

1 THE PRESIDENT: Yes, CMDR Rush.

2

3 CMDR RUSH: I'm not sure yesterday, sir, whether
4 I tendered the report of Detective Sergeant Snow. I don't
5 think I did.

6

7 THE PRESIDENT: It will become exhibit 219.

8

9 CMDR RUSH: That is COI.006.0130.

10

11 **EXHIBIT #219 REPORT OF DETECTIVE SERGEANT TIMOTHY JOHN**
12 **SNOW, BARCODED COI.006.0130**

13

14 CMDR RUSH: Sir, I call Professor Duflou.

15

16 <JOHAN DUFLOU, sworn: [10.12am]

17

18 <EXAMINATION BY CMDR RUSH:

19

20 CMDR RUSH: Q. Professor Duflou, could you state your
21 full name to the Commissioner, please?

22 A. My name is Johan Duflou.

23

24 Q. Are you the Chief Forensic Pathologist with the
25 Department of Forensic Medicine at Glebe, New South Wales?

26 A. Yes, I am.

27

28 Q. Your qualifying specialties or degrees and
29 qualifications are what?

30 A. I have a basic medical degree - a Bachelor of
31 Medicine, Bachelor of Surgery. I have a Master of Medicine
32 in forensic pathology. I'm a Fellow of the Royal College
33 of Pathologists of Australasia. I am a Fellow of the
34 Faculty of Forensic and Legal Medicine of the Royal College
35 of Physicians in London, and I hold a Diploma in Aviation
36 Medicine.

37

38 Q. Your role as the Chief Forensic Pathologist with the
39 Department of Forensic Medicine at Glebe involves what?

40 A. My major role is that of performing autopsies for the
41 coroner, and those autopsies are in a range of deaths,
42 including deaths as a result of violence, including those
43 cases that have sustained gunshot wounds and injuries and
44 other circumstances.

45

46 Q. Related to that, are you the Associate Professor in
47 the School of Medical Sciences, National Drug and Alcohol

1 Research Centre at the University of New South Wales?

2 A. Yes, I am.

3

4 Q. And the Clinical Senior Lecturer in the Department of
5 Pathology at the University of Sydney?

6 A. Yes, I am.

7

8 Q. Forensic pathology involves the sorts of matters that
9 you have indicated to the Commissioner?

10 A. Yes, certainly. A percentage of our cases are
11 skeletal remains. I get involved at a not-infrequent
12 interval with both the exhumation of skeletal remains and
13 the assessment of them.

14

15 Q. Professor Duflou, were you asked to make an assessment
16 of the skeletal remains of the body that was recovered at
17 Christmas Island?

18 A. Yes, I was.

19

20 Q. After your assessment, did you prepare a report?

21 A. Yes, I did.

22

23 Q. That is at COI.001.0091. Do you have a copy of that
24 with you?

25 A. Yes, I do.

26

27 Q. Is what has come up on the screen in front of us the
28 first page of your report of the examination of the
29 skeletal remains from Christmas Island?

30 A. Yes, it is.

31

32 CMDR RUSH: I tender that report, sir.

33

34 **EXHIBIT #220 REPORT ON THE EXAMINATION OF SKELETAL REMAINS**
35 **FROM CHRISTMAS ISLAND, BARCODED COI.001.0091**

36

37 CMDR RUSH: Q. Did you initially work in conjunction
38 with Dr Donlon in relation to the examination of the
39 remains?

40 A. Yes, absolutely, and that very much is my practice
41 with any skeletal remains - that we work as a team.

42

43 Q. Where did that take place?

44 A. That took place, from memory, in the Shellshear
45 Museum.

46

47 Q. Is that where your examination took place?

1 A. In the main, yes, if not the only location where I did
2 the examination.

3
4 Q. Where else was the examination?

5 A. I think that was the only location. We might have, at
6 one stage, transported some of the skeletal remains to the
7 Department of Forensic Medicine for X-ray documentation as
8 well, but I can't recall that specifically.

9
10 Q. I want to ask you about the skull. When you examined
11 the remains, did you make an observation as to a piece of
12 what looked like metal or an object in the skull?

13 A. Yes, I certainly noticed a fragment of metal. It was
14 very obvious. It looked probably like corroded metal. I'm
15 certainly not an expert in materials like metal. I noted
16 that there was a fragment of metal about 1.5 by 1.2 by
17 1.3cm in size, and it was obviously embedded in the left
18 frontal bone of the skull. The frontal bone is essentially
19 that part of the skull, of the forehead, and on the left
20 side of the body itself (indicating).

21
22 Q. We have here, Professor, a cast that was made of the
23 skull, with a further cast, I think, of the inside of the
24 skull depicting the metallurgy. Does that depict what you
25 observed in the skull?

26 A. Yes, it does. Yes, it's a good-quality cast of what
27 I saw. Essentially, the dark area is the fragment of
28 metal, and this (indicating) is a cast of the inside table
29 of the skull, again showing the fragment of metal.

30
31 Q. If we can go to the next page of your report at 0092
32 at paragraph 7, in the first dot point, in the fifth line,
33 you say:

34
35 *... I understand that the metal fragment*
36 *has characteristics consistent with*
37 *a German shrapnel origin. Detailed*
38 *examination of the skull wound revealed*
39 *beveling of the inner table of the skull.*

40
41 What do you mean by "beveling", and when you talk about
42 the "inner table of the skull", what are you referring to?

43 A. The skull has both an inner table and an outer table.
44 In other words, the smooth bone on the outside of the skull
45 is the outer table. The relatively smooth bone on the
46 inside of the skull is the inner table.

47

1 When a projectile strikes the skull and either
2 partially or fully penetrates the skull bone, it causes
3 a hole, which, on the outside, on the outer table, is
4 smaller than on the inner table. Essentially, as it pushes
5 through, it causes, if you like, splintering of the bone
6 around the back part of it.

7
8 It's not that dissimilar to when you drill a hole into
9 a piece of wood. The front of the piece of wood is
10 generally a neat hole, and the back often has some
11 splintering of wood around it. This is a very similar type
12 of appearance with skulls, and that can give you a very
13 strong indication of direction. It is almost unheard of to
14 have reverse bevelling, in other words, a bullet going in,
15 and the outer table, where it has gone into the skull,
16 being larger than the inner table.

17
18 THE PRESIDENT: Q. You get a mushrooming effect on the
19 internal?

20 A. Yes, correct. Then when the bullet leaves the skull
21 itself, you get a reverse. In other words, on the inner
22 table, you get a small hole; on the outer table, you get
23 a large hole. With high-velocity projectiles, you can get
24 radically different types of wounds, but, in general terms,
25 with fairly low-velocity projectiles - and in that,
26 I include handgun-type bullet wounds as well as pieces of
27 shrapnel - you would get bevelling of that nature.

28
29 Q. The bevelling you observed enabled you to conclude, as
30 I understand your report, that the skull penetration
31 occurred from the front?

32 A. Yes, your Honour. As much as it is possible within
33 medicine and forensic pathology to express high levels of
34 confidence, I am confident that that is the case in this
35 case.

36
37 Q. Assuming that that cast is an accurate representation,
38 would the internal protrusion of the metal object have
39 disturbed the brain?

40 A. Your Honour, the chances are that it may very well
41 have. It would certainly have pushed against the brain.
42 It is likely that there would have been a degree of brain
43 damage in that area. The projectile alone, the way it has
44 lodged in the skull, need not have caused direct
45 unconsciousness and need not have killed the person.
46 Certainly, if medical care were available, today, it would
47 be very likely that the person would survive this injury.

1
2 Q. Does that mean that it may have caused unconsciousness
3 and it may have caused death, but it equally may not have?
4 A. On its own, yes, your Honour.

5
6 CMDR RUSH: Q. In the next dot point, you referred to:

7
8 *... an 11.5cm sagittally aligned perimortem*
9 *undisplaced linear fracture extending from*
10 *the right superior orbital ridge to the*
11 *coronal suture.*
12

13 Can you explain what you're talking about?

14 A. Possibly if I demonstrate, that would be the easiest
15 way of doing it. It is shown on the skull cast as
16 a fracture line extending adjacent to the projectile
17 embedded in it. It's on the right side and it ends at the
18 coronal suture, which is one of the sutures of the skull.
19 Essentially at right angles to that are a number of other
20 lines to the fracture. Importantly, these fracture lines
21 do not communicate with the fragment of metal and the hole
22 in the skull.
23

24 In a gunshot wound, even a low-velocity handgun
25 gunshot wound, one of the almost invariably present
26 injuries is one of radiating fracture lines from the hole
27 in the skull itself. In other words, you expect to see
28 fractures coming from the centre of the hole outwards.
29

30 This is probably related to the force applied and
31 possibly to the speed of the projectile. It really is
32 quite unusual not to see radiating fracture lines. As to
33 the reason for this fracture, then, there are basically,
34 I think, two possibilities. The first, and probably the
35 one that I prefer, is that this was as a result of a blunt
36 object striking the head or the head striking a blunt
37 object not directly related to this.
38

39 THE PRESIDENT: Q. A fall against something?

40 A. Possibly a fall against something. In fact, if you
41 look at the other injuries, in the third dot point, there
42 is certainly an indication that there was either a very
43 heavy fall against something or been thrown against
44 something or that something hard hit that part of the head.
45 There was significant deformation of the skull as a result
46 of a very significant blow to the head, at least one blow.
47

1 Q. So that's a second injury?

2 A. Correct. The alternative that could be considered,
3 but I don't favour it, is that this line of fracturing
4 occurred at the same time as this object striking the head.
5 What makes it unusual is that it's away from it.

6

7 Q. And there are no radiating lines?

8 A. Yes, correct. Possibly there was something else
9 attached to this fragment at the time. I don't know. But
10 if that were the case, it would be heavier and I think it
11 would be more likely, again, to cause fracturing directly
12 in association with it, so I put that forward as a much
13 less likely possibility.

14

15 My preferred possibility is that there was significant
16 blunt force injury to the head at about the same time or
17 possibly later - possibly earlier, for that matter, as
18 well - and the two are not directly related.

19

20 CMDR RUSH: Q. Professor, in addition to your
21 examination of the skull, did you examine the rest of the
22 skeleton?

23 A. Yes, I did.

24

25 Q. You refer to that examination at 0093, at paragraph 8.

26 A. Yes.

27

28 Q. What were your findings on examination?

29 A. Most of the skeleton was present. There was
30 fragmentation of many bones. I think probably, in the
31 main, they were the result of deterioration of the skeleton
32 after death. I emphasise that those types of aspects are
33 probably best explained by Dr Donlon. No foreign objects,
34 including projectiles, were identified embedded within
35 those skeletal remains.

36

37 I noted that there was extensive fracturing of ribs,
38 but I was unable to say whether this was sustained at
39 around about the time of death due to compression of the
40 trunk or whether it was a grave collapse at some stage.

41

42 Q. You go on to a discussion, which has just been
43 covered, but on the final page, at 0094, you refer to the
44 cranial injuries that you have described and there is
45 a discussion as to whether these injuries may have proved
46 fatal. You there say that they need not have been
47 immediately fatal.

1 A. Yes, correct. Even with remarkably severe head
2 injury, which includes multiple skull fractures, people
3 can, on occasion, remain conscious throughout and survive
4 for a number of days. That certainly does happen on
5 occasion. I would not expect this person to have survived
6 his injuries without treatment, but certainly you can get
7 survival at times for a number of days without any obvious
8 medical treatment.

9
10 On the other hand, it is certainly within my very
11 regular practice to see cases of people who have sustained
12 head injuries of this severity and who have died either
13 within minutes or possibly hours of sustaining the
14 injuries. Unfortunately, and especially in the absence of
15 soft tissue, it's not possible to state how long the person
16 has survived.

17
18 The injuries don't show features of healing, but
19 healing in bone takes many days to become apparent, and as
20 the bone gets older from burial, it becomes harder to
21 identify that healing. I don't think, though, that there
22 was any significant healing in this case at any stage.

23
24 Q. Professor, in the opinion that you offer in relation
25 to it potentially being days or potentially being fairly
26 immediate, in looking at the days, does that allow for both
27 the injury caused by the shrapnel and also the other injury
28 to the skull?

29 A. The other injury to the skull, yes. I must say that
30 the shorter the survival period, the more comfortable
31 I feel. I'm giving "days" as an outer limit. I'm
32 certainly not suggesting that that is the most likely.

33
34 THE PRESIDENT: Could you put on the screen, please,
35 COI.003.0081.

36
37 Q. That is a diagrammatic representation of the skeleton
38 as found in the grave.

39 A. Yes.

40
41 Q. There are two accounts of the recovery of the Carley
42 float and the body within it from Christmas Island, neither
43 of which is very extensive. There is some suggestion that
44 the body or skeleton was found, as it were, in a sitting
45 position in the Carley float and that the coffin in which
46 the remains were interred was not a standard-size coffin
47 but of a different dimension, possibly to accommodate the

1 unusual structure of the skeletal remains as found and as
2 shown in that diagram.

3
4 Put another way, one possibility is that if it were
5 the case that the skeletal remains were found in a sitting
6 position leaning against the edge of the Carley float, it
7 may be thought that the legs were tucked up underneath the
8 skeleton, which means that at some point of time the person
9 was able to get into that position or, alternatively, fell
10 into the Carley float or got into the Carley float in some
11 fashion in a position where his legs were underneath him
12 and he couldn't remove them.

13
14 It's a very unusual circumstance to have someone
15 sitting there with his legs underneath him, I would have
16 thought. One would expect that, in a Carley float, if he
17 were leaning against the external wall, his legs would be
18 stretched out ahead of him.

19 A. Yes.

20
21 Q. Does that position give you any basis for determining
22 the likelihood of the time period between the skull injury
23 caused by the projectile and death?

24 A. That's a very difficult question to answer,
25 your Honour.

26
27 Q. That's why I'm asking it.

28 A. My understanding is that the body was quite decomposed
29 on being found on Christmas Island.

30
31 Q. And rigor mortis had set in, according to one account.

32 A. That I find difficult to believe. It's not consistent
33 with my medical experience that rigor mortis remains in
34 a decomposed body. There could be explanations for this.

35
36 As a general proposition, rigor mortis, at
37 temperatures of about 20 degrees Centigrade on average,
38 wears off, at most, at about 72 hours, say, three days
39 post-mortem. Especially in the setting of water, where
40 there would be movement on the water by the float, it would
41 be highly surprising to see rigor mortis maintained for
42 more than a few days. I'm purposefully being vague with
43 the words "a few days" here. Certainly, in the setting of
44 significant decomposition, I have never seen rigor mortis.

45
46 An alternative could be that decomposition was
47 predominantly in the form of mummification or drying out of

1 the body. You certainly get that. Even though you're
2 essentially adjacent to water, because it is seawater, salt
3 water, you can get mummification of bodies, as long as they
4 don't get significantly wet or as long as they're not
5 immersed in the water. Where there is mummification, you
6 can get quite significant hardening of the tissues - not
7 rigor mortis, but hardening of the tissues - as they dry
8 out.

9
10 Q. Rendering the skeletal bones difficult to move?

11 A. Correct. So that can certainly happen. But
12 rigor mortis - no, I do not believe so.

13
14 In terms of the actual position, I'm not sure how much
15 can be made of that. I agree that it is a bit unusual. An
16 alternative explanation that I would certainly consider,
17 without knowing any history in relation to what
18 eyewitnesses may have seen, is that the body was in that
19 position because it needed to fit a coffin of that size
20 that was made, for whatever reason. It would certainly not
21 be impossible to move legs in the setting of mummification,
22 but I accept that one possibility is that the deceased got
23 into the float in some way or other and, in some way or
24 other, landed up with his legs underneath him at the time
25 he died.

26
27 CMDR RUSH: Q. Professor Duflou, I think in May 1998,
28 did you receive an email from Mr Michael Montgomery asking
29 a number of questions in relation to the Christmas Island
30 body and particularly the skull?

31 A. Was that 1998 or 2008?

32
33 Q. Did I say "1998"? I meant 2008. Thank you.

34 A. Yes.

35
36 Q. Sir, could we have EML.004.0278, and if I could ask
37 that we go to 0279. Do you see there in the middle of the
38 page an email from Michael Montgomery to you, Jo Duflou, of
39 29 April 2008, where he states:

40
41 *Dear Professor Duflou,*

42
43 *Many thanks for getting in touch with*
44 *me ...*

45
46 How did it come about that you got in touch with him?

47 A. I can't remember the exact details, but I certainly

1 did not initiate the conversations. I was contacted by
2 someone, possibly Mr Montgomery or one of his associates.
3

4 Q. In this correspondence, Mr Montgomery raised with you
5 issues concerning a statement of Minister Billson to the
6 effect that:

7
8 *... "forensic experts had confirmed it*
9 *[a small-calibre bullet, the type fired*
10 *from a pistol] had been fired from behind*
11 *his head just above the neck as though the*
12 *man had his head bowed. The bullet lodged*
13 *in the skull on the inside of the*
14 *forehead."*

15
16 And he raised matters and asked you questions concerning
17 them. I'm not sure where Mr Montgomery got that from --
18

19 THE PRESIDENT: It's plainly wrong.

20
21 CMDR RUSH: It is, sir.

22
23 Q. If we can go back to 0278, did you reply to him by
24 stating:

25
26 *Dear Mr Montgomery,*

27
28 *I think the best way to answer your*
29 *questions in the first instance is to*
30 *provide you with the conclusions in my*
31 *report of 18 December 2006 ...*

32
33 And you set out there the conclusions that you have spoken
34 to this morning.

35 A. Yes.

36
37 Q. You went on to state in the next paragraph:

38
39 *I was not involved in the exhumation of the*
40 *skeleton, although I was involved in an*
41 *earlier excavation on Christmas Island*
42 *which was unsuccessful. I am aware though*
43 *that an apparent projectile injury was*
44 *noted on the skull at the time the skull*
45 *was removed from the soil. We had to be*
46 *very careful in terms of preserving the*
47 *skull and then extracting the projectile.*

1 *At the time of my examination, which took*
2 *place in Sydney after the remains had been*
3 *transported here, I was of the view it was*
4 *likely a piece of shrapnel, in part because*
5 *of the lack of typical fracture lines*
6 *radiating from the wound which is typically*
7 *seen in gunshot wounds. Also, there was*
8 *significant corrosion of the missile, hence*
9 *mistaking it for shrapnel. I understand*
10 *though that metallurgical analysis has*
11 *shown the projectile to be a bullet.*

12
13 A. Yes.

14
15 Q. Were you aware of the metallurgical examination that
16 had been undertaken at that time?

17 A. I probably was, but my memory was very much mistaken
18 as to what the answer was. I am obviously here of the view
19 that even though I thought it was shrapnel and not a bullet
20 at the time of the initial examination of mine, I was shown
21 to be incorrect by the metallurgical analysis.
22 I understand that my memory of what the analysis showed
23 was, in fact, totally incorrect - that it showed it to be
24 not a bullet. That comforts me, because in fact what I saw
25 was an injury that was not caused by a bullet. It's
26 comforting to realise that, in fact, by testing that
27 fragment of metal, it shows that it is not a bullet.

28
29 THE PRESIDENT: Q. If it had been a bullet, you would
30 have expected the radiating fractures to which you've
31 previously referred?

32 A. Yes, your Honour. That was the problem that - well,
33 I think as I've indicated, almost nothing is definite in
34 medicine, but this would have been a very surprising
35 outcome. I was prepared to accept it as such, based on
36 what I thought the information was. As it turned out, it
37 was incorrect.

38
39 CMDR RUSH: I tender that email, sir.

40
41 **EXHIBIT #221 EMAIL FROM MICHAEL MONTGOMERY TO**
42 **PROFESSOR JOHANN DUFLOU DATED 29 APRIL 2008,**
43 **BARCODED EML.004.0278**

44
45 CMDR RUSH: I have no further questions for
46 Professor Duflou, sir.

47

1 THE PRESIDENT: Thank you, Professor. You've been very
2 helpful. Thank you.

3

4 <THE WITNESS WITHDREW

5

6 CMDR RUSH: Sir, I call Mr Austin Chapman.

7

8 <AUSTIN CHAPMAN, sworn: [10.45am]

9

10 <EXAMINATION BY CMDR RUSH:

11

12 CMDR RUSH: Q. Mr Chapman, is your name Austin Chapman,
13 and do you reside at [REDACTED]

14

15 A. Yes, I do.

16

17 Q. Are you a retired engineer?

18

19 A. Yes, I am.

20

21 Q. Mr Chapman, did you attend the Royal Military College,
22 Duntroon, commencing in 1943?

23

24 A. Yes, I did.

25

26 Q. And upon graduation in May 1945 --

27

28 A. Incorrect. Graduation in December 1944.

29

30 Q. December 1944, and thereafter what was your service?

31

32 A. I went to a place called Morotai, in the Halmaheras,
33 in about May 1945 and was then posted to the
34 2/12th Battalion as part of 18 Brigade 7 Div.

35

36 Q. Thereafter, did you serve in the Occupation Forces in
37 Japan?

38

39 A. Yes. The 34th Australian Infantry Brigade was formed,
40 I think, around about October, not sure, 1945, and each
41 battalion was raised from each of the divisions. I was
42 granted the No. 1 Platoon of the 65th Battalion, which came
43 from 7 Div.

44

45 Q. Where did you serve in the Occupation Forces?

46

47 A. When we first arrived, we landed at Kure, which was
the Japanese Naval Base, and we were based in a place
called Hitachi, which was about 8 or 9 miles from
Hiroshima. Then in about May of that year - no, a little
earlier - we went up to a place called Fukuyama, where we
took over trainloads of Koreans from the Americans and
escorted them down to a place called Shimonoseki and then