

## **Finding after Inquest into the death of Katherine Schweitzer**

1. On 15 February 2010, I began an inquest in to the death of Katherine Schweitzer. Mr Ian McClintock SC was Counsel Assisting, leading Ms Kirsten Edwards and instructed by Ms Tracey Stevens of the Crown Solicitor's Office. After a week, the inquest was stood over to mid March for further evidence, thus seven days of evidence was heard by this court. Before proceedings began, I also attended, with my legal team and the Officer in Charge Detective Walker, a view of the apartment in which Mrs Schweitzer lived and died. The FACTS are as follows:
2. In the early evening of the 27<sup>th</sup> of December 2006 Mrs Katherine Schweitzer's body was found in a wheeled Sulo garbage bin in the stairwell of a block of flats known as the Tiffany Building in Bellevue Hill. Mrs Schweitzer died in violent circumstances. Forensic examination established that she had been strangled. At the time of her death Katherine Schweitzer was 81 years old.

### **Katherine Schweitzer the Person**

3. Katherine Schweitzer was born in Hungary on 22 August 1925.
4. She had married her husband Paul in Hungary. The couple were Jewish and had survived the Holocaust. It would appear that many members of her family did not survive the Holocaust and, at the time of her death, she had only one possible blood relative. She had apparently met her husband whilst participating in the resistance in Hungary.

5. Mrs Schweitzer and her husband emigrated to Australia in the late 1950s. She worked as an accountant and in the 1960s became the accountant for a restaurant equipment supply company (QCC) in the 1970s. She and her husband formed close and lifelong friendships with the principals of this business. She purchased shares in the business, which ultimately became a significant and profitable investment for her. At the time of her death she was financially secure.
6. Mrs Schweitzer continued to work for a number of years following the death of her husband. She maintained an interest in stocks and shares and apparently used the internet to monitor her investments. She was an astute businesswoman.
7. The couple did not have any children. Mrs Schweitzer remained active in her community, particularly the Sydney Jewish community, until shortly before her death.
8. Mrs Schweitzer had a number of friends who have assisted police in obtaining the necessary background to her life. They describe Mrs Schweitzer as an industrious and intelligent person. A lover of art and opera, she gave significant amounts of both her money and her time to charities.
9. Friends and acquaintances of Mrs Schweitzer note that she held some firm opinions, and could occasionally express those opinions strongly. However, nothing in Mrs Schweitzer's past in regard to her personality or conduct suggests any plausible motive for her murder. There is no realistic suggestion that any known person held any significant grudge against her – let alone a grudge that would explain the circumstances of her death.

10. Indeed all the material presented to this inquest suggests that she was a worthy citizen, albeit as she aged, one who guarded her privacy, who made significant contributions to her community.

### **Mrs Schweitzer's Financial Affairs**

11. Katherine Schweitzer's estate amounted to 3.3 million dollars. She had been the sole beneficiary of her husband's estate when he died in 1987. The beneficiaries of the estate firstly included a number of individuals, with the bulk of the estate including the monies realised by the sale of her unit, going to various charities.
12. Police inquiries indicated that there was no likely motive relating to the disposition of the property via the will.
13. Mrs Schweitzer apparently lived modestly and did not engage in open displays of wealth. There was nothing found by police of significant value in the flat. There were no valuable artworks or jewellery that are likely to have drawn particular attention, envy or prompted a forced entry.
14. Mrs Schweitzer did have a number of bank accounts of various kinds including term deposits, credit cards and debit cards with various financial institutions. These assets were held both in her own name and in the name of her company Rosefox Pty Ltd.

### **Mrs Schweitzer's Physical Health**

15. Friends of Mrs Schweitzer noted a deterioration in her health in the six months prior to her death. Some suggested that she suffered from Parkinson's disease and that her shaking became more noticeable during this period. The shaking led to difficulties with holding objects and reduced mobility. Mrs Schweitzer increasingly relied upon others for assistance with household tasks including her housekeeper Agnes Toth and her close friend Anna Carmon.
16. By the time of her death, Mrs Schweitzer was frail and physically weak. She had been bedridden for at least two days and told close friends she felt very unwell. The autopsy report found that she had suffered a minor stroke in the days before her death and was suffering from lung cancer. Neither the stroke nor the cancer had been diagnosed or treated as she had not recently sought medical help other than on the day of her death. Mrs Schweitzer's general practitioner was Dr Peter Wilkenfeld. He had treated her since 1988. Mrs Schweitzer was awaiting a home visit from Dr Wilkenfeld at the time of her death.

### **Layout of the Tiffany Building**

17. The Tiffany Building is situated at the top of Bellevue Hill on Bellevue Road in Sydney. It is a multi-story building which on each level had three flats nominated by level and letter.
18. The Tiffany building is accessed by a security door system, which does not record entries or exits. The system may be operated via a dedicated key or

by the occupier of the unit “buzzing the person in” after being contacted through the intercom at the front door of the building. At the exterior of the entrance, before the front security doors, are a series of key-accessed mail boxes designated to each flat.

19. Once inside the building, access to any floor can be gained either by a single lift or alternatively by use of the fire stairs.
20. Directly on top of the foyer level is a level, which comprises the car park and utilities related to the occupiers. These include areas dedicated to the garbage and storage areas.
21. Car spaces are allocated to individual units in the garage. Vehicular access to the building is gained to the garage by use of a security key. Pedestrian access is either by lift or stairs to level one.
22. As part of the investigation into the death of Mrs Schweitzer, police conducted extensive enquiries of the occupiers of all units in the building. Enquiries were made of every identifiable person who visited the unit block on the 27<sup>th</sup> of December 2006. Scores of persons were identified and their accounts were cross-checked against the accounts and observations of others. The process was even more difficult than predictable because of a party that took place on Level 4 in the afternoon of 27<sup>th</sup> December 2006.

### **Adjacent Residences**

23. Mrs Schweitzer lived on Level 5 in unit 5B. There were two other units on her floor: 5A and 5C. On the 27<sup>th</sup> of December the principal occupant of 5A was Gisela Michelson – a lady in her 80’s who suffered from dementia. Also living

in the unit were Connie Salomon, Sissi Song and her partner Zheng (Vincent) Tan. Ms Salomon's friend Maria Agovida (sometimes referred to as 'Kith') was present on 27 December and had stayed the previous night but was apparently not a permanent resident.

24. Sissi Song and Connie Salomon acted as carers employed by Jennifer Michelson, the daughter of Gisela Michelson. They lived rent free in return for their care of Gisela. Connie Salomon also assisted another occupant on the next level (level 6) who was suffering from dementia, Ms Dorothy Lewis, by delivering her medicine once a day.
25. The occupants of 5C were Ursula Sturm, who suffered from severe dementia, and her full time carer Rosalia Horvath. Ms Horvath returned home at about 3:45pm on the afternoon that Mrs Schweitzer was murdered but not did not see or hear anything unusual or suspicious during the afternoon or evening.
26. Mrs Schweitzer lived alone in 5B, a two bedroom apartment. A floor plan of the apartment is located at Tab 11 of the brief. She was visited on a regular basis by her housekeeper Agnes Toth who had a key to the unit. Ms Toth gave evidence at the inquest. Ms Toth did not attend the unit on the day Mrs Schweitzer was murdered. Mrs Schweitzer had contacted her that morning requesting that she bring over some milk but Ms Toth, who lived in Doonside, was unable to attend until the next day.
27. Mrs Schweitzer had friends in the building including her close friends of fifteen years, Mr Basil Don and his wife Thelma Don. The Dons invited Mrs Schweitzer to their home every Friday for dinner. Basil Don was an active participant in the body corporate and a well-known resident of the Tiffany

building. He was regularly approached by residents as unofficial caretaker for the building.

### **The Day of Mrs Schweitzer's Murder**

28. On the morning of 27 December 2006 Ms Schweitzer was unwell. At approximately 8:00am Mrs Schweitzer contacted her GP Dr Wilkenfeld to book a home visit as she felt too ill to attend his surgery at Bondi Junction. Mrs Schweitzer spoke to her friend Dr Eva Vertes in Hungary and told her that she was unwell and that a doctor would be visiting her. Mrs Schweitzer also spoke to her close friend Anna Carmon in the morning and told her that she did not need a lift to the doctor's surgery as she was receiving a home visit.
29. At 1:04pm Agnes Toth returned a call from Mrs Schweitzer from earlier that morning. Mrs Schweitzer told Ms Toth that she was unwell and asked her to come to her unit as she needed milk and could not put the rubbish out. It is worth noting at this point that 27 December 2006 was the garbage collection day for the Tiffany Building.
30. As Ms Toth could not attend until the next day, Mrs Schweitzer then called her friend Anna Carmon at 1:46 pm and asked her to bring some milk to her unit after Mrs Carmon had finished seeing her own doctor at Bondi Junction.
31. The last call Mrs Schweitzer made was at 2:19pm. This call was to the surgery of Dr Wilkenfeld, inquiring as to when he would attend. Dr Wilkenfeld's receptionist told Mrs Schweitzer that the doctor would attend in the early evening, as the surgery was very busy.

32. At around 4:00pm Mrs Carmon arrived at the Tiffany Building with the requested milk. She buzzed unit 5B but did not receive a reply. A resident let her enter the building and she went to the unit. Mrs Carmon knocked on the door but received no reply. Mrs Carmon was understandably concerned about her friend and made a number calls to the surgery of Dr Wilkenfeld and to Basil Don inquiring after Mrs Schweitzer. Mrs Carmon also repeatedly rang Mrs Schweitzer's landline for the remainder of the afternoon and early evening but did not receive any answer.

### **The Discovery of Mrs Schweitzer's Body**

33. Sometime after 6:00 pm Connie Salomon left unit 5A to deliver medicine to Ms Lewis on level 6. She took the fire stairs to level 6. She noticed nothing unusual at that time but on her return down the stairs she noticed a red lidded wheeled garbage bin, with its lid ajar, on the landing on level 5. Her attention was attracted to a gold coloured quilt protruding from the bin.
34. The discovery prompted a number of phone calls from the occupants of 5A to Ms Jennifer Michelson. Connie Salomon, Maria Agovida and Vincent Tan all examined the bin and contents on more than one occasion. Basil Don and Ms Michelson also attended the bin. Mr John Gray, cleaner for the Tiffany Building, attempted to remove the bin from the corridor in the normal course of his duties, but was prevented by Mr Don
35. By at least 8:00pm, but probably considerably earlier, the residents of 5A had correctly determined that there was a body in the bin, and that it was Mrs

Schweitzer. Mrs Michelson called 000 at 7:56pm and Mr Don also called 000 at 8:07pm.

36. The first police arrived at the building at 8:14pm. A crime scene unit attended as did pathologist Dr Matthew Orde who examined the body.
37. The inquest focussed on the events of the critical period on 27 December 2006 between 2:19pm - when Mrs Schweitzer made her last phone call - until approximately 8:30pm when the building was properly secured by police.

### **The Police Investigation**

38. Police attended the unit block shortly after notification via the 000 system. The police secured unit 5B and commenced examination of the crime scene, which included the stairwell and the areas adjacent to the unit. Dr Orde, pathologist, examined the body of Mrs Schweitzer upon his arrival at 10:32pm. The interior contents of the bin were taken out and systematically examined by Crime Scene Officers Debbie Veness and Matthew Schibeci. The entire process of the extraction of the body from the bin was videoed and that video was played during the course of the inquest.
39. Police conducted extensive enquiries of the occupiers of all units in the building and statements in relation to all those persons were obtained. Enquiries were made of every identifiable person who visited the unit block on the 27<sup>th</sup> of December 2006. The scores of persons were identified and their accounts were cross-checked against the accounts and observations of others.

40. The process was made more difficult than may have been expected because of a party that took place on level 4 in the afternoon of 27th December 2006, and because of the fact that the Tiffany Building contained a significant number of elderly residents some of who were suffering from dementia and Alzheimer's disease. However, it became apparent during the inquest that the greatest hindrance to the police was the false story given to them by all the occupants of Unit 5A regarding the discovery of the body.
41. During the evening of 27 December and into the following morning the Crime Scene Officers conducted an extensive examination of the interior of the Mrs Schweitzer's unit. The interior of the unit was described, measured and examined. A number of items and samples were taken for later forensic analysis.
42. The crime scenes, including the stairwell, lift areas, doors, lobby and the exterior and interior of unit 5B were fingerprinted.
43. Material collected by crime scene officers was forwarded to the Division of Analytical Laboratories for analysis, and in particular for DNA analysis.

## **Results of the Forensic Analysis and Evidence**

### **Time and Manner of Death**

44. The material available does not conclusively establish where Mrs Schweitzer was killed.

45. The forensic examination suggests that the wheelie bin was probably brought into the flat for the specific purpose of moving the body (and possibly the associated documents, clothing etc found in the bin).
46. Track marks exist in respect of an area beside the bed in Mrs Schweitzer's bedroom. These marks progress through the living room in a direction suggesting that the bin was used to load the body in the bedroom and transport it towards the front door and ultimately to the stairwell area.
47. Carpet fibres found on Mrs Schweitzer's body and abrasions on her elbows and upper back suggest that either she was dragged immediately prior to death or, more likely, was moved along the carpet prior to being placed into the bin.
48. The cause of death was found by Dr Orde to be strangulation. The precise mechanism of death – that is, whether it was one of four possible mechanisms (artery restriction, venal restriction, nerve induced or choking) – was unable to be determined.
49. There is no doubt that Mrs Schweitzer was murdered.
50. Mrs Schweitzer's body was found with two ligatures in the form of belts around her neck area. One of the belts appears to have broken, probably because of excessive force being applied whilst the item was around Mrs Schweitzer's neck. The other belt was intact and around the neck of Mrs Schweitzer.
51. The belts, together with the bruising pattern on the neck tissue, are suggestive of either repeated attempts at strangulation or perhaps the use of the ligatures as devices of intimidation and/or restraint.

52. Mrs Schweitzer's hands were bound by a cloth material, consistent with the material of her brunch coat. Investigating police believe the murderer opportunistically used the belt of the brunch coat to tie up Mrs Schweitzer. The existence of the hand ties supports the general hypothesis that there was some restraint and probably directed force used prior to strangulation.
53. The evidence suggests that it was probable that Mrs Schweitzer was initially bound, possibly then led or dragged around the unit, and ultimately strangled. The time interval between these possible occurrences is uncertain.
54. Dr Orde did not find and nor was there any evidence supporting the proposition that there was any sexual assault nor any sexual motive.
55. Time of death was not able to be obtained from measurements consistent with body temperature due to both equipment failure (the thermometer) and the location of the body in a confined and insulated place.
56. However, time of death can be determined with some degree of precision due to the telephone records and the visit of Mrs Anna Carmon. The last telephone call made by Mrs Schweitzer occurred at 2:19 pm. Ms Anna Carmon knocked on her door to no avail at around 4:00 pm. Phone calls to Mrs Schweitzer's land line after 4:00 pm were not answered.
57. Thus the time of death is probably between 2:19pm and 4:00pm.
58. Of course, it remains a possibility that the intruder was still in the flat when Mrs Carmon attended around 4:00pm and that Mrs Schweitzer was still alive but incapacitated.

### **Premeditated or Opportunistic Entry?**

59. As already outlined, Mrs Schweitzer's unit was located on level 5. She had a locked front door and a metal grill security door, which could be opened by a deadlock style device. After her death both doors and locks were examined. Both doors were locked, but not deadlocked, and there was no sign of forced entry.
60. One possibility that was explored during the inquest was that Mrs Schweitzer was specifically selected by the perpetrators. The location of her unit – not adjacent or near to the entrance - may be an indicator of a specific plan to extort or attack her.
61. There is a possibility that such a selection may have occurred. Mrs Schweitzer was a comparatively wealthy woman and she took pride in her commercial background and skills. Information she gave in otherwise casual conversations may have provided a sufficient motive to plan a robbery. For example, a painter with whom she had a passing acquaintance recalls her saying to him that "*she was old but she could still make money*" (statement of Edward Broyda Volume 2 Tab 34 at paragraph [6]). When Sissi Song gave evidence she indicated that Mrs Schweitzer had mentioned her significant skills, training and success in commercial matters. Many witnesses interviewed by police noted Mrs Schweitzer's interest in, and apparent success at, trading shares on the internet.
62. It would not have been difficult for a potential perpetrator who came into contact with Mrs Schweitzer to infer that she was both rich and vulnerable.
63. Nevertheless, an opportunistic and spontaneous entry cannot be ruled out.

64. Entry to the building was comparatively easy. When Mrs Schweitzer's treating doctor, Dr Wilkenfeld, arrived at the building on the evening of 27 December he was let through the front security entrance by another occupant. The general tenor of the evidence before the inquest is that when people waited at the entrance to building they were usually let in by incoming residents without enquiry.
65. On the afternoon of Mrs Schweitzer's death there was a considerable amount of movement by people on the lower levels, including from the party in unit 4A. An opportunist may simply have sought to avoid those levels where there were the greatest number of people in the hallways and lifts.
66. In addition, the evidence is unclear as to what steps Mrs Schweitzer would normally take to secure her unit. Some witnesses were vehement that Mrs Schweitzer was very security conscious (see for example, Hal Goldstein Volume 2, Tab 51) while others gave accounts that indicated a less rigorous approach. Ms Agnes Toth informed the court that Mrs Schweitzer would not deadlock her security grill door when she was inside the unit in case of a fire. That door could easily be opened from the outside by reaching an arm through the metal bars of the door and turning the lock. Ms Toth also recounted that Mrs Schweitzer would sometimes leave her front door open if she was expecting visitors.
67. Mrs Schweitzer was said by some to be unlikely voluntarily to allow a stranger into her unit, however there is evidence she did invite acquaintances into her unit to admire the view (see statement of Glynn Prosser Volume 3, Tab 88) or to assist with tasks such as carrying groceries (see statements of George and Savvakis Koukkoullis Volume 3 Tabs 148 & 149).

68. There is a real possibility that on the afternoon of her death, Mrs Schweitzer had left her main door open or ajar and her security door unlocked in the expectation of the arrival of her friend Mrs Carmon. Whatever her general habits, there may also have been good reason to leave the door unsecured on that particular day to ensure that Dr Wilkenfeld could effect an entry without Mrs Schweitzer needing to get out of bed. It is clear that Mrs Schweitzer was feeling distinctly unwell that day and the material suggests that she was in bed for most of the day.
69. If such were the case, a quick entry may have been easy for an opportunistic thief. On the exterior of the doorframe there are two palm prints that remain unidentified.

#### **What Occurred once the Murderer entered the Flat**

70. Notwithstanding the brutality of the murder, the interior state of the unit gives little clue as to what occurred prior to Mrs Schweitzer being strangled. Large numbers of photographs, samples and fingerprints were taken by crime scene officers and were later analysed. None give any clue as to the nature of the events in the flat prior to the removal of the body.
71. Basil Don, who was sufficiently close to Ms Schweitzer to have been given her spare keys, entered the flat on 27 December around 7:30pm to search for Mrs Schweitzer. Other than that she was not there, he did not notice anything unusual or untoward. Mr Don's observations were confirmed by the crime scene photographs.

72. The crime scene material does not disclose any evidence of a struggle – apart from the removal of the bedding and its placement in the bin. An electric clock on the bedside table was flashing and it appeared to have been disconnected and reconnected. It is possible that the disconnection occurred during a struggle and the item was reconnected by the perpetrator. As Crime Scene Officer Senior Constable Veness indicated during her evidence, if the clock had reverted to 00:00 and was 10:36am on observation (when the actual time was 2:30 am) then the time of reconnection was likely to be 4:06 pm.
73. This would place the murderer in the flat, probably reorganising the flat or packing the bin, at about the time when Anna Carmon was at or approaching the unit.
74. There is therefore a distinct possibility that the murderer did not leave the flat until well after 4:00 pm. That person may have been interrupted or disturbed by Anna Carmon.
75. In Mrs Schweitzer's bedroom, the northern side of the double bed (which was comprised of two single mattresses) was covered and did not appear to be used. The southern side was stripped to the lower fitted sheet and a pillow with pillowslip. The pillow was placed next to the bed head in the proper orientation.
76. The discovery of bedding in the bin is consistent with the murderer stripping the top layers of the bed at the southern side and using these to bundle up Mrs Schweitzer's body before placing the body in the bin.

77. The faint track marks across the carpet in the lounge room are consistent with the movement of the wheelie bin.
78. The probable manipulation of the clock and the otherwise tidy appearance of the bedroom and other rooms in the flat do not suggest that any wholesale ransacking of the unit took place. It is possible that the murderer tidied up afterwards, which would be consistent with the re-connecting of the clock radio.
79. It should also be noted that the bin contents included items that could only have come from the flat, such as newspapers, catalogues, calendars, envelopes and bags and wallets, together with items of clothing clearly not part of the clothing worn on the day by Mrs Schweitzer.
80. It is possible that the items placed in the bin were those handled by the perpetrator, or in some way involved in the murder, and that they were placed in the bin to remove evidence from the flat.
81. It is likely that at least some of the items were selected to fill out the bin and prevent the body from being discovered. The contents of the bin are mixed. Some are clearly rubbish – such as the newspapers, catalogue and empty envelopes. It may be that these were to camouflage the true contents of the bin. They were initially observed at the top of the bin. The presence of a number of soiled underpants in the bin suggests that the perpetrator may also have used discarded laundry to fill the bin.
82. It is not known therefore what occurred directly before and after her murder. There is some evidence of the movement of furniture at a time recent to the

murder. This may be consistent with sitting Mrs Schweitzer on a chair at some stage or using the chair to conduct a search.

83. It is probable that Mrs Schweitzer was bound by the hands before her murder. The strangulation probably occurred over at least two bouts. It is probable that the murderer broke a belt before fixing another belt around Mrs Schweitzer's neck and killing her.

### **Motive for the Murder**

84. There is no clear evidence suggesting a motive for the murder of Mrs Schweitzer.
85. There is no material in the brief or presented to the inquest that suggests any motive related to personal vengeance or retribution.
86. The absence of any indicator or symptom of sexual assault makes it unlikely that the motive was sexual.
87. It would appear that there is at least one banking card missing from Mrs Schweitzer's property together with a set of house keys. There was a considerable amount of cash in the flat (\$1,110.76 in Australian dollars and \$460 in US currency) in a cash box in a hallway cupboard. There is no evidence of any missing items from cupboards or elsewhere in the flat. We do not of course know whether Mrs Schweitzer kept other amounts of cash or items of value. However, the contents of the wheelie bin included virtually all significant identity and banking cards associated with Mrs Schweitzer.
88. On examination by Dr Orde there was a 5mm blue/black pen mark on Mrs Schweitzer's right palm. Various photographs in the brief show pens in the

flat (see for example Photo 75 “desk” and Photo 151 “northern bedside table”).

89. The use of the wheelie bin to transport Mrs Schweitzer as far as the stairwell (at least) and the probable tidying up of the flat suggest that there may have been an intention to return to the flat using the house keys, or to utilise the banking material to withdraw monies (or both). In fact, no monies were withdrawn from Mrs Schweitzer’s accounts but this may be attributable to early detection rather than the intent of the murderer.
90. It does appear that some effort was made to disguise the fact that any struggle or assault had taken place in the flat. Basil Don used a key to enter and noted that the unit was locked.
91. It may be that the murderer's intention was to make it look as if Mrs Schweitzer had left for a holiday (not unexpected during the Christmas holiday period) taking her purse/handbag with her. In such a situation, it would be unlikely that her absence would be reported immediately. Accordingly this might leave open the possibility of the return of the murderer to continue searching the flat uninterrupted.
92. Ultimately, the motive for the killing of Mrs Schweitzer was probably financial and may have involved an attempt, before her death, to extort financial and personal identity information so as to access her accounts.

### **Obtaining The Garbage Bin**

93. The use of a garbage bin as a mechanism for the transport of the body of Mrs Schweitzer suggests that the perpetrator(s) must have obtained the bin at some time during the day.
94. It is probable that following the murder of Mrs Schweitzer, the perpetrator(s) went to the car park / garbage area and retrieved an empty garbage bin for the purpose of secreting and transporting the body.
95. Thus the garbage bin is likely to have been taken to Unit 5B at sometime after 2:19 pm and at anytime until shortly before its discovery around 6:30pm by Connie Salomon.
96. Mr Gray stated in his evidence that the relevant bin was likely the rearmost bin in the grouping of bins in the carpark and that it usually was placed on its side. This bin was the reserve bin when all others were outside on garbage day waiting to be collected. At 2:19pm, the bins had not yet been put out by Mr Gray.
97. This suggests that the perpetrator(s) was familiar with the layout and the particular organisation of the garbage bins in the carpark.
98. However, this is by no means the only possibility, and an uninformed search and discovery of an empty bin cannot be ruled out. Anyone entering the building at foyer level can gain access to all floors available via the lift or the stairs. The placement of the bins within the utility area on the car park level is relatively obvious upon entry or exit from the lifts.
99. The murderer would probably have been looking for an empty bin and the rearmost bin may have been the only obviously empty bin.

100. There is no clear evidence of when the bin was obtained. It could have been obtained before entry into the unit – which would indicate a significant degree of premeditation - or alternatively the bin may have been obtained after Mrs Schweitzer's death.
101. The latter is probably more likely. Accordingly, entry to the carpark area by the murderer to obtain the bin is likely to be closer to 4:00pm than 2:19pm.
102. Carrying garbage to the carpark level would provide a commonplace explanation for exiting at that level and being seen in or around the garbage bins. This fact lends significance to the man/men sighted in the lift carrying garbage to the area at relevant times by resident Oliver Darkes<sup>1</sup> on his way out at around 3:30 pm and by Vincent Tan while disposing of garbage at around 4:30pm<sup>2</sup>. An identikit image of the man was distributed by investigating police to Sydney media outlets but no leads of significance resulted. The description could correspond with one of the group of Sri Lankan men having a party on level 4 although those in attendance voluntarily provided statements and DNA to the police and none could recall any member of their party taking out garbage.

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<sup>1</sup> In his early 20's, of slim build, wearing casual dark clothing about 6ft, short black spiky shiny hair full of product with a dark olive complexion of Asian/Indian appearance carrying a large black garbage bin bulging with rubbish. (Evidence and Statement of Oliver Darkes Volume 3, Tab 136 at para [9]).

<sup>2</sup> Strikingly handsome 20-30 year old, about 178cm-179cm, medium athletic build, light brown skin, short dark hair with gel and spiked up with light coloured polo shirt with a collar and large polo symbol, light blue jeans. (Statement of Vincent Tan Volume 2, Tab 72 at para [9]).

### **Removal of the Body in the Bin**

103. The obtaining of the bin required a significant amount of time and exposure at least to identification or recognition in the public areas of the Tiffany Building. Assuming that Mrs Schweitzer was already dead, the murderer could not have been certain that he or she would not be interrupted and the process would inevitably involve going down (by stair or lift) and returning with a bin that could not help but provoke notice or interest.
104. Moreover, the movement of a body into a wheelie bin implies a significant degree of physical difficulty.
105. The effort and risk involved in the use of the wheelie bin suggests that it was regarded as an important aspect of the successful completion of the crime.
106. It may be that the removal of the body from the scene was required on the assumption that Mrs Schweitzer would be visited and her absence might not immediately provoke suspicion. It would have been far simpler (and with less risk of detection) to simply leave the unit after the murder.
107. It may have been intended to take the bin down to the garbage assembly area where it would have either gone out that night (according to Mr Gray) or alternatively remained in the area as the "empty bin" for a further week. This would have given the murderer at least another 12-16 hours before the garbage was picked up and longer if the body was not found or the bin was not put out.
108. When Mrs Schweitzer's body was discovered in the bin it was wrapped in a very wet sheet with a chemical smell. The source of that smell has not been

identified by forensic analysis but witnesses described it as similar to chlorine or phenyl (Detective Veness) or to rubbing alcohol (Connie Salomon). The sheet may have been soaked in some chemical fluid by the perpetrator in an attempt to disguise the smell of the body and delay discovery. Identification of the chemical substance which could have been used by the perpetrator was hampered by the use of cleaning fluid on the bin by Ms Salomon and Ms Agovida. Mr Gray also gave evidence that he used phenyl and bleach to clean dirty garbage bins.

109. It seems unlikely that the intended destination of the bin was the stairwell; it is more likely that the murderer was interrupted when he was attempting to remove the bin and hid it in the stairwell at that instant.
110. However, it may be possible that Mrs Schweitzer informed the murderer of the impending visit of her friend or her doctor and that secreting the body was a temporary mechanism to prevent detection in case another person gained entry to the unit. Such a scenario would not rule out the quick placement of the bin in the stairwell but would imply that that murderer remained to observe movements around 5B.
111. The presence of the purse and the cards at the top of the bin may have been simply a convenient method of carrying them (with the intent of removing them and keeping them) whilst also carrying the body in the bin. Alternatively it may have been intended to dump them, as their presence in the flat would indicate that there was something amiss. Mrs Schweitzer would not be expected to leave the flat without those items.

112. It is possible that the bin was moved up the stairs at about 3:45 pm. Maria Agovida (Statement 1 Volume 2 Tab 53) told police she could hear banging noises consistent with the movement of the bin at about this time. Connie Salomon told police that Gisela Michelson complained about a noise like the banging of furniture at around 3:20pm (given the discrepancy between estimated times in Ms Salomon's evidence and known time in phone records it is likely this event occurred later than 3:20pm and probably between 3:45pm and 4:00pm).

### **Interference with the Crime Scene**

113. Connie Salomon, Sissi Song and Jennifer Michelson all gave evidence at the inquest in relation to the finding of the body of Mrs Schweitzer in the bin.
114. The conduct of these persons, together with Vincent Tan and Maria Agovida, was a significant concern in the oral evidence at the Inquest.
115. The material and oral evidence disclose the following general circumstances regarding the finding of Mrs Schweitzer, the reporting of that finding and tampering with the crime scene.
116. The accounts summarised below were not the accounts originally given to police. The evidence by Connie Salomon, Sissi Song and particularly Jennifer Michelson cannot be regarded as either accurate or reliable. I disagree with Mrs Michelson's submissions that she appeared to be doing '*the best she could to try and given an honest account*'. She was self-contradictory, self-serving and not credible.

117. Connie Salomon, Maria Agovida and Vincent Tan indicated that they were in 5A during the afternoon. No one in 5A noticed anything amiss apart from Gisela Michelson who apparently heard banging outside the unit. It is possible that she left the flat but the other occupants of the flat did not investigate.
118. At 6:22pm Connie Salomon called Jenni Michelson, the purpose of this call being not recalled by either of them. I do not necessarily make any adverse inference from this loss of memory; it is just another fact in a litany of the inexplicable.
119. Between 6:30pm and 6:45 Connie Salomon stated that she went upstairs to see Dorothy Lewis in Unit 6A to leave her medication. On the way down the fire stairs she noticed a red lidded wheelie bin in the right hand corner of the firestairs. The lid was raised about an inch. Ms Salomon opened the lid and saw a relatively new gold coloured quilt, other clothes and some newspapers. She stated she could smell "*rubbing alcohol*".
120. Connie Salomon returned to the unit and spoke to Maria Agovida and then the pair returned to the stairwell and bin.
121. At the bin they located further items including a handbag and wallet. They returned to the unit with those items and conducted an examination.
122. As a result of the examination, they recognised Mrs Schweitzer's photograph on certain identity documents and cards. They noted the presence of the Medicare card and concluded that they needed to return the bag.
123. At around the time the women say they returned to the unit, Dr Wilkenfeld attended Mrs Schweitzer's unit at around 6:55pm, did not get a response to his knocking and left.

124. At 6:57pm Connie Salomon and Maria Agovida called Jennifer Michelson. Presumably the women commented upon the presence of Mrs Schweitzer's identity cards in the bin. It would appear that Jennifer Michelson then called Katherine Schweitzer at 7:01pm but received no response. Jennifer Michelson apparently indicated to Ms Salomon, after some initial reluctance, that she would attend the Tiffany Building.
125. At 7:14 pm Basil Don received a call from Anna Carmon expressing concern about Katherine Schweitzer. Basil Don was wearing a red shirt and dark trousers. Mrs Carmon asked him to attend Mrs Schweitzer's unit and check on her while she remained on the line. Mr Don took the elevator to unit 5B and knocked on the door and rang the bell several times. He returned to the phone and told Mrs Carmon he had not received a response.
126. At about this time, Connie Salomon and Maria Agovida returned the handbag to the bin and continued an examination of other contents of the bin. Ms Salomon described feeling and seeing a ball-like object that was '*warm like freshly cooked rice.*' Ms Salomon saw blonde hair and she became fearful that there was a body in the bin.
127. At 7:20 pm Connie Salomon called Jennifer Michelson and told her to hurry up. It is probable that she informed Ms Michelson of her fears that a body was in the bin although Ms Michelson denied that, as Connie herself gave evidence that she '*tried to explain to her (Ms Michelson) what I had seen*'. (Furthermore, Connie and Maria then took the step of spraying the bin against fingerprints, suggesting that they themselves knew what was in the bin.) During that call Maria Agovida told Connie Salomon that she had seen a man in a red shirt and black pants emerge from the stairwell while she was peering

through the peephole. Ms Salomon then looked through the peephole for 5 minutes and saw a man in a red shirt and black pants emerge from the stairwell. She heard the man open the door of 5A and yell out "*You need some help?*". Ms Salomon then heard the door being closed and the lift doors open. She described the man as Asian, about 5"4 to 5"5, medium build, aged in his early 60s and of Vietnamese appearance with a white v-shape beard that was 3 inches long and hair half bald at the front.

128. Also at about 7:20pm Mr Don was asked by Mrs Carmon to go inside Mrs Schweitzer's unit to check on her. He obtained his key to 5B and took the elevator to the unit. He walked through the unit calling words he recalled as "*Kathy are you home?*". He did not locate Mrs Schweitzer but did not notice anything out of place. He subsequently returned to his unit and advised Mrs Carmon on the telephone that Mrs Schweitzer was not in the unit.
129. About this time Connie Salomon and Maria Agovida apparently concluded that there would be a police investigation and returned to the bin with some form of cleaning fluid with which they sprayed the bin. The fluid was described in evidence as Windex and/or Methylated spirits. The purpose was to remove any trace of their fingerprints.
130. It is unclear whether Sissi Song and Vincent Tan had returned to the unit at the time of the first phone call to Jennifer Michelson but they were definitely present some time before Jennifer Michelson arrived (see below).
131. At 7:25pm Jennifer Michelson called unit 5A and apparently spoke to someone there for almost a minute. There is no reliable evidence as to the reason for this call.

132. At some time after 7:25, Jennifer Michelson arrived at the Tiffany Building. At the time of her arrival Ms Salomon again reported seeing a man in a red shirt around Mrs Schweitzer's unit.
133. After 7:20 pm but before 7:46 pm Basil Don returned to the unit for the third time and left a note next to the front door asking Katherine Schweitzer to call Annie Carmon, Basil Don and Dr Wilkenfeld. He wrote the approximate time of his visit, 7:30pm, on the note.

#### **The unknown man in the red shirt**

134. It is highly likely that if there was a red shirted man/ men sighted by Maria Agovida and Connie Salomon, it was Basil Don. Both women knew Mr Don although they denied the person they saw was he. Ms Salomon stated she had seen the man in the unit block in a different outfit some six months before. Mr Don is not of Asian appearance. Surveillance material placed before the inquest indicates that the women genuinely do not believe the man they saw was Mr Don. However, on the material there is an extraordinary coincidence with the dress and conduct of the person identified and Basil Don. Mr Don attended the unit three times at the same time as the three sightings of the man in a red shirt. His behaviour on those occasions, with the exception of entering the stairwell, is almost identical to the description provided by the women. It is clear that by the time of the sighting the women were extremely distressed, and more than likely hysterical.

### **The false account to the police**

135. It is difficult to know precisely what occurred between Ms Michelson's arrival at unit 5A and the time she called Basil Don at 7:46 pm and 000 at 7:56 pm.
136. The quality and reliability of the accounts of the participants (Agovida; Salomon; Song; Tan and Michelson) are all highly compromised. All participated in an agreement to deceive the police about the true circumstances of the finding of the body. Despite their voluntarily recanting on these accounts on 30 December 2006, there remain significant inconsistencies and self-serving elements to all accounts.
137. In particular, it is likely that Jennifer Michelson's account given in the witness box was a deliberate attempt to cover up her belief in the existence of the body at about the time she arrived at the unit. She seems to have told a series of lies minimising her role in obtaining the agreement to deceive the police and in the construction of a common false account. Ms Michelson stated in evidence that it was Sissi Song who, in a heroic gesture of friendship, volunteered to give a false account to police, which had her finding the body in the place of Ms Salomon and Agovida. Ms Song convincingly gave evidence, consistent with all the other witnesses who were present, that it was Ms Michelson's idea and further that she felt coerced by her employer into participating in the falsehood. The decision to do so was brief. Ms Michelson also denied (apart from one moment in her evidence) that she had attempted to remove fingerprints from the wallet and cards after she had inspected them inside the unit. This account again stands in the face of the accounts given by all the other witnesses (Sissi Song, Vincent Tan, Maria Agovida and Connie Salomon). In my view, the only available factual finding on the evidence is that

Ms Michelson was the primary moving party in removing any prints from the purse and cards and in organising the others to perpetuate the false account.

138. Submissions on behalf of Ms Michelson suggest *inter alia* that she could not have had time to organise so much in a short time, and that had she erased the fingerprints on the cards and wallet her own prints would have been left. Those submissions are not sustained on the evidence of four other witnesses. It does not seem odd that her fingerprints were not on the cards and wallet. Anyone wiping off prints would presumably have ensured that such elimination would include her own.
139. The statements in the brief and the oral evidence all lead to the conclusion that Connie Salomon and Maria Agovida were panicked and agitated by the finding of the body in the bin prior to 7:20 pm. It is submitted that by the telephone call to Ms Michelson at 7:20pm Ms Salomon was convinced that there was a body in the bin and had concluded that it was Katherine Schweitzer. As a result it was Ms Salomon and Ms Agovida who had initiated the attempt to cover up their presence at the bin for fear of involvement in a murder investigation and fear of deportation.
140. At some time after Jennifer Michelson arrived, Vincent Tan probably went to the bin alone to ascertain for himself whether there was a body in the bin. The evidence suggests that he returned and informed all the people in the flat that there was indeed a body in bin.
141. It is likely that in order to satisfy himself that the content of the bin was indeed human he reached down (as he says in one his early police statements) and touched around the neck area of the body.

142. This provides one possible explanation for the existence of Y-DNA consistent with Mr Tan on the ties associated with the neck and the existence of Mr Tan's fingerprints on the exterior of the bin.
143. The finding of Y- DNA consistent with Mr Tan (and Basil Don) on the ties around Mrs Schweitzer's hands similarly may be explained by the possibility of transference whilst rummaging in the bin.
144. At 7:46pm Jennifer Michelson called Basil Don and asked whether she had heard from "Kathy" and said she thought something may have happened to Kathy because the "Chinese couple" had found a wallet and her cards.
145. By this stage it is almost certain that everybody in 5A was aware that there was in fact a body in the bin. In her third statement Ms Michelson asserts that she started to call 000 but instead called Basil Don.
146. It is submitted by counsel assisting that "the cover up was already underway in this call and part of its purpose may well have been to involve Basil Don, as an independent witness outside 5A, in the finding of the body." On the evidence before me I can not be satisfied that this was the case.
147. Basil Don attended Level 5 and the effect of his arrival led to Connie Salomon and Maria Agovida closing themselves in Connie Salomon's room. There may have been an element of panic when Ms Salomon saw Basil Don in a red shirt at this time. However, the secretion of the two was already part of the plan to ensure that they were not spoken to by police and were not identified as witnesses.
148. Basil Don and Vincent Tan went to the bin and confirmed that there was a body. It is not clear how many times Basil Don went to the bin or precisely

what he did when he got to the bin. While, on Mr Don's account he went only once and had very minimal contact with the bin, and on his account Mr Tan had none at all, it is probable that the contact both men had with the interior contents was more extensive than Mr Don remembered or realised. This would explain the presence of Y-DNA consistent with Mr Don on the hand ties.

149. At 7:50 pm Connie Salomon called Sheryl Climaco – there was no satisfactory explanation for this call in the evidence.
150. At 7:56 pm Jennifer Michelson called 000 and reported that a body had been found in the bin. The content of the call is curious in that it suggests that Mrs Schweitzer had not been seen for days and that the body was "*long dead*". Both assertions were untrue. The account seemed designed to imply the killing of Mrs Schweitzer was not recent and to remove any urgency from the attendance of emergency services (However, Ms Michelson was not played the tape during her evidence and thus her explanation for the call is not before the inquest).
151. Basil Don made a call to 000 at 8:07 pm after returning to his flat. The account in his call was played to the inquest and was accurate.
152. The occupants of 5A then continued in a complicated plan to spirit Connie Salomon and Maria Agovida out of the flat to avoid contact with the police and for the remainder to give false accounts of their involvement to the police. Elements of this scheme almost certainly involved the destruction of evidence in the clean up and spraying away of fingerprint evidence.

153. Whilst the original spraying of the bin was Connie Salomon's and Maria Agovida's idea, from the time that Jennifer Michelson arrived it appears she was the person who initiated the wiping of the cards and the subsequent deceptions. Her account - where she took no active part in the initiation and planning of the further deceptions - is incredible.
154. The events upon the arrival of the police have already been described above.

### **Movements of persons of concern**

155. A significant amount of police time and effort was expended in determining the movements of various people of interest as the enquiry progressed.
156. Oral evidence was called in respect of the sighting by (name withheld) of an Asian man in a car in the car park of the Tiffany Building in the carspace used by Sissi Song and Vincent Tan at 5:15pm and 6:15pm. This man appeared similar to a man who had that day at 5:00pm shared the lift with (name withheld) and accurately pressed the button for her floor without being informed where she lived.
157. Extensive enquiries were made to determine whether accounts given by people of interest were verifiable and consistent with other information.
158. This information, in combination with other evidence, may one day assist in the identification of the perpetrator. However, appallingly, at present, there is no independent information in this category that conclusively assists in determining who murdered Katherine Schweitzer.

## **Forensic Material: Results of Fingerprints and DNA**

159. As has already been noted police conducted an extensive and thorough search of 5B and the adjacent areas including the stairwell and the bin. Forensic samples were taken for DNA analysis and later fingerprint analysis was conducted.
160. As a result of this inquest, the forensic material (particularly the DNA) has been the subject of analysis and further analysis and evaluation. On the request of counsel assisting the Coroner, Ms Michelle Franco of the Division of Analytical Laboratories conducted additional DNA tests on the belts that were believed to have been used as the murder weapon. Dr Simon Walsh, a highly qualified DNA expert with particular expertise in Y-DNA testing and "trace DNA transference," provided an additional expert report and was called to give evidence before the inquest. Dr Walsh supported Ms Franco's methodology and her conclusions.
161. The relevant results of analysis of the DNA are as follows:
162. Apart from a specific finding on a pillowslip (see below) no identifiable DNA that could reasonably be associated with a suspect was found within 5B.
163. All items associated with Mrs Schweitzer contained significant amounts of her DNA in quantities that in most cases made the identification of minor contributors difficult or impossible.
164. As a result of the difficulty of delineating Mrs Schweitzer's DNA from minor contributors a relatively new profiling method was adopted which is known as "Y-Filer" (in contrast to the "Profiler Plus" System.)

165. This method ignores contributors who are female and concentrates on the Y chromosome.
166. This method has various serious limitations (in terms of identification of an individual). Principally, it does not provide evidence of a profile that is unique to each individual but rather provides a common patrilineal profile, which thus, may be common to all male relatives.
167. There is no accepted database from which a reliable calculation can be obtained to determine the rarity of any Y-DNA profile.
168. Mixed and partial Y profiles suffer from the same restrictions and further require more assumptions with respect to identification, further undermining their probative weight.
169. There is evidence that indicates a Y-DNA profile consistent with Vincent Tan's exists at a number of sites on the belts around the neck of the body. This evidence is consistent with a possibility that Mr Tan inadvertently transferred his DNA at a time when he was rummaging in the bin at the time of the discovery of the body.
170. There is evidence that a mixed Y-DNA profile, consistent with Vincent Tan and Basil Don, appear on the ties around the hands of Katherine Schweitzer. The presence of Basil Don's Y-DNA profile suggests the possibility that both Mr Tan and Mr Don's DNA were deposited during the rummaging in the bin or by some other process of transference.
171. There is evidence that a partial Y-DNA profile consistent with Mr Tan (and possibly a profile of another male) was found on a pillowslip located on Mrs Schweitzer's bed in 5B. When interviewed by police Mr Tan did not suggest

that he had any contact with a pillow case belonging to Mrs Schweitzer. He did state that he had been inside her unit, including her bedroom, at some stage in the weeks before her death to assist her with some household tasks.

172. Also found in a different location on the pillowslip was the Y-DNA profile of a crime scene officer (Detective Matthew Schibeci). There is an available inference that the process of analysis of the pillowslip was compromised by contamination by the crime scene officer. Detective Schibeci had previously handled almost all of the items found in the wheelie bin including those containing Mr Tan's Y-DNA profile. Dr Walsh acknowledged that this process may have involved transference of DNA from other locations onto the pillowslip. However, he noted that evidence that militates against this possibility is that the pillowslip was not handled until many hours after crime scene officers had contact with the bin. Further, Detective Schibeci may have employed protective clothing and handling techniques designed to minimise the risk of transference. Detective Schibeci was not available to give evidence at the inquest.
173. At the present stage, there is no forensic material which points unambiguously to a particular perpetrator.

### **Conclusion.**

174. It is difficult to escape the suspicion that during the inquest itself, several witnesses gave either untruthful or only partly truthful evidence, causing more questions to be raised than answers given.

175. The fact that no individual can be identified as responsible for Mrs Schweitzer's murder is highly regrettable, particularly given the thorough investigation by the police, and is at least in part due to the actions of the occupants of 5A (excepting Gisela Michelson) and Jennifer Michelson. The latter, in my view, does not deserve to be exonerated as merely '*foolish and..naïve..., nothing more*'. Ms Michelson is an educated, intelligent woman whose evidence to this court was calculatedly confusing and conveniently lacking. At some instances, it is clear that she was untruthful. Nor can the actions of the others in 5A be lightly dismissed. Allegedly for the purpose of hiding illegal immigrants, the police were deceived and misled at a critical time in the investigation. It may well be that traces of the perpetrator were obliterated by Ms Michelson when she tampered with the personal property of Mrs Schweitzer. The lack of probative forensic material at the crime scene in the flat is also a significant obstacle to the identification of the perpetrator.
176. The murder will now be referred to the Unsolved Homicide Unit of Police.

**FORMAL FINDING**

**Mrs Katherine Schweitzer died in unit 5B of the Tiffany Building, Bellevue Road, Bellevue Hill NSW on the afternoon of the 27<sup>th</sup> of December 2006. Mrs Schweitzer's death was caused by strangulation at the hands of a person or persons unknown.**

Magistrate M Jerram

Chambers, Glebe

NSW State Coroner

April 29, 2010