDIA, before doing what Justice DEMANDS!

I AM STILL OPEN TO DICUSSIONS, to enable the Justice System to fix its-self: failing this the NZ Justice System, only has its self to BLAME and those Corrupt individuals for bringing their own institutions into DISREPUTE for GREED, The ENEVERTABLE WILL HAPPEN you CAN NOT hid the Truth in our Digital World, But the fall-out can be Mitigated if you act NOW!

With Respect

Yours Sincerely

Anthony Ballantyne.

*Anthony Ballantyne*  


Michael A.H. Williams, JP  
#95175  
TE AWAMUTU  
Justice of the Peace for New Zealand

*20 Feb 2020*

*3 of 33*

*\$*

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA438/2017  
[2019] NZCA 596

BETWEEN ANTHONY BALLANTYNE  
Appellant

AND THE QUEEN  
Respondent

Hearing: 23 September 2019  
Court: Stevens, Ellis and Peters JJ  
Counsel: Appellant in person  
A J Ewing for Respondent  
J P Temm as counsel to assist the Court  
Judgment: 28 November 2019 at 12.30 pm

---

JUDGMENT OF THE COURT

---

The application for an extension of time to appeal is granted.

B The appeal is dismissed.

---

REASONS OF THE COURT

(Given by Ellis J)

Table of Contents

	Para No
Introduction	[1]
The central prosecution narrative	[6]
Mr Ballantyne's accounts	[19]
Procedural history of the appeal and the development of the grounds of appeal	[30]



[99] Again, we are satisfied there is nothing in this point.

### *Fingernails*

[100] As noted earlier, Mr Kapluggin's fingernail clippings were not forensically tested. They were noted as likely having blood on them. Mr Ballantyne says that tests would have shown that his DNA was not present, thereby exonerating him.

Note: see TECHNICAL REVIEW FORM ITEM ⑥: RESULTS

[101] There is a logical fallacy in that proposition. Mr Ballantyne's DNA would only have been present if Mr Kapluggin had managed to make some contact with Mr Ballantyne in whatever struggle preceded his death. Given that the killer was wielding a knife (and Mr Kapluggin had defensive wounds to his hands) this was unlikely. Such evidence would have done nothing to advance the defence case.

### *Murder weapon*

[102] This ground is also concerned with alleged failures to "disclose" exculpatory forensic evidence at trial, namely, the absence of his fingerprints or DNA on the murder weapon and the absence of Mr Kapluggin's DNA in the wound on Mr Ballantyne's hand.<sup>33</sup> The points are interrelated because Mr Ballantyne says they both support his contention that he did not touch the murder weapon.

[103] The first point was, in fact, clearly made to the jury made by Mr Sutcliffe in closing. After referring to the evidence of Mr Morgan-Smith, he said:

Now he had given evidence for over two days over a two day period pointing to blood stains, whose DNA those blood stains contained significantly and this is important the context of this case, significantly, none of his evidence connected Mr Ballantyne to any of the weapons that had been used. Sure they were in his home but there was no physical evidence. There was no DNA. There was no fingerprints. There was nothing connecting Mr Ballantyne to those weapons that [were] used, no fingerprints, no DNA.

[104] It is difficult to know what more could be said.

Note: see NOTORISED LEGAL SUBMISSIONS

<sup>33</sup> This second point is arguably covered by Mr Ballantyne's "cross-contamination" ground of appeal (see [35(a)] above) and was expressly referred to by him in a letter to this Court dated 13 March 2019: "The DNA Profile Comparison Test Clearly STATES: The DNA Profile On the Right Hand Swab ... ASC15546/67 (COULD NOT HAVE ORIGINATED FROM Mr. BALLANTYNE)". While this issue was not addressed by Mr Ballantyne in his submissions to us, we include it here for completeness.

Date (29 July 19)

5 of 33



Laboratory reference

ASC15546

Page

COPY

TECHNICAL REVIEW FORM

Scene report administration check

Actions listed below

Signed (Checker)

Date

Signed (Case Manager)

Date

- Case no, file name, addressee and address correct
- Authorisation of charging present if needed
- Records present to support all conclusions
- Significant observable results co-signed
- Batch numbers and controls documented
- Calculations checked
- Any alterations - single strikeout and initialled
- Technical Reviewer agrees with conclusions
- Proper technical methods and procedures followed

- Other hypotheses considered
- Continuity observed
- All items acknowledged
- Unbiased language used
- Pages numbered, dated (if req'd) and initialled
- Relevant client requests addressed
- Are associations properly qualified in the report
- Test report contains all required information
- Other relevant statements included

Recommended action

Case Manager comments

- Complete continuity p25
- 1) Add possible blood on brush bristles
- Add conclusion of possible blood to wear CE result on p76
- Add definition of possible blood to blood blurb at beginning of statement.
- 2) Given LCV didn't reveal any 'probable blood' suggest remove last sentence. Could say instead 'LCV testing did not reveal any additional bts to that already seen' or something like that. -> actually you
- 3) Bts on floor of the patio between this chair and the table.
- add conclusion to CE pps result p97
- 4) bts piece of fabric on rug (p92)
- 5) extending between 2dorm and striking or do you know direction was downwards?

- ✓
- } done.
- } like to introduce with other blood blurb. ok with summary result being later. - will remove last sentence
- } already mention LCV on p5. (double up?) reworded to capture entire area.
- done.
- added.
- by 100% downward diagonal striking wrong stain. - altered.

Signed (Checker)

Date

Signed (Case Manager)

Date

Scallan

9/5/2015

5/5/16

Reporting time:

6 of 35

Laboratory reference

ABC15546

Page

00140  
COPY

TECHNICAL REVIEW FORM (continuation)

Recommended action	Case Manager comments		
① Add results for left hand fingernail clippings	) added		
- add reagents for exam in lab 7	- added to report for of # 125		
② Microbial head hair - NEF	Not needed.		
- See draft for edits	done		
S. Cauffman 5/5/2015	[Signature] 5/5/15		
TR @ signout of statement for June 15 80 minutes ONLY			
<del>TR @ signout of statement for June 15 80 minutes ONLY</del>			
Signed (Checker)	Date	Signed (Case Manager)	Date



(b.)

02992 ASCISS46

00006

COPY

Circumstances continued:

Injuries to KAPLUGGIN include 1 x stab wound to the centre of the back (not deep wound) 1 x stab wound to the chest, 2 x stab wounds in the neck, 1 x left side of head over left ear and through to through to the skull, 1 x wound to his lips. The left hand had multiple wounds (as in self defence) and a bruise below his right eye. BSR conducted a scene examination on the 03/02/15 and have taken a number of swabs.

APPENDIX 01

Items seized from deceased Ivan KAPLUGGIN -

- ✓ 15027 - Right fingernail clippings and hair from hand. ASCISS46/62  
*Analysis to determine if DNA profile present and other trace fibres evident.  
 Analysis on hair located on right hand of deceased by Pathologist at time of post mortem. (DNA comparison with BALLANTYNE!)*
- ✓ 15028 - Left fingernail clippings and hair from hand. ASCISS46/63  
*Analysis to determine if DNA profile present and other trace fibres evident.  
 Analysis on hair located on left hand of deceased by Pathologist at time of post mortem. (DNA comparison with BALLANTYNE!)*
- ✓ 15029 - Plucked head hairs.  
*Analysis on hair plucked by Pathologist at post mortem.  
 DNA comparison with hair found in KAPLUGGIN's hand.*
- ✓ 15030 - 1 x Bottle of blood.  
*(If needed) toxicology, DNA profiling and blood screening.*
- ✓ 15031 - Dry swab right hand.  
*Analysis to determine if DNA profile present and other trace fibres evident.*
- ✓ 15032 - Wet swab right hand.  
*Analysis to determine if DNA profile present and other trace fibres evident.*
- ✓ 15033 - Dry swab left hand.  
*Analysis to determine if DNA profile present and other trace fibres evident.*
- ✓ 15034 - Wet swab left hand.  
*Analysis to determine if DNA profile present and other trace fibres evident.*

*[Handwritten initials]*

8 of 33



B:

<b>ESR</b>		Laboratory Reference ASC15546/62	Page 00124
<b>ITEM EXAMINATION</b>			
Examiner <i>DA</i> Location <i>lab 7</i> Date started Date completed <i>5/3/15</i>	Client reference	Client description <i>finger nail clippings &amp; hair</i>	
Packaging <i>1 x large envelope containing yellow top pottle.</i>	Label photograph		
Sealing <i>Envelope</i>			
Laboratory identification <input type="checkbox"/> marked (where) <input type="checkbox"/> tag attached <i>pottle</i>			
Description <i>3 = finger nail clippings 3 = hair 1 x root fibre</i>			
Examination <i>3 = hairs - 2 = fragments - dark brown - black - no roots</i>	Item photograph		
Summary			
			<b>COPY</b>

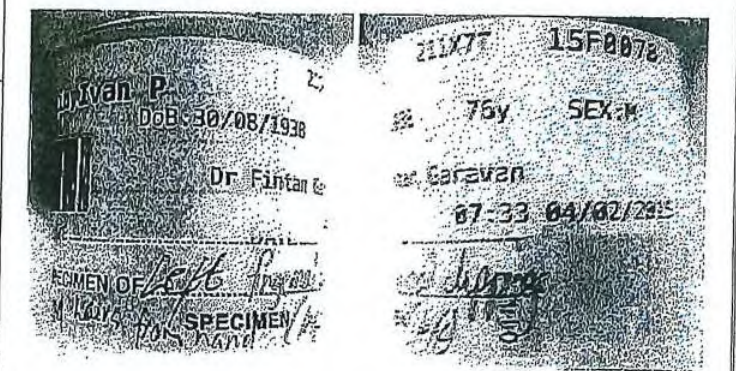
C:

Examiner <i>ES</i> Location <i>lab 7</i> Date started Date completed <i>5/3/15</i>	Client reference	Client description <i>Fingernail clippings &amp; hair</i>
---------------------------------------------------------------------------------------------	------------------	--------------------------------------------------------------

Packaging  
*In large envelope containing yellow top bottle.*

Label photograph

Sealing  
*Envelope taped & signed*

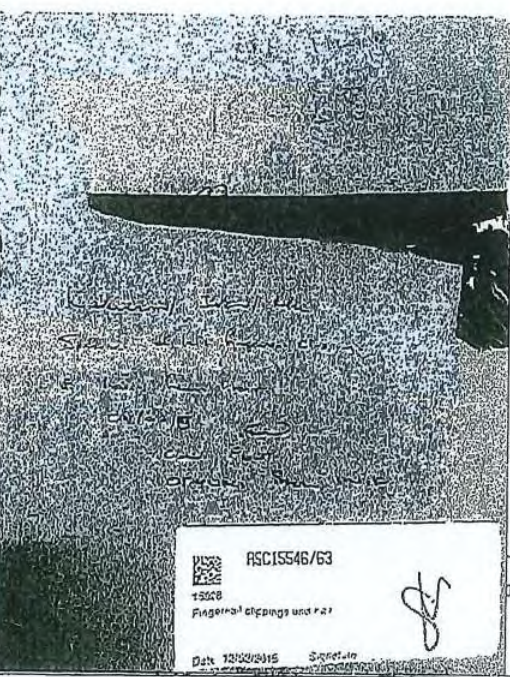


Laboratory identification  
 marked (where)     tag attached  
*potlle.*

Description  
*3x fingernail clippings  
 several hairs  
 flake of red material*

Examination  
*- several hairs; black / dark brown and colorless  
 - all hair fragments - no roots seen. (all w 2-3 cm long, 1/2 curls)  
 - some have blood flakes adhering.*

Item photograph



*has colour band  
 broken - 1/2 way*

*- large flakes - ce pos  
 => blood.  
 (small flakes not tested)  
 - fingernail clipping all stained red - ce pos  
 => blood.*

*have encased in blood.*

mary

COPY

*B.  
 N. Ulls*



(C.)

PubMed

Format: Abstract ~

J Forensic Sci. 1998 Mar;43(2):305-14.

### Evaluation of the human hair root for DNA typing subsequent to microscopic comparison.

Linch CA<sup>1</sup>, Smith SL, Prahlow JA.

#### Ⓢ Author information

#### Abstract

Telogen human hairs are one of the most common useful evidence findings at crime scenes and/or on homicide victims. Occasionally, the microscopic characterization of the found telogen hair is the only physical evidence association to a victim or suspect. Recently efforts to characterize these hairs by mitochondrial DNA (mtDNA) methods have progressed. The nature of the telogen hair root morphology and ultrastructure has, however, been largely ignored. Examiners have recognized these hairs are unlikely to be typable by nuclear DNA (nuDNA) methods. Most forensic biologists have little knowledge of the complex cellular composition of anagen, catagen, and telogen hair roots or their morphogenesis. This paper reviews ex situ human hair root morphology as it relates to the likelihood of successful nuclear DNA typing. Dermatology texts of hair root morphology always demonstrate their microscopic appearance in the skin. This study investigates the use of fluorescence in situ hybridization (FISH) methods to sex type telogen head hairs, and it further investigates hair root morphology as it relates to the potential nuclear DNA content of evidence hairs. There is a need for the use of appropriate, consensus terminology for describing hair root morphology. There is also a need for standardized laboratory light microscopic methods in evaluating a hair root for DNA typing. FISH was found to be an unsuitable technique for sex determination of telogen hair clubs. It was determined that anagen/catagen hair roots without translucent sheath material are excellent candidates for nuDNA PCR-based typing and that hairs with telogen club root material only should not be submitted for nuDNA typing attempts.

PMID: 9544538

[Indexed for MEDLINE]



Publication type, MeSH terms, Substances

11 of 33

<https://www.ncbi.nlm.nih.gov/pubmed/9544538>



Handwritten signatures and initials, including a large signature and a date 09/02/2010.

(d.)

125

MR DOUCH CALLS

RIAN KIER MORGAN SMITH (SWORN)

- Q. Your name is Rian Kier Morgan Smith?
- A. That's correct.
- 5 Q. And you live and work in Auckland where you're a forensic scientist employed by the Institute of Environmental Science and Research which we all know as ESR?
- A. Yes.
- 10 Q. And you're a scientist who has been with the ESR for now a lengthy period of time?
- A. I was initially employed as a technical officer in 1993 and then promoted to scientist in 1996.
- 15 Q. And the qualifications you had obtained Mr Morgan Smith?
- A. I have a New Zealand Certificate in Science majoring in chemistry, a Bachelor in Applied Science also majoring in chemistry, both from the Auckland Institute of Technology. A Graduate Diploma in Higher Education from the Auckland University of Technology and a post Graduate Diploma in Forensic Science from the University of Auckland.
- 20 Q. And ESR is a Crown research institute which provides an independent forensic testing and advice service?
- A. To the New Zealand Police, that's correct.
- 25 Q. Yes. And what accreditation does ESR and -
- A. ESR is a forensic section and has been accredited through the American Society of Crime Laboratory Directors, Laboratory of Accreditation Board and we've held that since 1995.
- 30 Q. Now over the 20 years since you embarked upon your career path as a forensic scientist what sort of work have you essentially undertaken?
- A. The work I undertake in the service centre in the Auckland forensic section of ESR involves attending crime scenes to provide the New Zealand Police with advice and services relating to the identification and collection of a variety of types of evidence, primarily biological evidence such as blood or semen as well as other types of

*Handwritten initials and marks:*  
A  
B



(d.)

208

Q. Yes, now I think your evidence earlier on was that it wasn't possible that those hair samples that were discovered, it was not possible to get any sort of reading as to what or whose DNA or where they came from, is that right?

5

A. The only way we can do a nuclear DNA analysis on hairs is if they have been forcibly pulled from the hair and still have sheath material around the roots; these hairs I didn't believe fit into that category, it's not uncommon to find hairs in a residential environment so as to whether those particular hairs would allow us to answer a specific question about the sequence of events wasn't really evident so no real examination was done on those hairs.

10

Q. Now notwithstanding the fact that they weren't perhaps suitable for conventional testing is it nevertheless possible to subject them to a form of testing to determine whether or not DNA can be extracted from those hairs?

15

A. There is a technique offered overseas known as mitochondrial DNA analysis which you can use to determine a maternal line in hair samples as in you'll have the same maternal, sorry, you'll have the same mitochondrial DNA as your mother through that maternal line, it's not a service that's offered in New Zealand.

20

Q. Was that considered in this case, that it wasn't considered is what you're saying?

A. Again it would be difficult to figure out what exactly the probative question would be to be answered by doing that analysis given that hairs do accumulate in residential environments. In this case we also know that Mr Kapluggin has a wound to his head and there is potential for hair to be shed in the general area where he is present so I'm not sure what the question would be that we would answer by doing that analysis.

25

Q. Well perhaps it might lead to the identity of the person who was involved in some sort of struggle or conflict with Mr Kapluggin, is that the possibility?

30

A. The difficulty we would have is that to make that conclusion you would have to make a number of leaps as to why the hair is in the

(d.)

209

environment, as I said it's not uncommon for hairs to accumulate within residential environments so if the hair is from anybody other than Mr Kapluggin there could be a myriad of reasons why they're in that environment, not necessarily because they are an assailant in this particular event.

5

Q. But a hair located in the fingernail samples taken from him, is a bit different isn't it?

A. That is correct, they were heavily bloodstained so there is a difficulty in that they would be saturated with Mr Kapluggin's blood which would make any further analysis more complicated but again it's not a DNA technique that we typically offer in New Zealand, it would be something that would specifically have to be requested either by the police or the Crown or perhaps defence.

10

Q. Was that a long black hair that was located in his, under his fingernails? It was approximately four centimetres in length?

15

A. Yes, the majority of the hairs in both samples from the left and right fingernail clippings were noted as fragments, there was one hair roughly four centimetres long in the fingernail clippings of the right hand.

**THE COURT:**

20

Q. Just hang on, Mr Morgan Smith, was it your decision that any hair found under the fingernails not be tested, was that your decision?

A. It's a decision that or a recommendation I would make to the police given the sheer amount of contamination potentially on the hairs, given where they were found and it's probably not going to answer any very specific question relating to -

25

Q. No, I'm just trying to find out who within ESR is responsible for the decision that the hairs not be tested for DNA?

A. That would probably be me.

Q. All right.

114 01 22



Handwritten signature and initials

(f.)

The Appeal Court  
54 Molesworth Street  
Wellington.

29. July 2019

Ref: Anthony Ballantyne V The Queen: CA438/2017

Attention: His Hon Justice Harrison J.  
AND To: Crown Law: Ms. Andrea Ewing.  
AND To: Chief Justice: Ms. Helen Winkelmann.  
C/C To: IPCO: Mr. Griffin Gully-Davies: Manager CRT/19-0118  
C/C To: Media: International. & NZ.

May it Please the Court: To except the Following: SUMMERY/ Submission.

Re: DNA Evidence of Innocence.  
: Non Discloser at Trial Date (2. May 2016) CRI-2015-019-001150.  
: Perjury On Oath at Trial.  
: GROSS MISCARRAGE OF JUSTICE.

Item: (1):  
Page: (02987) ESR Case Summery (Certified Copy) Page: Total (214) Date:  
Completed (1. September 2015).

Item: (2):  
E-Mail From ESR Mr. Rian Morgan-Smith to Det. Simon Everson, confirming copy of  
the ESR Case Summery sighted by the Appellant was Dated (8. Sep. 15).

Note: (a):  
Discloser Procedure: ESR To the NZ Police: From: To Crown Law: From: To the  
Appellate: From: To the Appellant. (Altered Copy) Minus: ESR DNA Profile Test  
Results: Re: ASC15546/17. 162. 163. 171. 172.

PLEASE NOTE: (a): (1): SEE COPY: ESR Case Summery Report Presented to the  
Appeal Court Date (1.11.18) as evidence By Mr. Jonathan Temm QC (Altered  
Copy) Page: Total (239) Minus: ESR DNA Profile Test results ASC15546/17. 162.  
163. 171. 172.

Item: (3):  
ESR Forensic Report Date: (14.4.16) By Ms. Lisa Marie Melia Page 15 of 15.

Note: (b): DNA Profile results: Page (3. Of 15).

Note: (c): KNIFE (Murder Weapon) ASC15546/54. 155. 156. 157.

Note: (d): MEAT CLEAVER ( Murder Weapon): ASC15546/17.

Note: (e): SWAB Right Hand (WET): (Deceased): ASC15546/67.

Note: (f): SWAB Right hand (DRY SKIN) (Deceased) ASC15546/66. Page (4. Of 15)



16 of 33



BRK

(f.)

2

Note: (g): SWAB Left hand (DRY SKIN): (Deceased) ASC15546/68.

Note: (h): SWAB Left hand (WET): (Deceased) ASC15546/69.

Item: (4):  
Pathology procedure (Protocol).

Note: (i): (1): Scrap Deceased Finger nails: Re: removal DNA. Hairs: Skin: Blood.  
: Left Hand x 7 Black Hairs & Blood FLAKE Material.  
: Right Hand x 3 Black hairs 1 telogen **ROOT ATTACHED**: Blood Flake.

(2): Cut Finger Nails: Remove DNA Materials: SKIN: Blood: Sweat: Oils.

(3): DRY SWAB: Remove DNA Material Skin: Foreign Material Fragments.

(4): WET SWAB: Remove DNA Material: Foreign Particles.

Item: (5):  
DNA COMPARISON PROFILE TEST RESULTS. Page: (5. Of 15).

Note: (j): DNA PROFILE **"NOT"** ORIGINATED FROM Mr. BALLANTYNE.

Note: (k): The Above DNA profile Test Results **"NOT"** Lawfully Disclosed at Trial  
Date: (2. May 2016) CRI-2015-019-001150.

Item: (6):  
Minute Justice Brewer J Whata J (Full Copy) Presented to the Appeal Court as  
evidence by Mr. Chris Tennet QC. Page: (3. Of 3).

Note: (l): Page: (36). Bail Hearing: Justice Whata J Date: (20 August 2015).

Note: (m): Page: (40). Para: (13). Sub para (a): TWO UNIDENTIFIED FINGER  
PRINTS ON ITEMS OF INTEREST (KNIFE: MEATCLEAVER) (b): (c): DNA and  
FINGERPRINTS OF THE DEFENDANTS **"NOT"** ON THE MURDER WEAPONS.

Note: (n): Sub para: (a). (b). (c). (d). (e): **"NOT"** Lawfully disclosed at trial Date:  
(2. May 2016).

Item: (7):  
On Oath Statement of Mr. Barry Smith: Police Fingerprint Expert: Page: (4. Of 4).

Note: (o): Page: (308) & (309) Ref: Para (10) & (30): **"NO"** Finger Prints on the  
Knife or Meat Cleaver. **(FALSE STATEMENT)**.

Item: (8):  
On Oath Statement By ESR Mr. Rian Morgan-Smith: Page: (5. Of 5).

Note: (p): Page: (179) Para (20): **NO SWAB** Taken of the Meat cleaver.

17 of 33



BR

(f.)

Note: (q): SEE Item (3): Page: (3. Of 15). Meat Cleaver Swab: ASC15546/17.

Note: (r): Page: (1440 para (20). "NO" Broken Glass. (FALSE STATEMENT)

Note: (s): Page: (208) (209). Para: (5) (10) (15): 4 CM Black Hair located under the Deceased right hand finger nails was NOT TESTED. (FALSE STATEMENT).

Item: (9):  
Police discloser Document: (Photo) Broken Glass in a white Rubbish Bag.

Item: (10):  
E-mail from ESR Mr. R. Morgan-Smith to Det. S. Everson Re: All Hairs located under the Deceased fingernails were hair FRAGMENTS (FALSE STATEMENT).

Item: (11):  
E-mail date (10 February 2015) from ESR Mr. R. Morgan Smith To Det. R. Brownlie. Re: MISSING HAIRS (EVIDENCE) NO NEED TO RECORD: CAURSE AN ISSUE IN COURT.

Item: (12):  
Page: (00124) (00138) Pathology Report: ESR Case Summery: Page: (1) Abstract Telogen Human hair (ROOT).

Note: (t): Page: (00124) ESR Lab Ref: ASC15546/62 Dark Brown/Back Hair x 3 Re: one 4cm long Hair has a Telogen hair Root Attached.

Item: (13): Affidavit Date: (22. 7 19) Page: (3. Of 3)

Note: (u): ESR Forensic Profile Test results Item: (1). (2). (4). (6). NOT Lawfully Disclose at trial Date: (2. May 2016).

Item: (14): Affidavit Date: (27.6.19) Page: (3 .of 3).

Item: (15): Affidavit Date: (15. 6.19). Page: (3. Of 3).

Item: (16): Affidavit Date: (1. 4. 19) Page: (5. Of 5).

Item: (17): Affidavit Date: (20. 2. 19) Page: (5. Of 5).

Sincerely Yours

Anthony Ballantyne

I Anthony Ballantyne Solemnly, Swear all the above Items: Page 55. Of 55. Are True and Not misleading.

SEVERALLY SWORN BY ANTHONY BALLANTYNE AT NAIKIROA HALLON THIS 30TH JUN 2019 BEFORE ME



BAK

10 11 17

(f.)

BIO15691/ASC15546

Item No.	Sample Description	Could Have Come From	Likelihood Ratio
ASC15546/16	Dilute bloodstain in sink	Mr Kapluggin	-
ASC15546/17	Dilute bloodstain on meat cleaver	Mr Kapluggin	-
ASC15546/18	Dilute bloodstain on sink bench	Mr Kapluggin	-
ASC15546/20	<sup>19</sup> HAIR ON MEAT CLEAVER MISSING Blood drip from deck	Mr Ballantyne	5 million million
ASC15546/21	Dilute bloodstain from deck	Mr Ballantyne	5 million million
ASC15546/22	Bloodstain from table	Mr Kapluggin	-
ASC15546/23	Bloodstain from chair	Mr Kapluggin	-
ASC15546/24	Bloodstain from deck	Mr Kapluggin	-
ASC15546/25	Bloodstain from deck	Mr Kapluggin	-
ASC15546/26	Bloodstain from chair	Mr Kapluggin	-
ASC15546/27	Bloodstain from chair	Mr Kapluggin	-
ASC15546/28	Bloodstain from deck	Mr Kapluggin	-
ASC15546/29	Bloodstain from deck	Mr Kapluggin	-
ASC15546/30	Bloodstain from wall	Mr Kapluggin	-
ASC15546/31	Bloodstain from ranch slider	Mr Kapluggin	-
ASC15546/32	Sample from mouth of glass on table	Most of the DNA: Mr Kapluggin. Additional DNA: results insufficient for meaningful comparison purposes	- -
ASC15546/33	Sample from mouth of glass on table	Mr Ballantyne	5 million million
ASC15546/34	Bloodstain from curtain	Mr Kapluggin	-
ASC15546/35	Bloodstain from curtain	Mr Kapluggin	-

14.04.2016

Page 13 of 15 pages

31 d 32





The Appeal Court  
54 Molesworth Street  
Wellington.

4. September 2019

Ref: Anthony Ballantyne V The Queen CA438/2017

Attention: Criminal: CROWN Law  
C/C To: His Hon justice Harrison J.  
C/C To: Chief Justice: Ms Helen Winklemann.  
C/C To: Crown Law: Ms Andrea Ewing.  
C/C To: The Police Commissioner: Mr. Mike Bush.  
C/C To: The Attorney General: Mr. David Parker.  
C/C To: The Justice Minister: Mr. Andrew Little.  
C/C To: Mr. William "Bill" West (Legal assistant) and MEDIA.

Ref: E-Mail dated 02. September 2019.

Re: Bundle was prepared before the appellants submissions were Filed.

Item (1):  
Note: Letter Dated (15.6.2019) Re: Merit on evidence of innocence, NOTORISED Date (17. June 2019. By J. P. Ms Marie Rawsen.

Item (2):  
Note: All previous letters to the appeal court prio to the 15.6.19 were not notarised but on the advice of the Court appointed (Amicus Curiae) Mr. Jonathan Temm QC, that all documents presented to the Appeal Court in respect to submissions of evidence of innocence (Gross Miscarriage of Justice) should be attested by a local J.P, Mr. Temms instructions had been strictly adhered to.!!

Item (3):  
Due to the late disclosed of documents from the NZ Police (Det. Simon Everson) X Two, Mr. Temm QC stated he would insure that I had ample time in which to get access to a corrections compute and arrange for a notary to attend me at Waikeria Prison and be able to E-Mail my submissions before the due date (2. Sep 2019)  
Note: Letter from the Appeal Court Dated (17. June 2019) Re: submissions on or before Date: (2. SEPTEMBER 2019)

Item (4):  
Re: Letter to the Appeal Court Submissions Date (29. July 2019) Notarised Date: (30. July 2019) By Mr. G. R. C. King J.P  
Ref to: page (3) Item (15) Affidavit Date (15. 6. 2019) Page: 3. Of. 3. Constitute as part off.

Item (5): Can the Court please confirm all letters and dates Re; e-mails submissions on evidence of innocence that HAVE been excepted by the Appeal Courts, (by return e-mails.)

Item (6):  
**NOTE: THE NZ BILL OF RIGHTS (1990): Right To Complain To the MEDIA.**  
All copies of E-Mails sent to the Appeal Court. Crown Law, The Police Commissioner, I.P.C.A. Criminal Law, ESR, The Attorney General, and the Justice Minister, have been forwarded to [bwest.ltd@gmail.com](mailto:bwest.ltd@gmail.com) and forwarded to an intermediate in Australia, who then forwarded all copies to [bclarke@nine.com.au](mailto:bclarke@nine.com.au) re: Chanel Nine News, Ref: My False incarceration and Energy technology (Invention) PCT/NZ2014/000051-WO 2014/158031, additional arrangements have also been made to POD Cast and Internet release.

[bclarke@nine.com.au](mailto:bclarke@nine.com.au)



I Have on a number of occasions stated that I am happy to Talk to any person willing to mitigate my situation, I have NO intention in taking legal action against any NZ Institution, I except no one is above being corrupted if the Price is high enough and some people will go to any lengths to stop My Invention *effecting there business*, but that is Now imposable due to the steps I have already put in place, **I only require Justice** and those persons who have committed crimes are dealt with by the NZ Justice system, if anything my respect and admiration for the NZ Police has risen, due to being in close proximity to those persons that the Good men and women of the NZ Police Force have had to deal with time and time again on a daily basis, (my hat goes of the those people) and I intent to state that fact on MY RELEASE.

I Have a technology to take to the world for the betterment of ALL humankind and the Whole World and that is what I intend on concentrating on!! NOT the past.

**The TRUE facts and incontrovertible evidence of innocence is before the Courts, AND MEDIA!! That is: all excepts what the Crown have NOT DISCLOSED items Re: ESR DNA and or RNA Profile Test RESULTS and or comparison tests from ESR Sample No. ASC15546/17. /62. /63. /71. /72. And the Fact they are Not,, in its self speaks Volumes.**

**Item: (7):  
Notarised: letter Date (24.7.16) Ref: Mr. Camden "Ross" Hyland. Chair Person of the Return on Science Division of the Auckland University.  
10 Page Legal Documents Ref: PATENT. "Proven" Energy (Green) Technology Invention.**

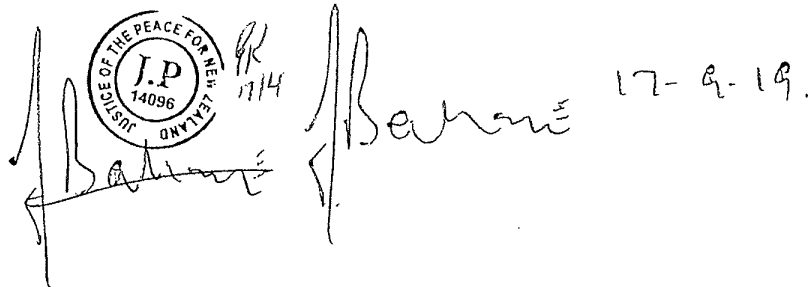
Item: (8): Summery of evidence of innocence items: 13/. Page 3. Of 3.

Item: (9): Page: 2. Of 2. Pathology Report: Dr. F. Garavan Ref: ASC15546/62. /63. Re: Hairs and Finger Nails. Page: 1. Of 1. Re: Evaluation Human Telogen Hair ROOT.

Item: (10): Re: Crime Scene Photo: Turned back rug, arm impression and Notations.

Yours Sincerely

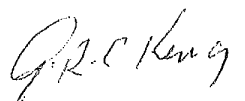
Anthony Ballantyne.

 17-9-19.

**Note: In today's digital world the Truth and Justice can never be hidden!**

I Anthony Ballantyne Do solemnly swear that pages 20. Of 20. Are TRUE & not misleading

*Sworn before me this 17 September 2019 at  
WAIKARIA*



G.R.C. King, JP  
#14096  
TE AWAMUTU  
Justice of the Peace for New Zealand

**SUMMARY on Points of INNOCENCE. Re: Anthony Ballantyne. CA438/2017**

1/. My DNA and FINGERPRINTS **"NOT"** Located on either murder weapon.

Ref: ESR Scientist Ms. Lisa Maria Melia Forensic Report Ref: ASC15546: Operation Tiger: Date **(20.2.15)**

NOTE: Date: of Arrest **(23.2.15)**.

Re: ESR Profile test results: Knife ASC15546/54. /55/. /56/. /57/.  
: Meat Cleaver ASC15546/19.

NOTE: Not lawfully disclosed at trial, by Ms. L. M. Melia Re: High Court of Hamilton Ref: CRI-2015-019-001150 "on Oath" Date: **(2. 5.16)**.

2/. There were **TWO UNIDENTIFIED** Finger Prints on items of interest Re; KNIFE. MEAT CLEAVER. Dish wash brush and liquid container. Etc. Etc.

NOTE: Ref To: The High Court of Hamilton Re: CRI-2015-019-1150 (2015) NZHC 1981 Ballantyne V The Queen His HON Justice Whata J Bail hearing at the High Court of Hamilton Date (20 Aug 15), evidence submitted by the Defence Mr. Tomas Sutcliffe QC and excepted by the Crown Mr. Elmoa Douch QC. *As True & Accurate.*

3/.Ref: The High Court of Hamilton Re: CRI-2015-019-001150 Date: (2.5.2015) Ref: Page: (308) & (309), Police Finger Print Officer Mr. Barry Smith lied on Oath when asked by the Crown was there any fingerprints located on the Knife and Meat cleaver He stated "NO" they were Clean.

4/. The Pathologist Dr. Fintan Garavan Date: (4.2.2015) took 4 swabs from the deceased Finger Nail tips: 2 x Dry and 2 x Wet.

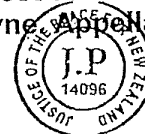
Ref: ESR Ms. Lisa M. Melia Forensic Report Ref: ASC15546: Operation Tiger: Date: (14.4.16) Re: ESR Sample No. ASC15546/66. /67/. /68/. /69/. **"DID NOT" CONTAIN DNA FROM A. BALLANTYNE.**

5/. Dr. F. Garavan also located 9 dark BROWN/BLACK hairs under the deceased finger tips and Blood "FLAKE" material (SKIN).

Ref: ASC15546/63. X 7 Hairs 6 dark Brown/Black and 1 no colour. Re: Left Hand.  
Ref: ASC15546/62 X 3 Hairs: ONE 4 cm long Black Hair with a **ROOT ATTACHED.**

NOTE: Anthony Ballantyne age 62 Date (2.2.15) Hair short, colour **GREY.**

NOTE: To date the NZ Police or the Crown have **NOT** lawfully disclosed the ESR DNA and or RNA profile test results or and comparison test results Ref To: ESR Sample No ASC15546/17. /62. /63. /71. /72. to A. Ballantyne Applicant.



Handwritten initials "RK" and a signature.

6/. Summery date (2. 2.15): when I woke up, on the wooden deck of my outside alcove dining area, just before 1am (3. 2.15) I placed my right hand down and onto a shard of broken glass (that I accidently broke during our meal), which coursed a deep cut (Latter requiring 4 stiches) and FRESH blood to drip from my wound to the floor were ever I walked.

I located Ivan in my wash room on a large Persian rug, to get close to him i turned back a corner of the rug and stepped onto the wash room vynil in the exposed area from the turned back section of rug, as I was still dripping FRESH blood I stepped onto some vertical drips and made foot impression Re: BS 1/.2/.3/. BS2/. Was a detailed toe print from my right foot, Re: Crime scene photo no **191-img-4039**.

NOTE: Dr. Rian Kier Morgan-Smith ESR Forensic Report Ref: ASC15546: Operation Tiger: Date: (5.5.15) Ref: Page: (7). Confirms that when the corner of the Persian rug had been turned back and onto a large section of Blood, the blood pool under the corner section was already congealed as NO Blood transfer had occurred to the folded area of the Persian Rug.

7/. As my next door neighbour Mrs. Vittori was a Nurse I went next door for help in the process dripping FRESH blood onto two of my OUTSIDE front door mats Re: **ASC15546/2. /3.** I rang a large bell at their home waking Both Mrs. Vittori and her friend Mrs. C. Clements at **1AM** when the lights came on I rushed back to Ivan, and picked his right arm up to check his pulse in doing so I fainted and did NOT place his arm back in its original position, I awoke a short time later and rang 111 for HELP at **1.26 AM.**

NOTE: Both Mrs. Vittori and Mrs. Clements stated on oath that they heard TWO male voices coming from my lounge area approximately 1.15am to 1.30am. (at court the crown informed them both what they had heard was Mr. Ballantyne and the 111 operator talking) BUT THE 111 OPERATOR WAS A WOMAN!!

8/. Dr. Rian Morgan-Smith ESR Forensic report Ref ASC15546: Re: Operation Tiger Dated (5. 5.15) Re: Crime Scene Photos **102-img-3944 and 106-img-3948** State and Show that when the deceased right arm was moved from its original position the large pool of blood the arm lay in had ALREADY CONGEALED as a visible arm impression had been left in that blood pool.

NOTE: None of the Above evidence of innocence was lawfully presented at trial at the High Court of Hamilton Re: CRI-2015-019-001150 Date: (2. 5.16).

9/. Crime Scene Photo **186-img-4034** show a DETAILED partial boot Heel imprint made from my FREASH blood and situated on the wash room vynil just feet from the back door.

NOTE: Both the Deceased and the Appellant had BARE feet Date (2/. 3/. 2. 2015)

10/. Ref: The High Court of Hamilton (CRI-2015-019-001150) On Oath statement Page: (208) & (209): Dr. Rian Morgan-Smith lied on oath when asked by the defence Mr. T. Sutcliffe QC if the hairs located under the deceased finger nails were tested 3



by ESR Mr. Morgan-Smith stated "NO" they were all hair FRAGMENTS! And when asked if the 40 millimetre long Black hair located under the deceased RIGHT Hand Finger Nails were ever tested Dr, Morgan-Smith Stated "NO" **NOTE:** ESR Profile Sample test no: **ASC15546/62.**

**NOTE:** Ref: Page (179) on oath statements Dr. R. Morgan-Smith was asked by the Defence if a swab was taken off the Meat Cleaver (Weapon) Dr. Morgan-Smith stated "NO" (**SEE:** ESR sample profile test Result No **ASC15546/19.**)

**NOTE:** Ref: Page: (144) on oath statements Dr. R. Morgan-Smith was asked by the Defence if he saw any broken glass at the crime scene, Dr. Morgan-Smith stated "NO" not in any place that hr Looked: **SEE:** Crime scene Photo of a **BROKEN Wine glass** in a white plastic rubbish bag with food waste (Mussels) situated at the back door at 202 Achilles Ave Whangamata.

**NOTE:** Ref: Page: (204) Dr. R. Morgan-Smith stated no evidence of FOOT PRINTS "yes that is correct" **SEE:** Crime scene photo: **186-img-4034** Detailed partial boot or shoe HEEL Print.

**NOTE:** The Forensic Group Ltd, Forensic Report No 15022 PE Dated (26. 8. 15) Stated in Ref To: photo no **186-img4034** "It COULD be made from a Boot or Shoe Heel" NOT presented at Trial Date (2.5.15) BY The Defence Mr. T. Sutcliffe QC, TRUST ME he stated I know best!!

**11/. No TIME OF DEATH** certificate was presented at trial (2.5.15)

**NOTE:** The Appellant was convicted of killing Mr. Ivan Kappluggin between 1AM and 1.26AM Date: (3. 2. 2015).

**12/. A. Ballantyne Toxicology test results Re: ASC15546/72** We're NOT presented at Trial Date: (2.5.15). Re: Blood Alcohol test results!

**NOTE:** The Crown informed the Jury of 12 that Two old DRUNK men had a fight and one killed the other.

**13/. A. Ballantyne Medical Kit test results Re: ASC15546/71.** We're NOT presented at Trial Date: (2.5.15). Ref: The inside of the right palm cut wound! "SWAB"

**NOTE:** The Appellant was convicted of cutting his OWN right hand Palm with the murder weapon (KNIFE) during a violent blood struggle.

**NOTE:** If that was a true factual event then both the Deceased and the Appellants DNA would be presents inside the Appellants palm wound and on the murder weapon (Knife) **SEE:** Item 1/. ESR DNA Profile test results Re: KNIFE Sample no: **ASC15546/54. 155. 56/. 67/.**

**14/. NOTE:** ESR Profile Sample test Results Re: ASC15546/17 Re: Hair on Meat Cleaver Have NOT been disclosed to date by the NZ Police or CROWN LAW to the Appellant. Appeal Date: (23. Sep 2019) also items Ref: ASC15546/62. /63. /71. /72.

16/20



8

# THOMAS SUTCLIFFE | BARRISTER

LYN WALKINGTON | BARRISTER

20 July 2016

TO WHOM IT MAY CONCERN

New Counsel for Anthony Ballantyne

This is the original marked "A" referred to in the attached affidavit of THOMAS SUTCLIFFE sworn/affirmed at this day of 19 before me: Solicitor of the High Court of New Zealand

*[Signature]* D McMillan  
Deputy Registrar  
District Court

Dear Colléague

## ANTHONY BALLANTYNE – TRANSFER OF FILE

- 1 Mr Ballantyne's file consists of three large file boxes, the contents of which I have attempted to outline below. I have not indexed every single document and you will find amongst the documents that there are duplicates. Some of those documents will have been original documents that were provided to Mr Ballantyne on which he has written notes and returned them to me.
- 2 Mr Ballantyne was a prolific note/letter writer and you will find his notes and Counsel's notes interspersed amongst the various files and documents. Mr Ballantyne's instructions were ongoing right from the outset through until and during and the trial. In order to keep up with his instructions I would on occasions place his instructions alongside the brief of a particular witness, or with briefing notes that I had obtained from Mr Ballantyne. I apologise now if it is confusing for Counsel to follow the thread of the file, but that was how I managed to keep abreast of matters with Mr Ballantyne.
- 3 I have not retained any hard copies of material from the file including notes of instructions from Mr Ballantyne nor my handwritten notes. Of course I have electronic copies saved of any typed transcript, letters, file notes or interviews with Mr Ballantyne or other possible witnesses. If any of the typed transcripts which I have provided you with or correspondence are incomplete please advise and I will provide you with the complete copy.
- 4 In the event that Mr Ballantyne proposed pursuing an appeal on the grounds of Counsel error I may need to have access to the contents of the file to properly respond to any claims made about Counsel's conduct of the trial.
- 5 I outline the contents of the boxes which I personally put together as follows:
  - a. Box 1 – Disclosure file 1A – 6 being page 1- 2917, sentencing file and reporting letter to client. 13 + 233 246
  - b. Box 2 – **Redacted copy ESR case summary page 02987-03233;**
    - Orange folder – client briefings, statements, drafts etc;
    - Red folder – forensic briefs and letters from Defendant, Counsel's notes of discussions/instructions, case theory and other documents;
    - Bail folder;
    - PI folder;
    - Red folder 2016 – ongoing disclosure formal written statements; and
    - Assorted documents including client's writings, trial exhibits including photographs, interview of private investigator with Defendant.

FALSE COPY →

B

á [redacted] m [redacted]  
 p [redacted] f [redacted]  
 e [redacted]  
 m [redacted]

Thackeray Chambers  
 www.thackeraychambers.co.nz  
 [redacted] | PO Box 19-021  
 DX GR20025 | Hamilton 3244

- c. Box 3 – assorted documents;  
Trial notes of evidence folder;  
Trial file – witness briefs with Counsel notes and some notes of Defendant;  
Correspondence file 1, including all correspondence between Counsel and Defendant including notes and letters to and from other parties, including private investigator;  
Correspondence file 2 between all parties including notes between Counsel and Defendant leading up to and during trial, file notes, draft briefs, notes and writings from client; and  
Two DVDs (CDs).

6 If you have any queries please do not hesitate to contact me.

Yours faithfully

**THOMAS SUTCLIFFE**

160720 new counsel

1<sup>st</sup> January 2023.

**(PRIVILEGED LEGAL DOCUMENT) Personal Attention!!**

Attention: Her Excellency. **The Right Hon Dame Cindy Kiro GNZM, KSO.**

Ref: To:

The legal Application: For Prerogative For Mercy: Re: A. Ballantyne PRN 42581582 Date: (12<sup>th</sup> December. 2022).

Dear Ma'am.

With the GREATEST of RESPECT to the KING, YOURSELF & THE NZ RULE OF LAW!. Please except my sincere apology if this letter is misconstrued in any way, it is intended only! To bring to your personal attention & knowledge, of several C.A. facts of Law.

It is not expected that you be aware of all NZ Statuary Legislation Laws, you no drought have Lawyer at your disposal for this purpose, BUT in the event they are not forth coming with the FULL truth, as to your legal requirement's & Liability's are (Under the NZ Rule of Law).

Ma'am, under our NZ C.A. Constitutional laws/ you Must have in your possession **(Substantial)** evidence of a Miscarriage of justice, **IN MY CASE the evidence in Your possession is OVERWELLMING & of a GROSS MISCARRAGE OF JUSTICE.**

Attached: For your Personal Attention: is a List of persons whom HAVE committed criminal acts or & conspired to Pervert the Course of NZ Justice (Crimes against myself & the NZ Rule of Law).

In the event! That *you* may Not be Fully (*Honestly*) informed, that in the (Unlikely) event that you, your self (fail) to act according to the NZ Law, your name can be added to this list.

Ma'am it is NOT POSSIBLE to hold the King to Task as the Head of state Ref: (The King can do NO wrong) but I can & will hold ALL those responsible who are representatives of the King!.

**Please Trust me on this Ma'am!** with respect it only takes ONE person on this list to GO Public and collect \$NZ250.000, & NOT TO JAIL, for the whole truth to come to LIGHT (Pandora Box is open for ALL the WORLD TO SEE). (I can name at least 20 persons on this list that will RUN to take up my offer (They have Too much to lose) & were Not Party to the attempts on my life! **SO THE TRUTH CAN NOT BE COVERED-UP!!!!**

Ma'am, I look forward to meeting you in person in the very NEAR future, to say THANK YOU for doing your sworn duty (What is RIGHT)

Kind Regards

Sincerely Yours

**ANTHONY BALLANTYNE. (INVENTOR)**



16<sup>th</sup> January 2023

Attention: To: **Detective Sergeant Gregg Flintoff.**

c/o The Waikato Tactical Crime Unit (TCU) & Corporate Fraud

Waikato District Police. Hamilton.

Ref: To: The Following NZ Legislative Criminal Laws (**ADAMS Criminal Law Act 1961**).

Ref: **NZ Bill Of Rights Act 1990** Page: ABUSE BY STATE: Page: (137). (*Protection of the Individual Human Right, Against Abuses by the State*).

Ref: **HABEAS CORPUS ACT:** Page: (139). (*Provides that a person is NOT to be ARBITRARY or UNLAWFULLY ARRESTED*).

Ref: **The NZ Legal System 2<sup>nd</sup> Edition** By: **Morag McDowell & Web.** Re: Chapter 3: Constitution 3.7.1. Re: **DICEYS PRINCIPLES:** (b). (i). Page: (129) (*NC Person can be punished unless he or she has broken the Law*).

Ref: To: **ADAMES Crimes Act 1961**

Not in order.

Re: **Failure to Act**, a Criminal offence, Ref To: CA 72.07 Omits an Offence.

- CA2.09: *Commission of a Crime. CA 1962 any one is liable to a punishment for any act of OMISSION, The Offender commits a crime.*
- CA72.07 *Omits an offence: Can be committed by an Omission (i). Failure to act (b). Omits an act.*
- CA2417: *SUPERIOR ORDER. Does NOT mean Mean's Rea, Duress will not excuse an Offence.*
- CA (98B): *Act of Coercion. (Being Coerced is NO defence).*
- CA66.13. (2). *Liability for conspiring to Aid & Abet (By Omission).*
- CA66.17. (1). *Aiding. (b). Stipulates Omits & act for the purpose of aiding.*
- CA20.37: *Negligence: Failure to Aid (Standard Care) (Officer of the Law).*
- CA117.06: *Liability of Lawyers. (Fail to Disclose) Conceals Evidence) (Obstructs Justice).*
- CA71: *Accessory after the Fact. (1). Suppression of a Crime. Evidence.*
- CA176: *Accessory after the fact of murder*
- CA385.08: *Sub: (1). (c). Miscarriage of Justice.*
- CA310: *Conspiracy to defeat Justice. (By Omission).*
- CA166.05: *Obstruction: Prevent Pervert or defeat Justice.*
- CA117.06: *liability of Lawyers (Fails to DISCLOSE)(Conceals Evidence)(Obstruction).*

2.

I Anthony Ballantyne with-in the Laws of NZ, with the (Constitutional Legal Right to make a complaint) to the NZ police against the Following Persons, with (Hard copy & or E-Mail Evidence) (**Full Knowledge**) of Criminal Acts carried out within NZ, and failing to act accordingly to The NZ Rule of Laws.

1. Christopher Jones. Ext Pastor The Gate Way Church Hamilton.
2. Barbara Allen. c/o 32 Josephine Cr Christchurch.
3. Alister Kelso. c/o 32 Josephine Cr Christchurch.
4. Julie Anne Kincade. K.C. c/o 14 Wyrindam St Auckland CBD.
5. Nicky Hager. c/o 73 Grafton Rd Roseneath, Wellington.
6. Peter Carson. c/o 182 Ulster St Hamilton.
7. Suzanne (Perjury on Oath) & Terrence Heaney. c/o Whangamata.
8. Kira Dalas Martin-McManus. Grey St Hamilton.
9. Kieran Martin-McManus. Grey St Hamilton. Convicted Fraudster.
10. Karen Grau. Crown K.C.
11. William & Val West. c/o Linda Evens Rest Home Hamilton.
12. Stewart & Maylene Ross. c/o 3169 Ohaupo Rd Hamilton.
13. L. Melia ESR Scientist.
14. Dr Finton Garavan. (Pathologist) (Non-Disclosure at Court /Black Hairs under the deceased Finger Nails)
15. Dr M. Trauaglia. (Police Dr). (Non-Disclosure Cut Palm Jagged Glass Cut)
16. Chief Justice H. Winkelman.
17. Satya Pandaram. K.C. c/o PO Box 4033 Hamilton East.
18. Tim McKinnel. P I c/o The C.C.R.C.
19. M. Dyhberg. K.C. c/o Auckland.
20. Ex Police Commissioner Bush.
21. Police Commissioner A. Coster.
22. The Australian Consulate General To NZ.
23. Ceri Wells. Patent Attorney. Hamilton.
24. J. Dowling. Police Officer.
25. The NZ PM. J. Ardern.
26. Minister A. Little. Then justice Minister.
27. The Attorney General. D. Parker.
28. Minister J. Shaw. Green Party.
29. Minister D. Seymour. Act Party. c/o PO Box 9209 Auckland.
30. Sandra Venables. NZ Police Officer.
31. Richard Chambers. Police Officer.
32. John Tims. Police Officer.
33. Glenn Dunbier. Police Officer.
34. Gannin Orsby. c/o The C.C.R.C.

35. Simon Bridges. c/o Taranga.
36. M. Mahuta. Minister.
37. A. Ewing K.C. Crown Lawyer.
38. His Hon Justice Stevens. (Appeal) Auckland.
39. Her Hon Justice Ellis. (Appeal)
40. Her Hon justice Peters (Appeal)
41. J. Temm. K.C. (Amicus Curie)
42. The G.M. The NZ SFO. Auckland.
43. Peter Read. The Tasman Police District Commander.
44. Page McElhinney (Scientist) Auckland.
45. Warren Young. G.M. IPCA
46. G. Grahraman. (Green Party) Human Rights Solicitor.
47. Carl Taka. Corrections PCO. c/o SHCF
48. Mr. Torrinson P.I. Auckland.
49. Glen Tinsley P.I. Wihi Beach.
50. Peter Hikaka P.I. Wihi Beach.
- 51. North End Law Firm. c/o PO Box 20555 Hamilton**
- 52. David O'Neil. KC c/o PO Box 815 Hamilton.**
- 53. His Hon Justice Davison (CIV-2020-419-000310) (I have seen your Detailed Documents) Judgment (I Find Your Case UNTENABLE).**

Note: (1). The Following Named Persons: Her Hon Justice French J/ Det Simon Everson/ Det Dean Anderson/ Det Cons J. Poaschek/ Barry Smith Police Officer/ ESR Scientist Rian K. Morgan-Smith/ Tomas Sutcliff Defence KC/ A. Douch KC Crown Prosecutor/ S.K. Green/Pyke K.C/ C. Tennet K.C /Camden Hyland, Have Committed Criminal acts with-in NZ (I now lawfully add these name to my Official complaint).

Ref: To: CA 115: Conspiring to Bring False Accusation.

**ADAMS on CRIMINAL LAW 4<sup>th</sup> Edition.**

- *Lawyers Manual 2005. Page: (527). Ref: Perverting the Course of Justice. (Active Police Misconduct) Evidence Amendment Act 1980.*
- *CA 347.01 Sub: (1). Unconscionable conduct during an Investigation of an Offence.*
- *CA 244.03: False Documents (Must Tell No Lie about itself).*
- *CA 257: using a False Document (I). (b). Ref: Using Altering or Presenting a False Document with the Intent to Deceive.*
- *CA 108.05: Intent to Mislead (I). Misleading Justice.*
- *CA 111: False Statement or Declaration: Amount to Perjury.*
- *TOD 509/2011. Ref: 98A. Organising of a Criminal Group (Conspiracy to commit a crime).*

4.

- CA 174: Counselling or attempting to procure a Murder.
- CA 100: Judicial Corruption.
- CA 101: Bribery of Judicial Officer.
- CA 200: Poisoning with Intent.
- CA 216F: Unlawful Disclosure.
- CA 115: Conspiring to Bring False Accusation.
- CA 104: Corruption & Bribery of a Law Enforcement Officer.
- CA 30: Arresting the Wrong Person.
- CA 71: Accessory after the Fact.
- CA 176: Accessory after the fact to Murder.
- CA 116: Conspiracy to Defeat Justice. (04) Course of Justice.
- CA 166.05: Obstruction, Prevent, Pervert, Defeat.
- CA 66.13. (2). Liability for Conspiring to Aid & Abet.
- CA 66.17. (1). Aiding. (b). Stipulates Omits & Act for the Purpose of Aiding.
- CA 175: Conspiring to commit Murder.

Note: (2). The Persons named as/ Daniel Heaney / Graham Dowling are now lawfully accused as the True Murders of Mr. Ivan Kapluggin. (Deceased). (I now lawfully add these persons to my official Complaint).

Ref: To:

- Crimes Act 160: Culpable Homicide (2). Consist of Killing a Person.

ANTHONY BALLANTYNE. D. O. B. 19<sup>th</sup> March 1953. PRN 4258158

A handwritten signature in blue ink, appearing to read 'Ballantyne', with a vertical line extending downwards from the start of the signature.

Pages: 4. Of 4. ARE TRUE & NOT MISLEADING