



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Richard Sajko
Hearing dates:	24, 25, 26 June 2014
Date of findings:	29 September 2014
Place of findings:	State Coroners Court, Glebe
Findings of:	Deputy State Coroner C. Forbes
Catchwords:	Coronial Law-Missing person-Suspicious circumstances-Police procedure
File number:	216/07
Representation:	Mr I Bourke, Counsel Assisting instructed by Ms G Lewer and Ms M Heris Crown Solicitor's Office Ms P Wass SC representing Mr Sajko's family Mr B Haverfield representing NSW Police Force Mr G Goold representing Mr Dibella
Findings:	I find that Richard Sajko died on or about 14 May 1995. I am unable to determine the place, manner or cause of his death
Recommendations:	To the Commissioner of the New South Wales Police: I recommend that this case be referred to the Unsolved Homicide Unit of the New South Wales Police Force for further investigation.

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REASONS FOR DECISION

INTRODUCTION

1. Richard Sajko was last seen when he left his work address at AVIS, Mascot on 13 May 1995. At the time of his disappearance he was 21 years of age.
2. Richard Sajko was born on 12 August 1973, the only child of the marriage of Rose and Karl Sajko. Richard's parents separated in 1989, when Richard was about 15 or 16. Richard's Mother moved into a house in the eastern suburbs, where Richard sometimes stayed, although he lived mainly with his father in Ashfield.
3. As all witnesses agreed, Richard was a shy and quiet young man, and had some mild learning difficulties.
4. In 1995, Richard was working as a car detailer for AVIS Car Rental at Mascot airport. He was a good worker and liked his job.
5. In 1994 and 1995 Richard had a number of friends, including Con and Bill Papadakis, George Alexakis, and Richard's cousin Attila Justin. Richard also associated with Sam Testalamuta Jr, with whom he had gone to school.
6. Richard was interested in cars, and in early 1995, he traded in his first car, a Holden Gemini, for a red V8 Holden Commodore, which he had bought through Sam Testalamuta Jr. Sam worked at the car yard operated by his Father, Sam Testalamuta Sr. There is evidence that in 1994 and 1995 Richard spent a good deal of time at the car yard, Testa's Autos, operated by the Testalamutas.

Richard and Sam Testalamuta Jr are arrested

7. On 29 October 1994, Richard and Sam Testalamuta Jr were arrested, after police stopped the tow truck being driven by Sam, in which Richard was riding as passenger. On the back of the tow truck, police found the shell of a car which had been stolen, and stripped of almost all of its parts. When interviewed by police, Sam said that the car had been found dumped outside his father's car yard, and he was simply moving it elsewhere. However, Richard told police (when spoken to separately to Sam) that Sam had started the car with a key, and that it had been a whole car when Sam had driven it.
8. Richard and Sam were charged with stealing (and/or receiving) the car and they were due to face trial which was listed in the District Court for August 1995. Richard did not initially tell either of his parents about these charges. When committal proceedings were conducted, Richard was represented by the same lawyer as Sam, and the legal fees were being paid for by Sam's parents.
9. According to Richard's Mother, she first became aware of the charges on about 3 May 1995. On that occasion, Richard was staying over at her house, he told her about the charges, and that he had received a threat from Sam Testalamuta Jr to "kill him or blow up his car". Richard's Mother told the inquest that, as she understood it, this threat was made because Richard's police statement contradicted Sam's statement, but that the threat might have been partially related to an allegedly outstanding monetary debt owed by Richard in relation to a mobile phone he bought from Sam.
10. Richard's Mother gave evidence that, as a result of this conversation with Richard, she made an appointment for 16 May 1995 at Kingsford Legal Centre, for Richard to consult with an independent lawyer. The appointment was set to take place 3 days after he went missing.

Threats

11. Richard's Mother was not the only person he told about the threats. Mrs Sajko's partner, Mr Profilio, also spoke with Richard about the threats, and was told by Richard that he was "going to tell the police everything".
12. A number of Richard's AVIS workmates made observations, or had conversations with Richard, which suggest that he was involved in some kind of "racket" that he wanted to get out of. A number of his friends and workmates also noticed that in the weeks before his disappearance, Richard was quieter than usual and sometimes anxious and "on edge".
13. In his statement Richard's Father said that Richard told him that on Friday 12 May 1995, that Sam had attended Richard's work and "apologised" for having threatened him.

Richard goes missing

14. Richard usually worked Thursday to Sunday, on either the 4 pm to midnight shift, or the 3 pm to 11 pm shift.
15. There is evidence that on Saturday, 13 May 1995, Richard's shift commenced at 4 pm, which meant he was due to "knock off" at about midnight. It appears that Richard arrived for work at the usual time (half an hour or so before he was due to start work). He parked his red Holden Commodore in the staff car park, which was across the street from his work place.
16. Around 11:45pm that night Richard's supervisor, Duty Manager Erin Duff, told Richard that he could finish up for the night. She said that shortly after this she and Ms Sonia Ferrara locked up the building. Both Ms Duff and Ms Ferrara told the inquest that around this time, they saw Richard sitting in his red Commodore, and that they both noticed that there was at least one other person seated in the

car, although they could not say who it was, or whether the person was male or female.

17. Ms Duff specifically recalled watching as Richard's car drove out of the car park. This was at about midnight or perhaps just after. Sonia Ferrara gave evidence that she saw Richard's car driving off, and that there were at least 2 persons in it.
18. Neither of these witnesses, who both knew Richard, noticed anything suggestive of a struggle, or of any apparent concern or panic in Richard. They saw nothing in the behaviour of the occupants of the car, or in the manner in which the car was being driven, which caused them any suspicion or concern.
19. According to a statement of a resident in Croydon, Mr Whitty, about half an hour later he saw Richard's red Holden Commodore, parked in an unusual manner blocking a driveway with the rear protruding into the street, in Edwin Street, Croydon. The car was noticed by many other residents of Edwin Street the following morning (Mother's day – 14 May 1995). Although one of the residents of Edwin Street, Nancy Hughes reported the car to the police that morning, it was not until 25 May 1995 that police examined the car and made the connection to Richard Sajko.
20. Richard had been expected to visit his Mother on Mother's Day. It was very unusual according to both his Mother and Father that he did not turn up as arranged, and that no phone call was received.
21. Since that date, neither Richard's Mother nor Father (his Father is now deceased), nor any of his friends or extended family have seen or heard from Richard. His bank account has not been accessed and inquiries of various government agencies have revealed no trace of him being alive.
22. There is evidence that on the morning of Mother's Day, the mobile phone normally used by Richard was in the possession of and used by John Tuiletufuga (an associate of Sam Testalamuta Jr). There is also evidence that, shortly after

Richard went missing, John Tuiletufuga told his adopted parents that he had shot and buried a man he had met in custody. When police interviewed John Tuiletufuga the day after, about this "confession", he claimed that he had "made it up" just to "stir his parents". (Richard had never been in custody)

ISSUES

23. The purpose of an inquest, as set out in s.81 of the *Coroner's Act 2009* ("the Act") is to make findings as to:

- (a) the identity of the deceased;
- (b) the date and place of the person's death;
- (c) the physical or medical cause of death; and
- (d) the manner of death, in other words, the circumstances surrounding the death.

Section 82 of the *Act* also permits a Coroner to make recommendations that are considered necessary or desirable in relation to any matter connected with a death.

24. In this Inquest one of the issues has been whether there is sufficient evidence to make a finding that Richard Sajko, a missing person, is dead?

25. The other issue has been whether the police investigation at the time of the report of his disappearance was appropriate?

Is Richard Deceased?

26. There is no evidence to suggest that Richard intentionally "moved away" and started a new life elsewhere. He was close to his parents, extended family and friends, and he enjoyed his job, and his car. Any suggestion that he suddenly, and without reason, would have abandoned all of these things around which his life

revolved, is untenable. This conclusion is fortified by the fact that no trace of Richard has been detected in over 19 years.

27. I am satisfied on balance that Richard is deceased. Given the circumstances under which he disappeared, and the unexplained abandonment of his car, I am satisfied he died on or about 14 May 1995 in suspicious circumstances.
28. There is insufficient evidence, at this time, to determine the place, manner or cause of Richard's death. I propose to refer this matter to the Unsolved Homicide Unit of the New South Wales Police for further investigation.

The Police investigation

29. While it is important to remember that of the very large number of missing person reports that police receive, the vast majority of missing persons are located, safe and well, it should have been fairly clear from the outset of this case that this was a “suspicious” missing person case. If that was not apparent during the first week of Richard's disappearance, when he failed to show on Mother's Day, and at work, then it should have been apparent once Richard's abandoned car was found. It should also have been apparent from other surrounding circumstances, such as evidence of threats, and evidence that an associate of the person who made the threats had Richard's phone the morning after he disappeared, and had spoken of killing someone.
30. There were some deficiencies in the early stages of the investigation of Richard's disappearance.
31. It is important, and accords with common sense, that in an investigation involving a suspicious disappearance, it is the hours, days and weeks following the disappearance that represent the best opportunity to gather crucial evidence. This is the most important time for focusing available resources, and securing

evidence of the last known movements of the person, and evidence which might suggest possible theories as to what has happened to them.

32. While in Mr Sajko's case, a number of important steps were taken e.g., media release, and some canvassing and statements, a number of opportunities to gather potentially crucial evidence were missed. I do not propose to set them out in detail as this is an ongoing investigation and it would be inappropriate for me to comment on the evidence or that any offence may have been committed by any person.¹ However, I propose to mention some of the deficiencies of the investigation that took place at the time of Mr Sajko's disappearance and note that they are apparent from the present brief which has been served on the parties and is Exhibit 2 in these proceedings;

- a) Ms Ferrara was one of the last persons to see Richard and who saw him talking to two "rough looking males" the night he went missing. Her statement was not taken until 2008,
- b) the men who moved Mr Sajko's car from the driveway of 118 Edwin Street, Croydon were never tracked down and questioned,
- c) the red commodore abandoned in Edwin Street Croydon was not linked to Richard Sajko until a call from a resident on 25 May 1995 despite the fact that Ms Nancy Hughes, another resident of Edwin Street, had called Ashfield Police Station with the registration number on Mother's Day. Richard's Father had given police Richard's registration number when he reported him missing on 18 May 1995,
- d) John Tuiletufuga, who had used Richard's phone the day after he went missing and whose premises the police had searched was not interviewed when his father brought him to Ashfield police station late on Sunday 9 July 1995. He was told over the phone, by Assistant Commissioner Mennilli, who was at home, to return to the police station the next day for interview,

¹ Attorney-General v Maksimovich (1985) 4 p 300

allowing an opportunity for a change of heart as to what he wanted to tell police.

e) The alibis of Sam Testalamuta and Guy Dibella were not explored.

33. I note that the present investigation and brief is thorough and professional.

34. This inquest has received evidence of recent changes to police procedure with respect to missing person cases. The new procedures are set out in the New South Wales Police Force "Missing Persons Standard Operating Procedures" ("Missing Persons SOPS") published in 2013. This document replaces "Instruction 39 Missing persons" which was issued in November 1994. The new Missing Persons SOPS provide a far more detailed approach to missing person cases, set out mandatory and other steps, and also assign responsibility for those steps to particular levels of command. These SOPS establish the "minimum standards" for Police officers in their day-to-day management of missing person matters (par 1.1). They represent a significant improvement from the procedures which applied in 1995.

35. Some of the significant improvements (which are of particular relevance to the circumstances of this case) are the following: –

3.1 Investigating Officer

The officer taking the MP report is deemed the Investigating Officer (or Officer in Charge – OIC) and is responsible for exhausting all avenues of inquiry until the MP is located or the investigating role is transferred to, and accepted by, another LAC or specialist unit by way of Case Management.

3.2 Supervisor

The Supervisor ensures that the Investigating Officer takes all the relevant information and pursues the investigation appropriately. They should ensure the police response is commensurate with the risk assessment outcome and support the Investigating Officer, particularly if they are a probationary constable.

3.6

Crime Manager

The Crime Manager has an overview role in suspicious MP cases, ensuring local investigators are available to support MP investigations, facilitating specialist resources, and guiding investigation strategy in high risk or long term MP matters.

3.8 The Missing Persons Unit

The main function of the Missing Persons Unit (MPU) is coordination, quality assurance, education, information management and investigative support. The MPU monitors all MP reports and assists investigations. They do not have a direct investigative capacity, but they can offer specialised advice and information.

The MPU receives, records, researches and collates all information relating to persons missing from or in NSW. This information is used to provide state-wide analysis of long term cases and statistics. They are also responsible for cross-referencing MP matters against the Unidentified Bodies and Remains data base.

5 Initial Report

5.1 Take initial details

There is no minimum time to wait before a report can be accepted. If a family member or loved one comes to report a MP, they should not be turned away; if the definition for a missing person is met, then the report must be taken.

(This section of the SOP then sets out, in table form, a dot point list setting out the responsibilities of various persons)

5.2 Conduct Risk Assessment

.....

A risk assessment must be conducted on receiving a MP report. The Missing Person – Risk Assessment (see Annexure 2) is provided as a model to use when determining the level of risk...

The Risk Rating should be continually reviewed and re-evaluated throughout the course of the investigation, as long as the person remains missing. If the assessment changes, so too should the level of police response.

<i>ROLE</i>	<i>RESPONSIBILITIES</i>
<i>INVESTIGATING OFFICER</i>	<ul style="list-style-type: none"> • <i>Conduct the Risk Assessment on receiving a missing persons report in consultation with their supervisor.</i> • <i>Record the information that determines the level of risk in the COPS Event.</i> • <i>Implement the Risk Mitigation Actions, in line with the Risk Rating.</i> • <i>Continue to re-evaluate the Risk Rating through out the investigation.</i>
<i>SUPERVISOR</i>	<ul style="list-style-type: none"> • <i>Supervise the Investigating Officer to ensure the Risk Assessment is completed and that the resulting police actions are commensurate with the Risk Rating.</i>

	<ul style="list-style-type: none"> • <i>If foul play is suspected, immediately brief the Duty Officer and Detectives who will make a mandatory referral to the Homicide Squad, State Crime Command.</i> • <i>Continue to re-evaluate the Risk Rating through out the investigation.</i>
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6 Investigation

6.1 Gather further details and investigate the disappearance of the MP

(This section sets out a number of responsibilities, including importantly, the following...)

- *Conduct enquiries and keep comprehensive records, including dates and times. Utilise COPS Case Management or e@gle.i.*
- *Update the COPS event and case regularly. Including the result of Risk Assessment reviews.*
- *Keep in contact with the person reporting even if you have nothing new to tell them. Your contact will help reassure the family that the investigation is continuing.*
- *Organise regular meetings with families of MPs and provide appropriate feedback...*
- *If the person is still missing after three months (or within 72 hours if foul play or suicide is suspected) you must... (the SOP then sets out various minimum evidence-gathering procedures)*

36. Mr Sajko's disappearance was reported to the Coroner in April 2006. Under the new Missing Persons SOPS if a person is still missing after twelve months then the case is reported to the Coroner².

37. Given the changes in procedure I do not propose to make recommendations about the police investigation.

² Missing Persons Standard Operating Procedures-2013 6:2

38. There is currently a reward of up to \$100,000 being offered by the New South Wales Government for information leading to the conviction of any person in relation to the disappearance of Richard Sajko. I note that Assistant Commissioner Mennilli agreed in his evidence that it would be appropriate for that reward to be increased and I support his view.

FINDINGS:

Pursuant to s.81 Coroner's Act

I find that Richard Sajko died on or about 14 May 1995. I am unable to determine the place, manner or cause of his death.

RECOMMENDATIONS:

Pursuant to s.82 Coroner's Act I make the following recommendation;

To the Commissioner of New South Wales Police:

I recommend that this case be referred to the Unsolved Homicide Unit of the New South Wales Police Force for further investigation.

C. Forbes

DEPUTY STATE CORONER

29 SEPTEMBER 2014