

CITATION: *Inquest into the death of Paul James Du Toit* [2013] NTMC 026

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

FILE NO(s): D0053/2012

DELIVERED ON: 4 December 2013

DELIVERED AT: Darwin

HEARING DATE(s): 18 - 20 November 2013

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: **Unexpected death, beach drowning, unexplained injuries.**

REPRESENTATION:

Counsel:

Assisting: Jodi Truman

Judgment category classification: B

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IN THE CORONER'S COURT
AT DARWIN IN THE
NORTHERN TERRITORY
OF AUSTRALIA

No. D0053/2012

In the matter of an Inquest into the death of
PAUL JAMES DU TOIT
BETWEEN 20 - 21 MARCH 2012
AT STINGRAY HEAD, DUNDEE BEACH

FINDINGS

Mr Greg Cavanagh SM

Introduction

1. Paul James DU TOIT was born in Frankston, Victoria on 15 July 1958. He was last seen on the evening of Tuesday 20 March 2012 at Stingray Head Beach, Dundee. His body was located at Stingray Head Beach almost two (2) days later at approximately 8.30am on Thursday 22 March 2012.
2. This death was reportable to me pursuant to s.12 of the *Coroners Act* ("the Act") because it was unexpected. The holding of an inquest is not mandatory but was conducted as a matter of my discretion pursuant to s.15 of the Act. I did this in the hope of being able to establish what caused Mr Du Toit's death and when and where it occurred.
3. Counsel assisting me at this inquest was Ms Jodi Truman. There were no other formal appearances however I note that Mr Du Toit's eldest daughter, Misti-Starr Du Toit and his eldest sister Elizabeth (Libby) Du Toit were in attendance at this inquest and I thank them for the respect that they showed during the course of the evidence surrounding the death of their loved one.

The Conduct of this Inquest

4. A total of thirteen (13) witnesses gave evidence before me. Those persons were:
 - 4.1 Detective Senior Constable Domenic Crea, the Officer in charge of the Coronial Investigation.
 - 4.2 Misti-Starr Du Toit.
 - 4.3 Raynor Evans.
 - 4.4 Ian Panchaud.
 - 4.5 Sally Walker.
 - 4.6 Doug Walker.
 - 4.7 Dean James.
 - 4.8 Mr Matthew Sharland, Orthopaedic Surgeon.
 - 4.9 Dr Eric Donaldson, Forensic Pathologist.
 - 4.10 Sergeant Mark Casey.
 - 4.11 Jennifer Grapendaal.
 - 4.12 Stuart Foreman.
 - 4.13 Steven Foster.
5. A brief of evidence containing statutory declarations from 36 persons and numerous other reports, police documentation, and records were tendered into evidence (“exhibit 1”). I also received into evidence the original medical files and Medicare documents held in relation to Mr Du Toit (exhibit 2). The death was investigated by Detective Senior Constable Domenic Crea who prepared a thorough investigation brief and I thank him

for his assistance and the additional work undertaken by him in advance of the hearing.

Formal Findings

6. Pursuant to s.34 of the Act, I am required to make the following findings:

“(1) A Coroner investigating:

a. A death shall, if possible, find:

(i) The identity of the deceased person.

(ii) The time and place of death.

(iii) The cause of death.

(iv) Particulars required to register the death under the *Births Deaths and Marriages Registration Act*”

7. I note that section 34(2) of the Act also provides that I may comment on a matter including public health or safety connected with the death being investigated. Additionally, I may make recommendations pursuant to section 35 as follows:

“(1) A Coroner may report to the Attorney General on a death or disaster investigated by the Coroner.

(2) A Coroner may make recommendations to the Attorney General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the Coroner.

(3) A Coroner shall report to the Commissioner of police and Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the Coroner believes that a crime

may have been committed in connection with a death or disaster investigated by the Coroner”

Background

8. At the time of his death, Mr Du Toit was 53 years of age. He had come to the Northern Territory in or about 2005. It appears he had a varied lifestyle and travelled around from about the age of 14 years after leaving home. He had a number of siblings, however it appears that the only sibling he kept in touch with was his sister Libby.
9. Mr Du Toit was better known as “Scrooge”. In fact all the witnesses who knew the deceased referred to him by this name. It appears that some did not even know his real name before his death. “Scrooge” was a nickname he may have gained during his time as treasurer for the “Hells Angels” Outlaw Motorcycle Gang in Western Australia.
10. Mr Du Toit had four (4) children and it appears on the evidence that he was particularly close with his eldest daughter, Misti, and his youngest daughter, Larissa. Both daughters in fact spoke to the deceased on the day that he was last seen alive.
11. After having moved to Darwin in 2005, the deceased subsequently relocated to the Dundee area in or about 2011. It is clear that from that time he formed some very strong friendships with locals in the area. It was my distinct impression from the evidence that the deceased was widely considered to be a “good man”, a “good bloke”, a “great friend” and a “real protector”. Someone who could be “relied” upon. It is likewise clear from the evidence that he is sadly missed.
12. The deceased was a heavy drinker and had been so for some time. The evidence suggests that the deceased spent most of his time with persons who, by their own account, are “habitual drinkers” and confirmed “alcoholics”. I find that the deceased led a similar way of life. He lived in

a caravan and from the photographs provided to me he had a very basic standard of living. However from almost all accounts this is a lifestyle that the deceased embraced and he enjoyed the freedom he found at Dundee.

13. He had been living in his caravan at Lot 3127 Zuleika Road, Dundee Beach since early 2010 after being recommended by Stuart Foreman to the owner as a possible caretaker for the property. Mr Foreman lived next door and appears to have been considered by most to be a close friend of the deceased prior to his passing. The deceased would visit the residence occupied by Mr Foreman and his partner, Jennifer Grapendaal, almost every day and consume alcohol with them.
14. Also living at that property from about October 2011 was Mr Steven Foster. Mr Foster was a family friend of Mr Foreman and met the deceased through Mr Foreman. Whilst it appears that the deceased and Mr Foster saw each other regularly, they were not friends like the deceased was with Mr Foreman and appeared more easily described as “associates”.
15. The deceased also formed a very close friendship with Ms Grapendaal and I received evidence that he would visit with Ms Grapendaal even when Mr Foreman was not at home and that Mr Foreman would, from time to time, request the deceased assist him with the care of Ms Grapendaal. I pause to note here that Ms Grapendaal suffers from an acquired brain injury and Mr Foreman is her carer.

Events on 20 March 2012

16. As noted earlier, Mr Du Toit was a heavy drinker and would commence drinking alcohol early each day. The morning of 20 March 2012 therefore appears to have started out like most; with the deceased going next door to Mr Foreman’s residence at about 10.00 am and helping him to do some work on a trailer and to drink alcohol. Mr Du Toit had in fact already commenced drinking by the time he arrived at Mr Foreman’s address.

17. At that location were Mr Foreman, Ms Grapendaal and the deceased. Mr Foster had gone into Darwin with Doug and Sally Walker to do some shopping earlier that morning.
18. Whilst at Mr Foreman's address, the deceased spoke to his daughter Misti at about midday. He left the address for a period of time but then returned later in the afternoon, by which time Ian Panchaud and Trudi Seagrott had also arrived. The group continued drinking. It appears there were no arguments, disagreements or animosity at that address during that day.
19. At about 5.00pm Mr Panchaud and Ms Seagrott left and returned home. The deceased and Mr Foreman went for a drive for approximately an hour and then returned. Mr Foreman made a meal for Ms Grapendaal and himself. The deceased did not eat. Both men continued to drink.
20. I find that Mr Foster also returned to the address around this time and that Mr and Mrs Walker also stayed for a short period and had a drink with the deceased and Mr Foreman. They then left and returned home.
21. Between approximately 8.00 and 8.30pm it appears that Mr Foreman persuaded the deceased, Ms Grapendaal and Mr Foster to go for a drive to the Finniss River mouth. This is apparently an area that Dundee locals frequently visit. A decision was made to take two (2) cars. Mr Foreman and Ms Grapendaal were in the first vehicle being a Nissan GU Patrol, with Mr Foreman driving. Mr Foster and the deceased were in the second vehicle, being a Suzuki Vitara with Mr Foster driving. They drove in convoy to the Finniss River mouth with Mr Foreman in the lead.
22. Around this time the deceased also spoke with his youngest daughter Larissa. It is unclear where the deceased was when he spoke to Larissa. She believes that it sounded as if her father was in a car and that another person was talking and she heard her father tell them to slow down. Mr Foster however gave evidence that he did not hear the deceased speak to

anyone on the phone whilst they were in the car and I am simply unable to make a finding one way or the other on the evidence.

23. It appears that in order to get to the Finniss river mouth, locals utilise the back road, which is a dirt track that takes them to Stingray Head beach. The dirt track ends as vehicles drive onto the sand along the beach for approximately ten (10) kilometres. This route is only accessible on low tide. On Tuesday 20 March, 2012, low tide was predicted to be at about 2.3 metres at 11.24 pm, with the high tide predicted to be at about 6.5 metres at 5.09am on Wednesday 21 March 2012. The tide was therefore still going out when the group set off.
24. Despite attempts during the evidence to suggest otherwise, I do find that Mr Foreman, Mr Foster and the deceased were all intoxicated on this night. In this regard I note the eventual acceptance by Mr Foreman that he was probably more drunk than what he thought and I make a similar finding in relation to Mr Foster and also the deceased.
25. On the evidence before me, at some stage during that drive it appears that the deceased came to no longer be in Mr Foster's vehicle. Just how that occurred is unfortunately not clear. Whether it was a bit of fun or horseplay, whether it was a deliberate act of the deceased to exit the car, whether it was high dudgeon or intense indignation as to something said in the car, or whether it was simply accidental, I am unable to find. Mr Foster gave evidence that he heard a bang of some sort and noticed that the deceased was no longer sitting next to him in the vehicle.
26. Mr Foreman and Mr Foster state that shortly after establishing that the deceased was no longer in the car, they began searching for him. I find that this night was a particularly dark night being a new moon, meaning there was no moonlight. There is also no man made light in that area. Mr Foreman also recalled it being overcast. The men were therefore heavily

reliant upon the lights of their vehicles in their attempts to locate the deceased. They did not find him.

27. Eventually Mr Foreman got his vehicle bogged and it appears that their concentration and energies were then spent trying to get the vehicle out of the bog before the high tide. They were unsuccessful in this regard and Mr Foreman's vehicle was completely swamped by the high tide. I find that this is a further indicator of just how intoxicated these men were.
28. During the investigation into the death, the police obtained a copy of the phone records of the deceased, Mr Foreman and Mr Foster. They were tendered before me as exhibit 4. It is clear that during the course of these events Mr Foreman telephoned the deceased twice. The first call was at 9.29pm, but only lasted one second. The second call was at 9.31pm and lasted 2 minutes and 11 seconds. Mr Foreman's evidence is that he called the deceased once, but was unable to hear the deceased say anything. Because the phone had connected he told the deceased to meet him at the gates to the Finnis River station. Mr Foreman stated that the deceased did not meet them at the gates and I am unable to establish whether the deceased even heard Mr Foreman say those words, given that Mr Foreman says he could not hear the deceased.
29. Mr Foreman's phone records make clear that from 10.10pm he was bogged and attempting to contact people to assist him in recovering his car. There were numerous calls made to a number of people. Unfortunately no further attempts were made to contact the deceased. This is extremely unfortunate as it is clear that although Mr Foreman was making and receiving calls throughout this time, at 10.13pm the deceased attempted to call Ian Panchaud from his mobile. Unfortunately Mr Panchaud did not hear this call and although it connected for 6 seconds, no message was left.
30. I find therefore that as at 10.13pm the deceased was still alive. It is likewise clear that at this time, Mr Foreman, Mr Foster and Ms Grapendaal

at the very least were still in the area and attempting to recover Mr Foreman's vehicle. Unfortunately however, no further attempts were made by Mr Foreman to contact the deceased by phone and the deceased was not located.

Cause of Death

31. As noted earlier, the deceased's body was located at 8.35 am on Thursday 22 March 2012. He was still in the black jeans that he had been seen wearing on 20 March 2012, but was approximately two (2) kilometres from where he was last seen. His body was in a state of decomposition.
32. An autopsy was conducted by Dr Eric Donaldson the following day on 23 March 2012. Dr Donaldson was unable to determine a cause of death, but did indicate in his oral evidence that given the findings of shell grit, specks of hard black material and sand in the lungs, it was his opinion that drowning was certainly a possible cause of death.
33. The significant finding however was a "fractured left and right pelvic rami and fracture/dislocation of the right sacroiliac joint with adjacent muscle haemorrhage". Dr Donaldson gave evidence that this injury was attributable to significant blunt force trauma to the pelvic region. He stated that in his opinion such an injury was likely to have occurred from a "high velocity impact" or being "run over by a vehicle".
34. In relation to this injury I also received expert evidence from orthopaedic surgeon, Mr Matthew Sharland. Mr Sharland stated it was his opinion that in terms of this injury the evidence suggested a fall either "from a moving vehicle or from a height".
35. Both Mr Sharland and Dr Donaldson were in agreement that this injury would have been extremely painful. Mr Sharland stated that the injury would have prevented "anyone walking" and that the "right leg would have been essentially useless". In fact he did not believe that the deceased would

have been able to even stand on his left leg or even crawl. As Mr Sharland put it in his report:

“... the level of pain sustained would have been such that any form of movement would have been excruciating”.

36. Despite this significant injury, this is **not** what killed the deceased. Both Dr Donaldson and Mr Sharland gave evidence that the injury itself would not have caused the deceased's death. It did however clearly render him immobile and I am satisfied on the evidence before me that as a result of that injury, Mr Du Toit was simply unable to move to avoid the rising tide and died as a result of drowning sometime after 11.24 pm on 20 March 2012 when the tide reached its lowest point and 5.09 am on 21 March 2012 when the tide had reached its highest point. One can only hope that he was unconscious at the time.

Circumstances leading to the cause of death

37. Whilst I find I am satisfied that on the balance of probabilities the cause of death was drowning, I am unable to determine the circumstances leading up to the deceased's death, i.e. just *how* the deceased sustained the injuries that rendered him immobile and thus led to his drowning.
38. On the evidence there appears to be two (2) alternative hypotheses as to how the deceased may have sustained such injuries. The first being the possibility of the deceased being struck by a motor vehicle, and the second the deceased falling off a cliff (which cliff was nearby to the area in which the deceased exited the vehicle).
39. After closely considering the evidence of the medical experts, namely Dr Donaldson and Mr Sharland, it does appear that the more likely scenario is that the deceased fell from a cliff. Whilst neither expert was willing to “totally exclude” the possibility that the deceased was struck by a motor vehicle, they both agreed that if the injury had been caused by being hit by a

car, they would have expected other injuries to have been apparent and there were none. As a result it appears that a fall from a cliff is the far more likely turn of events.

40. I note that the evidence is also clear that in terms of the location of where the deceased was last seen alive, there are cliffs in the immediate area ranging from a height of 2 to over 6 metres. The expert evidence is such that a fall from only 2 metres was all that was required to cause such an injury.
41. It is apparent that there was a level of suspicion in relation to the events leading up to this death as recalled by Mr Foreman and Mr Foster. I therefore closely analysed their evidence during this inquest. Whilst I agree that because of their level of intoxication their evidence is to some extent unreliable, and whilst I note that there were lapses in their memory and also inconsistencies in their versions of events, I am unable to conclude that they deliberately misled either myself or the coronial investigators.
42. I am however, as a result of their unreliability, lapses and inconsistencies in evidence, unable to determine clearly the events leading up to this death. I do find however that it is more likely than not that this death was accidental, most likely following a fall from a cliff, and that the cause of death was drowning.

Decision

43. On the basis of the tendered material and oral evidence received at this Inquest I am able to make the following formal findings:
 - i. The identity of the deceased person was Paul James Du Toit born 15 July 1958 in Frankston in the State of Victoria, Australia.
 - ii. The time and place of death was sometime between 11.24 pm on 20 March 2012 when the tide began to turn and 5.09am on 21 March

2012 when the tide reached its highest point. The place of death was Stingray Head, Dundee Beach.

- iii. The cause of death was drowning.
- iv. Particulars required to register the death:
 - a. The deceased was a male.
 - b. The deceased's name was Paul James Du Toit.
 - c. The deceased was of Caucasian descent.
 - d. The death was reported to the Coroner.
 - e. A post mortem examination was carried out by Dr Eric Donaldson who investigated and discussed the possible causes of death on 23 March 2012.
 - f. The deceased's mother was Betty Myrtle Du Toit nee Donahue (deceased) and his father was Carl William Ernest Du Toit.
 - g. At the time of his death, the deceased resided at Lot 3127 Zuleika Road, Dundee Beach in the Northern Territory of Australia.
- 44. On all of the evidence received, I have no comments or recommendations to make in relation to this death.

Dated this Wednesday the 4th of December 2013.

GREG CAVANAGH
TERRITORY CORONER