



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 45 /15

*I, Sarah Helen Linton, Coroner, having investigated the suspected death of **Jan ZAPOTOCKY** with an inquest held at the **Perth Coroner's Court, Court 51, CLC Building, 501 Hay Street, Perth, on 19 November 2015** find that the death of **Jan ZAPOTOCKY** has been established beyond all reasonable doubt, that the identity of the deceased person was **Jan ZAPOTOCKY** and that death occurred between **21 March 2014 and 26 March 2014** in **sea off Canal Rocks, Yallingup** in the following circumstances -*

Counsel Appearing:

Sgt L Housiaux assisting the Coroner.

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INTRODUCTION

1. On 26 May 2014, Ms Jessica Josephson, the niece of Jan Zapotocky, wrote an email to the State Coroner advising that she had reported her uncle, Mr Zapotocky, to police as a missing person in March 2014 and that the police had conducted a search and could not find him.
2. On 29 May 2014, the State Coroner wrote to a detective at the Missing Person Unit to ascertain whether the police had any information to enable the State Coroner to determine whether there was reasonable cause to suspect that Mr Zapotocky had died and that the death was a reportable death under the *Coroner's Act 1996* (WA) (the Act). A police investigation file relating to Mr Zapotocky was provided to the State Coroner by police on 7 November 2014.
3. Based on the information provided, the State Coroner considered that there was reasonable cause to suspect that Mr Zapotocky had died and that his death was a reportable death. On 28 April 2015, the State Coroner wrote to the Commissioner of Police and directed that the suspected death of Mr Zapotocky be investigated pursuant to s 23(1) of the Act. The subsequent investigation was carried out by First Class Constable Barnett from the Dunsborough Police Station and a report was provided to the Coroner.¹
4. Pursuant to s 23(2) of the Act, an inquest was then required to be held in order to determine whether the death could be established beyond all reasonable doubt. I held an inquest into the suspected death of Mr Zapotocky at the Perth Coroner's Court on 19 November 2015.
5. The inquest focused primarily on determining whether the death of Mr Zapotocky could be established to my satisfaction, beyond reasonable doubt.

THE DECEASED

6. The deceased was born on 15 December 1945 in the Czech Republic and migrated to Australia in 1969. He had been married but at the time of his death he was divorced and lived alone. His only living relative in Australia was Ms Josephson but he was also very close to his neighbours, Mr Robert Gibbs and Ms Alison Radburn, who treated him like family.²

¹ Exhibit 1.

² Exhibit 1, Tab 2 and Tab 3.

7. Mr Zapotocky was a keen fisherman and gardener. He enjoyed land-based fishing from various locations in the South West and usually fished alone. He was also a keen gardener, with a particular interest in orchids. If he was ever intending to be away from home for any length of time, he would always ensure his neighbours had clear instructions on how to look after his orchids in his absence.³
8. Mr Zapotocky was generally in good health for his age although he was frail and was known to suffer from migraines and had a history of heart problems.⁴

LAST KNOWN SIGHTING

9. At 9.15 am on 21 March 2014, Mr Zapotocky was in his rear yard tending to his garden. His neighbour, Ms Radburn, was leaving home to go to work when she stopped to speak to him. They had a general conversation over the back fence. Mr Zapotocky was in good spirits and told Ms Radburn that he intended to go fishing at Canal Rocks in Yallingup for a couple of days.
10. Canal Rocks is a large granite outcrop located south of Smiths Beach in Yallingup. It is a popular tourist location and recreational fishing spot.⁵ There is easy road access ending with a large carpark and a toilet block. The popular “Cape to Cape” walking track passes through the car park.⁶ The coastline there can be treacherous and, although uncommon, freak waves are known to occur in the area and lives have been lost by people washed from Canal Rocks.⁷
11. Ms Radburn offered to water Mr Zapotocky’s orchids while he was away but he declined the offer. Ms Radburn inferred from his refusal that he would only be gone for a day or two. Ms Radburn left for work at about 9.30 am and she did not see Mr Zapotocky again.⁸

MISSING PERSON REPORT

12. On 21 March 2014, Mr Zapotocky’s niece, Ms Josephson, tried to telephone him but he did not answer the call. He would usually return her missed calls, but this time he did not. Ms Josephson

³ Exhibit 1, Tab 3.

⁴ Exhibit 1, Tabs 2, 3 and 18.

⁵ Exhibit 1, Tab 7.

⁶ Exhibit 1, Tab 12.

⁷ T 10; Exhibit 1, Tab 8.

⁸ Exhibit 1, Tab 2 and Tab 3.

thought perhaps he had gone to Perth to visit friends. When she still had not heard from him on Monday, 24 March 2014, Ms Josephson telephoned the Bunbury Police Station and requested that the police conduct a welfare check. She later received a call advising that police had been to his house and he was not at home.⁹ The police officer asked her to check with family, friends and hospitals and to call back if she did not locate him.¹⁰

13. Ms Josephson telephoned the Bunbury Police Station again on Tuesday, 25 March 2014 to advise them she still had not heard from Mr Zapotocky. Police officers apparently went to the deceased's home again and telephoned Ms Josephson to tell her that there was still no sign of Mr Zapotocky at his house. She was told to attend her local police station and make a missing person report.
14. Ms Josephson attended the Yanchep police station on the morning of Wednesday, 26 March 2014 and made a missing person report. Police officers attended Mr Zapotocky's house and obtained the spare key held by the neighbours. They used the key to enter and search the house but found no recent sign of Mr Zapotocky.¹¹
15. That same day Mr Zapotocky's neighbour, Mr Gibbs, was working in the Cape Naturaliste area and he decided to conduct a search for Mr Zapotocky while in the area. Mr Gibbs and a work colleague drove to the Canal Rocks car park at around 5.30 – 6.00 pm. Mr Gibbs immediately recognised Mr Zapotocky's car parked in the car park. He immediately called Ms Radburn, who then notified the Bunbury Police Station. In the meantime, Mr Gibbs and his colleague searched the rocks until the sun went down, but found no sign of Mr Zapotocky.¹²

THE SEARCH

16. At 10.24 pm on 26 March 2014, Senior Constable MacAlister and First Class Constable Vinden attended the Canal Rocks car park. They located the deceased's Holden Commodore parked in the car park, as described by Mr Gibbs. The car was locked and unoccupied. Inside the car was a backpack, fishing rods, blankets, pillows and a small esky, which was later found to contain a drink and piece of fruit. A sun visor had been placed

⁹ Exhibit 1, Tab 19.

¹⁰ Exhibit 1, Tab 19.

¹¹ Exhibit 1, Tab 14.

¹² Exhibit 1, Tab 21.

across the windscreen. No other cars were present in the car park.¹³

17. A witness later came forward advising that he had seen Mr Zapotocky's car parked in that same spot in the Canal Rocks carpark when the witness went fishing mid-morning on Friday, 21 March 2014. The witness had not seen anyone near the car when he arrived, nor did he see anyone else fishing during the day. The witness had left the carpark at 3.00 pm that day and Mr Zapotocky's car was still there at that time.¹⁴
18. The two police officers conducted a search of the surrounding area by torch light, including the toilet block adjacent to the car park and the surrounding rocks. No sign of the deceased was found. They also made enquiry with the local hospitals and confirmed that the deceased had not been admitted as a patient. They reported the results of their inquiries back to the Officer in Charge of the Dunsborough Police Station, Sergeant Craig Anderson.¹⁵
19. Sergeant Anderson holds a diploma in Search and Rescue Coordination.¹⁶ Given the circumstances and the already lapsed timeframe, Sergeant Anderson had grave concerns for the welfare of Mr Zapotocky. He had been involved in several searches within the Canal Rocks area and was aware of the location where bodies had been recovered. He put in a plan for a land and water search for Mr Zapotocky to be conducted at 7.00 am the following morning, utilising that knowledge.¹⁷
20. Sergeant Anderson assumed the role of Police Commander of the search and was responsible for the marine component of the search operation. First Class Constable Simon Barnett, a qualified land search mission controller, was allocated the land search component of the search operation.¹⁸
21. At 6.00 am on 27 March 2014, Sergeant Anderson, First Class Constable Barnett and other officers attended the Canal Rocks car park and conducted a check of Mr Zapotocky's car and a thorough land search of the immediate Canal Rocks area. A track led directly from Mr Zapotocky's car down towards an area used by fishermen. In amongst the rock crevices were located a small quantity of tackle, old bait bags and a sharpening steel. The items were located amongst some slippery black rock where

¹³ Exhibit 1, Tabs 4, 5 and 7.

¹⁴ Exhibit 1, Tab 14 and Tab 20.

¹⁵ Exhibit 1, Tabs 4 and 5.

¹⁶ Exhibit 1, Tab 6.

¹⁷ Exhibit 1, Tab 6.

¹⁸ Exhibit 1, Tab 6.

swell was washing over the rocks. The appearance of the items was consistent with their having been in the area for approximately one week.¹⁹

22. Given the popularity of the Canal Rocks area as a tourist destination, Sergeant Anderson concluded that if Mr Zapotocky had collapsed or been injured and remained on land in the area, he would have been found by a member of the public in the preceding six days. Therefore, Sergeant Anderson concluded on the known factors that it was probable Mr Zapotocky had been washed into the ocean while fishing sometime on Friday, 21 March 2014. Given the timeframe, it was extremely unlikely that Mr Zapotocky was still alive.²⁰ An opinion was later sought from an expert experienced in estimating survival times, who expressed the opinion (based on the known information) that Mr Zapotocky would probably have died by drowning within a short period of entering the water, most likely within minutes.²¹
23. A full scale land and sea search operation, with helicopter aerial support, was activated that morning to search for Mr Zapotocky. Despite all efforts, Mr Zapotocky was not found. After a full day of searching was unsuccessful, the search was scaled back the following day with a further land-based search and close in shore water search around Canal Rocks conducted, with the hope that as sea conditions eased there was a chance Mr Zapotocky's body might be recovered.²² No evidence was found related to Mr Zapotocky and the search was ceased that morning. Ms Josephson was notified that the police suspected Mr Zapotocky was deceased but his body had not been recovered.²³
24. On 17 April 2014, First Class Constable Barnett conducted a search of Mr Zapotocky's home with Ms Josephson and Ms Radburn. The residence was noted to be neat and tidy. First Class Constable Barnett searched for personal papers and ascertained that Mr Zapotocky held only one bank account, which was with the Commonwealth Bank. Later enquiries with the bank established that Mr Zapotocky had not access his bank account since 9 March 2014.²⁴
25. Enquiries with the Department of Immigration established that Mr Zapotocky did not hold an Australian passport and there were no records of him leaving Australia.²⁵

¹⁹ Exhibit 1, Tab 6, 10 (map) and 14.

²⁰ Exhibit 1, Tab 6.

²¹ Exhibit 1, Tab 23.

²² Exhibit 1, Tab 6.

²³ Exhibit 1, Tab 6.

²⁴ Exhibit 1, Tab 7 and Tab 16.

²⁵ Exhibit 1, Tab 7.

CAUSE AND MANNER OF DEATH

26. The evidence strongly supports the conclusion that Mr Zapotocky was washed into the ocean while fishing at Canal Rocks on Friday, 21 March 2014. Experts in search and recovery have expressed the opinion that, given the known circumstances, he most likely would have died within minutes of entering the water.
27. Consistently with their opinion, there has been no sighting of Mr Zapotocky since that day. He has not contacted his niece or his neighbours, with whom he was very close, and he has not accessed his only bank account. He has not returned to his home nor arranged alternative care of his beloved orchids.
28. I am satisfied on the basis of all the evidence before me that the death of Mr Zapotocky has been established beyond reasonable doubt and I so find.
29. The most probable cause of his death is immersion (drowning), although it is also possible that Mr Zapotocky was seriously injured on the rocks as he entered the water. In those circumstances, the cause of death will remain unascertained.
30. However, either possible cause of death would support the same manner of death, namely accident. I therefore find that the manner of Mr Zapotocky's death was by way of accident.

CONCLUSION

31. On 21 March 2014, Mr Zapotocky went fishing at Canal Rocks in Yallingup. He went into the ocean and died sometime that day. Despite a comprehensive search of the area several days later, his body has never been found. His death was a tragic accident and there are no suspicious circumstances surrounding his disappearance.

S H Linton
Coroner
November 2015