בבית המשפט העליון בירושלים **מ"ח 6881/19**

לפני כב' המשנה לנשיאה, השופט ח' מלצר

המבקש: **רומן זדורוב**

ע"י ב"כ עו"ד ירום הלוי

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נ ג ד

המשיבה: **מדינת ישראל**

פרקליטות המדינה, המחלקה הפלילית

הודעה מטעם המשיבה

בהתאם להחלטת בית המשפט הנכבד מיום 14.12.20 מוגשת בזאת הודעה מטעם המשיבה.

1. ביום 29.11.20 הגיש ב"כ המבקש חוות דעת נוספת מטעמו, שנערכה על ידי ד"ר כריסטופר מילרוי. באמצעות חוות דעת זו מבקש ב"כ המבקש לתמוך בטענה לפיה הדם שנמצא על גבי טביעת הנעל הזרה שנמצאה על מכסה האסלה הגיע אליה סמוך לאחר המוות.

2. לדעת ד"ר מילרוי, לאור סיבת המוות, אין זה סביר שדם כלשהו, ומכל מקום לא יותר ממספר טיפות, נמצא באזור הפצע חמש שעות לאחר המוות. לעמדתו, בנסיבות אלה, דם לא היה זורם מהפצעים בעקבות תזוזה קלה בלבד של הגופה אלא נדרשה תנועה מאסיבית כדי לגרום לזליגת דם מהגופה בכמות שנמצאה על גבי האסלה, ותנועה כאמור אינה מתוארת על ידי הפרמדיקים.

3. לאחר קבלת חוות הדעת, ועל מנת לברר האם אכן אין כל אפשרות לכך שדם של המנוחה הגיע אל גבי טביעת הנעל גם בשלב בו נמצאה הגופה, ערכה המשיבה התייעצות עם מומחה, ד"ר מרקוס רוטשילד, אשר חוות דעתו מצורפת בזאת.

4. ד"ר מרקוס רוטשילד, מכהן כראש המכון לרפואה משפטית בבית החולים האוניברסיטאי בקלן, גרמניה, ומשמש אף כפרופסור לרפואה משפטית בפקולטה לרפואה באוניברסיטת קלן. כפי שעולה מקורות חייו המפורטות בחוות הדעת, לפרופ' רוטשילד ניסיון רב שנים בתחום הרפואה המשפטית, ואף מומחיות בניתוח כתמי דם.

5. חוות דעתו של ד"ר רוטשילד מוגשת כפי שנכתבה, בשפה האנגלית, על מנת לעמוד בלוח הזמנים שנקבע על ידי בית המשפט. ככל שיש בכך צורך, תגיש המשיבה תרגום לעברית של חוות הדעת ואת החומרים על בסיסם ניתנה.

6. כזכור, בהודעתה מיום 22.9.20 ובדיון בעל-פה, טענה המשיבה כי בנוסף לאפשרות כי זלג דם מפצעי המנוחה, הרי שלא ניתן לשלול את האפשרות כי הדם הרב שנזל מהגופה מיד לאחר הרצח נקווה על המעיל של המנוחה וזלג שוב כאשר הזיזו אותו בעת בדיקת הגופה.

7. בתמצית, בחוות הדעת המנומקת מבהיר ד"ר רוטשילד כי קיימת אפשרות לכך כי כמות הדם שנמצאה על גבי טביעת הנעל, מקורה בדם שנקווה/נלכד בין קפלי בגדיה של המנוחה ואשר יכול היה לזרום על גבי העקיבה, בין היתר, בעקבות הפעולות שביצעו הפרמדיקים בגופתה, כמתואר בחומר הראיות.

8. הנה כי כן, לעמדתו של מומחה ברפואה משפטית ובניתוח כתמי דם, אפשרי בהחלט כי הדם שכיסה חלקית את טביעת הנעל הזרה זלג עליה לאחר שהתגלתה גופתה של המנוחה.

9. על כן, ומבלי שהמשיבה מסכימה לחוות הדעת מטעם ההגנה או לטענה כי הדם לא יכול היה לנזול מהגופה עצמה, הרי אין בטענות המבקש בעניין זה, בפני עצמן, או ביחד עם טענותיו הנוספות, כדי להצדיק קיום משפט חוזר בעניינו.

איתמר גלבפיש	תמר בורנשטין
סגן בכיר א' במחלקה הפלילית	ראש תחום (פלילי)
בפרקליטות המדינה	בפרקליטות המדינה

י"ט טבת תשפ"א
03 ינואר 2021

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Köln, 28. Dezember 2020

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The Office of the State Attorney
Criminal Department
Ministry of Justice
State of Israel

Subject: Murder of Tair Rada
Our Ref.: 20-12889

Expert opinion

Information and Qualification of the Expert

This is the report of Markus Rothschild, licenced physician with the Medical Association Northrhine (*Ärztekammer Nordrhein*), Director of the Institute of Legal Medicine of the University Hospital Cologne, Germany, and Full Professor in the Institute of Legal Medicine of the Medical Faculty of the University of Cologne, Germany.

I qualified as a medical doctor from the *Freie Universität Berlin*, Germany in 1988. I undertook training in legal medicine (forensic pathology, clinical forensic medicine) at the Institute of Legal Medicine of the *Freie Universität Berlin* and became a forensic physician (*Facharzt für*

Rechtsmedizin) in 1993. In 1999 I became Associate Professor of Legal Medicine in Berlin and in 2001 I became Full Professor at the Institute of Legal Medicine of the Goethe-University Frankfurt, Germany. In 2002 I became Director of the Institute of Legal Medicine of the University Hospital of Cologne, Germany.

I am engaged full time in the practice of Legal Medicine since 1988. All my professional engagements have been and are until today at Institutes of Legal Medicine of a University. Therefore my professional duties within legal medicine are medicolegal servicing, teaching, and research. I have a large experience of performing autopsies on natural and unnatural deaths (accidents, suicides, homicides), and of examining alleged crime-victims and defendants (clinical forensic medicine). I have received training in blood stain pattern analyses at the Metropolitan Police Institute, Miami-Dade County, Florida (2004), and the Metropolitan Police London, United Kingdom (2006). Since 2006 I am full member of the International Association of Blood Stain Pattern Analysts. I regularly give evidence in various courts in Germany.

I have served as Vice-President of the German Association of Legal Medicine. Since 2011 I am Vice Dean of the Medical Faculty of the University of Cologne, since 2018 I chair the Ethics Council of the University Hospital Cologne. I am teaching at undergraduate and post graduate level at the Universities of Cologne and Aachen. I lecture regularly at national and international levels and have published widely on Legal Medicine in national and international peer reviewed journals.

Statement of the Expert

I understand that my overriding duty is to the court, both in preparing reports and in giving oral evidence. I have complied and will continue to comply with that duty. I have done my best in preparing this report to be accurate and complete. I have mentioned all matters that I regard as relevant to the opinions I have expressed.

Background Information

Together with the request for an Expert Opinion the Office of the State Attorney (Senior Deputy Itamar Gelbfish, 16.12.2020) sent me the following short summary of the case:

The deceased, 8th grade student named Tair Rada, was found murdered inside the girl's WC cell at her school, on December 2006. Rada was murdered around 13:15 and found dead approx. 5 hours later. According to the autopsy report, her death was caused by external blood loss caused by cut wounds through the carotid artery and jugular vein.

Upon arriving at the crime scene, the paramedics checked for signs of life and also attached ECG pads to the body of the deceased. One of the paramedics testified that he attached 4 pads to the body – two at the shoulders area and two at the pelvis area – during which he felt rigor mortis and that the body was cold (the pads at the pelvis area can be seen in the crime scene photos). He also testified that the other paramedic "thoroughly" checked the body. The other paramedic reported that an initial examination revealed an open incision in the front of the neck. Rada's death was declared by the two paramedics at the scene.

As can be seen in photo no.11 and photo _MG_6887, a partial shoe print covered with blood was found on the toilet seat cover. It is not disputed that the blood covered the shoeprint after the impression of the shoeprint was made. The argument in the request for a re-trial is that the blood stain on the shoeprint was made within 1 hour after the time of the murder, and that blood could not have flowed from the deceased's body 5 hours after the murder, when the paramedics arrived at the scene. Therefore, the defense claims that the shoeprint could not have been imprinted by paramedics, police or forensic teams – as they only arrived at the scene 5 hours after the murder, but only by the perpetrator.

Documents used for the report

Together with the request for the expert opinion the following documents were attached:

- Autopsy report by Dr. Zaitzev concerning Tair Rada (19.12.2006).
- Exhibit P.11 – some photos from the autopsy.
- Exhibit P.1 – photos from the crime scene report.
- Photo _MG_6887 - picture of the toilet seat, taken after its removal.
- High resolution photos DSC_0064, DSC_0072, DSC_0086, DSC_0102.
- Expert opinion by Prof. Dr. Milroy (26.11.2020)

Opinion on the questions asked by the Office of the State Attorney

The request for an expert opinion consists of two questions which are repeated below in italic.

a) Taking into account the data from the autopsy report and from the scene of the crime, the amount of blood on the shoeprint and the actions of the paramedics, is it possible that the blood on the shoeprint flowed onto it after the body was discovered?

In my opinion it is possible that the blood on the shoe print was transferred onto it after the body was discovered 5 hours after death, e. g. by actions of the paramedics.

The autopsy report together with the photos taken at the scene and during the autopsy show that the girl died due to blood loss from cut wounds to the neck with opening of the left carotid artery and the left jugular vein. The photos of the body taken at the scene and during autopsy do not reveal any relevant post-mortem lividity. In accordance to that finding the autopsy report describes the inner organs as pale with *vertical streaky bleedings* of the endocardial layer of the heart (p. 6, no. 12) which regularly can be seen in cases with acute lethal blood loss.

According to the autopsy protocol the clothing of the girl´s corpse was *imbibed and stained with bloody fluid* (p. 2, no. 1), which also can be seen on the photos from the scene on the dark coat with hood and collar as well as on the two white training shirts. The photos also show blood in the girl´s hair.

The clotting and drying of blood depends on various factors. In general it is observed at autopsies that the blood inside a body shows clotting when there was longer agony; on the contrary we regularly find more or less liquid blood in cases where the person died fast or immediately. In the case presented here we can assume that the girl died fast after opening of the carotid artery.

Drying of blood outside of the body (e. g. on/in clothing, on surfaces) depends on ambient temperature, humidity, amount of blood and other terms. It can be seen on the photos of the scene that most blood stains e. g. on the walls of the WC cell look dry. On the other hand the pool of blood on the floor of the WC cell besides the toilet seat gives the imagination of still being wet. Also the photos no. 14 to 16 (Exhibit P.1 – photos from the crime scene report) with the girl´s body having been recovered on a white plastic sheet show a transfer of wet

blood probably from the hair and the clothing (collar of coat?) to the sheet. This indicates to me that not all blood at the scene had been dried when the body had been found 5 hours after death.

The amount of blood on the shoeprint only can be estimated roughly. It is my estimation that it could has been something like 5 to 10 millilitres blood which came onto the shoe print on the toilet seat.

To me it is entirely conceivable that such an amount of still liquid blood was pooled / trapped in the pleats of the clothing and within the textile material. Movement of the body would have caused movement of the clothing and also some pressure on the textile material causing blood to drip or even flow from the clothing onto the toilet seat resulting in a blood stain as seen on photo MG_6887.

The movement of the body and/or the clothing must have been large enough to mobilise blood from the clothing and to let it fall or flow onto the toilet seat. In my opinion such a significant movement would have occurred when the paramedics attached 2 ECG pads at the shoulders. As seen on the photos from the scene the body of the girl is twisted to her right side with the shoulder regions in the front and in the back entirely covered by clothing. To attach ECG pads to the skin of the shoulder regions must have caused a certain amount of movement at least of the clothing. And the information that one paramedic *thoroughly checked the body* also indicates that there should have been movement of the body or at least the clothing which in my opinion will have been sufficient enough to mobilise enough blood from the clothing to having caused the blood stain onto the shoe print.

b) Are there other ways in which blood could have reached the shoeprint after it was discovered, other than bleeding from the body itself - e.g. from pooling of blood in the wound area, or from the victim's clothes and especially her blood soaked coat?

This question largely is answered under a).

It is clear that after cardiac arrest there will be no more active bleeding from the severed carotid artery nor the jugular vein.

It can be discussed whether some blood might have been collected in some kind of wound pocket within the injury of the neck. But considering this it also would only be a relatively small

amount of blood as the type of wounding (cut wounds) gives an open wounding with relatively even tissue levels. When the body would have been moved (e. g. by the paramedics) any blood leaving the neck wound probably would have been absorbed by the textile material of the clothing.

Prof. Dr. M. A. Rothschild