



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref 13/20

*I, Evelyn Felicia VICKER, Coroner, having investigated the disappearance of **Simon MARBIN** with an inquest held at the **Coroner's Court, Court 2, Broome Court, Hamersley Street, Broome, on 30 January 2020, find the death of Simon MARBIN** has been established beyond all reasonable doubt, and the identity of the deceased person was **Simon MARBIN** and that death occurred following **12 December 1992, somewhere between Bayulu and Muludja Communities, Fitzroy Crossing** in the following circumstances:*

**Counsel Appearing:**

Senior Constable Craig Robertson assisting the Coroner.

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## INTRODUCTION

On the 12 December 1992 Simon Marbin (Mr Marbin) had breakfast at Wally Smith's (Mr Smith) house in Bayulu Community.<sup>1</sup> Mr Marbin had taken a few days leave from Fossil Downs Station where he worked. Once he left Mr Smith's house, Mr Marbin was never seen or heard from again.

The inquest into Mr Marbin's disappearance was held in Broome in the hope additional information became available through the publicity of the Kimberley hearings. The documentary evidence comprised the brief of evidence, Exhibit 1 attachments 1-17, and the Public Notice of Inquest dated 31 December 2019 as Exhibit 2. Oral evidence was heard from Senior Constable Peter Smith who spoke to a report he had compiled from the Missing Persons Unit (MPU) file concerning Mr Marbin; John Richard Harwood (Mr Harwood) the owner of Fossil Downs Station (Fossil Downs) in 1992, who gave evidence via videolink from Midland Court of his memory of events; and the shared evidence of Helen Malo (Ms Malo) and Sally Marbin (Ms Marbin) Mr Marbin's niece<sup>2</sup>, by videolink from Fitzroy Crossing.

### Long Term Missing Persons Project (LTMP)

In 2017 it was confirmed there were a considerable number of files relating to the long term disappearance of people who had been in Western Australia at the time of their reported disappearance. Some of these had occurred at a time when there was no or limited jurisdiction for a coroner to investigate a suspected death.

Section 23(1) of the *Coroners Act 1996 WA* (the Act) allows the State Coroner to direct an investigation into a suspected death in certain circumstances without a body, for the purposes of allowing a coroner, under section 23(2), to establish beyond all reasonable doubt that death has occurred. The

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<sup>1</sup> Ex 1 Tabs 3 and 16

<sup>2</sup> t. 30.1.20, p.30, 32

investigation must be done by way of inquest and will attempt to clarify how the death occurred and the cause of the death. This effectively brings the suspected death into the ambit of s 25 of the Act and allows registration of the death under the *Births, Deaths and Marriages Registration Act 1998*.

The reported number of LTMP made it unrealistic for the Office of the State Coroner (OSC) to absorb those matters into the already long outstanding inquest list in a timely manner. A plan was proposed for a project to clear the backlog of LTMP files once it had been determined the matters fitted the circumstances set out in s 23(1) of the Act. That is, the State Coroner or delegate had reasonable cause to suspect the person had died and the death was a reportable death (s3 of the Act).

In 2018 approval was given for a coroner to work exclusively on the LTMP cases, on a part-time basis for twelve months, as a separate listing from the OSC general inquest list. This followed a pilot project of four inquests conducted in 2018.

In 2019 a coroner was appointed for that project with the support of an in-house Coronial Investigation Squad (CIS) police officer as Counsel Assisting (CA).

Work on the files indicated a number of the disappearances related to specific areas of Western Australia, such as the Kimberley around Kununurra or Broome, and Albany. For these matters it was decided that, while there is always a preference for inquests to be held in the communities to which they relate, especially for Indigenous communities where there is an emphasis on oral history, resources would not be effectively utilised for all matters to be heard in the place of disappearance. Instead matters where the disappearance occurred in places other than the Perth metropolitan area were considered from the perspective of the best availability for relevant witnesses. Where there were no witnesses available in the relevant area of disappearance the matter would be heard in Perth, unless there was the potential for

additional information to become available due to the court's presence for other matters.

In the case of Mr Marbin, enquiries established Mr Henwood was living in the Perth metropolitan area and was available to give evidence from wherever was convenient. Enquiries by CA during the Broome hearings located Ms Malo at Fitzroy Crossing, who is related by marriage to Mr Marbin whom she called "Uncle". Ms Malo had been married to Willie Cherubin to whom Mr Marbin's brother, Willie Marbin was like a step-father.<sup>3</sup> Unexpectedly Ms Malo brought Ms Marbin to court to assist with her evidence and it was possible to have both Ms Malo and Ms Marbin on videolink together from Fitzroy Crossing to Broome to assist the court in understanding the perspective of the family at the time of Mr Marbin's disappearance.

The anticipated outcome of the LTMP project was that by June 2020 the majority of reported LTMP matters would be resolved and that future missing person files would be dealt with in the normal course of the OSC's usual business.

## **THE DECEASED**

Mr Marbin is recorded as having been born on 1 July 1935. He was about 57 when he disappeared. Ms Malo confirmed Mr Henwood's evidence that the majority of the residents from both Bayulu and Muludja communities had been born and bred on Fossil Downs Station.<sup>4</sup>

Mr Henwood described how after the separation, and when some of those community people returned to Fossil Downs at Christmas they would commonly have approximately 100 people attend their Christmas celebrations as part of the Fossil Downs family.<sup>5</sup> Mr Henwood explained that although he

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<sup>3</sup> t. 30.1.2020, p.27

<sup>4</sup> t. 30.1.2020, p. 29

<sup>5</sup> t. 30.1.2020, p. 7

had not moved to Fossil Downs until 1968 having been on other stations beforehand, his wife and her family had been born on Fossil Downs and had effectively been brought up with the Indigenous communities then resident on the Station. Most of the families had worked and lived on the Station until there were policy changes regarding station owners and managers using Indigenous labour on the stations. As a result the Indigenous families moved to the Aboriginal communities where they lived isolated from their birthing lands.

This continued over some 7 years before Mr Henwood decided the distress caused to the families by no longer being part of their birthplace was destructive to their lives and he gradually let them make their way back to work on the station as they had before.<sup>6</sup> So while Mr Marbin had connections with both Muludja (where he lived)<sup>7</sup> and Bayulu (where he had family)<sup>8</sup> communities, he spent most of his time on Fossil Downs where he was very good, in fact gifted, with the horses and was the station's horsetailor.<sup>9</sup>

Ms Malo, confirmed by Ms Marbin, described the two communities which had devolved from the original Fossil Downs group as the Muludja Community and the Bayulu one. She stated:

*“Bayulu is a larger community than Muludja and we live 30 kilometres out of Fitzroy. Muludja is. And Bayulu is another large community and – we are the same language group. The same language group between Muludja and Bayulu but we don't go to Bayulu much often.”*

Ms Malo went on to say that Mr Marbin would go to Bayulu to visit other family members for a weekend, but he was not resident in Bayulu he was resident at Muludja.<sup>10</sup>

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<sup>6</sup> t. 30.1.2020, p.4

<sup>7</sup> t. 30.1.2020, p.27

<sup>8</sup> t. 30.1.2020, p.30

<sup>9</sup> t. 30.1.2020, p.5 p.42

<sup>10</sup> t. 30.1.2020, p.30

Mr Henwood considered Mr Marbin to be an exceptionally gentle man who aside from his gift with horses did not cause any problems for the station.<sup>11</sup> Ms Malo who also knew Mr Marbin well stated he did not cause problems with others in either of the communities and was considered by all to be a gentle, non-aggressive person.<sup>12</sup>

Mr Marbin reputedly drank in the normal course of socialising when he was not on the station or dealing with the horses. As far as Mr Henwood knew Mr Marbin's family consisted of his brothers, he had no partners or children, and they were on the station as part of the station family.<sup>13</sup> Mr Marbin was a younger brother to Willie Marbin,<sup>14</sup> while Ms Malo, whose husband was Willie Cherubin, considered Willie Marbin as a father. This would make Mr Marbin's relationship to Ms Malo similar to an uncle by marriage. There was a skin factor in the relationship as well.<sup>15</sup> In evidence Ms Marbin stated Mr Marbin did have a partner, but no children. He and his partner had come together when older and his partner, Amy Bamby, had only recently passed on in 2019.<sup>16</sup>

Mr Henwood recalled his head stockman to be Martin Chestnut,<sup>17</sup> although the police have no record of a Martin Chestnut, only a Michael Chestnut. Ms Malo knew both brothers.<sup>18</sup> Mr Henwood stated the station owners and managers did not become involved in cultural disputes unless specifically asked for input. Generally Mr Henwood allowed his head stockman, Mr Chestnut to co-ordinate workers necessary for the station as and how he considered necessary. Mr Marbin's role as horsetailor was separate from the

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<sup>11</sup> t. 30.1.2020, p.4

<sup>12</sup> t. 30.1.2020, p.29

<sup>13</sup> t. 30.1.2020, p.7

<sup>14</sup> t. 30.1.2020, pp.7-9

<sup>15</sup> t. 30.1.2020, p.26

<sup>16</sup> t. 30.1.2020, pp. 34, 35 and 39

<sup>17</sup> t. 30.1.2020, p.10

<sup>18</sup> t. 30.1.2020, ps. 35-36

head stockman's role. Although Mr Henwood would be advised of certain incidents he did not query further unless specifically asked for input.<sup>19</sup>

Mr Henwood stated he came to respect the cultural views of the local Indigenous people. If they believed a person had intended to go bush to die, they were not looked for<sup>20</sup> and the station owners and managers would not inquire further if the local communities did not seem concerned about a disappearance.

Mr Henwood recalled being told of an incident prior to Mr Marbin going missing which had resulted in Mr Marbin ending up in hospital where it was believed he had died. However, Mr Marbin recovered and returned to Fossil Downs where he gave no explanation as to what had happened. Mr Henwood had not inquired further. Due to later queries from the police with respect to Mr Marbin's disappearance he had referred them to Ms Malo over that report. Mr Henwood understood the incident had occurred as the result of some dispute involving Mr Marbin and a group from Halls Creek. Later police enquiries indicated there had been a dispute involving Mr Marbin and a group from Balgo Community, however, that was never clarified and did not become significant in the later investigation into Mr Marbin's disappearance.<sup>21</sup> Ms Malo stated in evidence she did not know of any incident with men from Balgo.<sup>22</sup>

Ms Malo did not discuss the incident where Mr Marbin had been considered deceased in evidence, but did recall a dispute between Mr Marbin and his older brother, Willie, where they had both been at the Mulduja Community and drunk. They had become involved in a drunken fight which was dealt

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<sup>19</sup> t. 30.1.2020, p.11

<sup>20</sup> t. 30.1.2020, p.6

<sup>21</sup> t. 30.1.2020, pp. 4-5

<sup>22</sup> t. 30.1.2020, p.30

with by the family<sup>23</sup> and, from Mr Marbin's medical records, possibly resulted in Mr Marbin having a fracture ulna.

A medical report from Dr Beverley at Fitzroy Crossing Hospital recorded Mr Marbin had an old oblique fracture of the midshaft of his left ulna which on an x-ray taken on 9 December 1992 had not properly healed. Dr Beverley commented that although there was no external evidence of an injury to the arm it could be seen on x-ray.<sup>24</sup> The x-ray was only days prior to Mr Martin going missing on 12 December 1992. It is not clear whether the healed fracture noted on x-ray on 9 December 1992 was the result of the fight between Mr Marbin and his brother Willie mentioned by Ms Malo<sup>25</sup> or an assault by an out-of-town mob from either Halls Creek or Balgo. Neither is it evident from the report as to why Mr Marbin needed an x-ray on 9 December 1992.

## DISAPPEARANCE

Mr Marbin's disappearance was reported to the Fitzroy Crossing police on the 17 December 1992 by his brother Willy Marbin from Mulduja Community. By that stage Mr Marbin had been unseen since the 12 December 1992.<sup>26</sup>

The MPR gave the facts of Mr Marbin's disappearance as follows:

*"Missing person was staying at Wally Smith's house at Bayulu Community, Fitzroy Crossing. Had breakfast and not seen since. Did not tell anyone where or if he was going anywhere. Possibly tried to walk back to Muludja Community where his brother resides but not known. Muludja Community which is approximately 10 kilometres north of Bayulu Community."*<sup>27</sup>

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<sup>23</sup> t. 301.1.2020, p.28

<sup>24</sup> Ex 1, tab 11

<sup>25</sup> t. 30.1.2020, pp.4, 27

<sup>26</sup> Ex1, tab 3

<sup>27</sup> Ex1, tab 3

From that it would seem Mr Marbin's older brother Willy, who lived in Muludja which is where Mr Marbin was said to reside, had made some inquiries and had traced Mr Marbin back to Wally Smith's house. There is also some information on the file that originally it was believed Mr Marbin may have had breakfast with Michael Chestnut at the Shell Service Station in Fitzroy Crossing. This is not confirmed anywhere and Martin Chestnut is now deceased, while Michael is very elderly.<sup>28</sup>



Google map of area showing Fitzroy Crossing, Fossil Downs Station, Bayulu and Muludja Communities.

Exhibit 1, tab 13

The distances given in the MPR would seem to be at odds with those shown on the Google Maps which, even taking a direct route, would seem to imply a further distance than 10 kilometres.<sup>29</sup> The most that can be said of the placement is that from Bayulu Community, through Muludja Community to Fossil Downs, a straight line north east from Bayulu can be drawn, and it is probable a person walking of foot would be able to take a shorter route than by the roads. Fitzroy Crossing is more or less due north of Bayulu.

<sup>28</sup> t. 30.1.2020, p.36

<sup>29</sup> t. 30.1.2020, p.11

There is virtually no other information available with respect to Mr Marbin's disappearance. Ms Marbin believed it possible Mr Marbin had been caught unawares by the group who had injured him initially, although there is no record of this other than Ms Marbin's memory.<sup>30</sup> Ms Malo also thought it possible Mr Marbin had met an untimely end, but rather to do with him being robbed.<sup>31</sup> Mr Henwood believed it possible he had gone bush to die as was traditional among the elders, but the fact he was well and the community was concerned enough to go to the police supported the idea it was foul play of some description.<sup>32</sup>

The MPR indicated Mr Marbin was associated with a Mandy Rogers and Ann Jingle from Halls Creek, but on checking with them it was found they had not heard from him. Ms Malo and Ms Marbin had never been asked about his partner, Amy Bamby, while she was still alive. It seemed to be generally accepted by both the Bayulu and Muludja Communities that something untoward happened to Mr Marbin on his way between Bayulu to his home at Muludja Community.<sup>33</sup> Ms Malo and Ms Marbin were quite sure Mr Martin had no reason to disappear unless he had become the victim of foul play. He was happy in his life.<sup>34</sup>

## INVESTIGATION

Due to a lack of information in the written record for the disappearance of Mr Marbin the Fitzroy Crossing police occurrence books (OB) were obtained and Senior Constable Smith compiled his report from the occurrence books.<sup>35</sup>

Following his brother's report of him disappearing the police at Fitzroy Crossing received a telephone call from Fossil Downs confirming that

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<sup>30</sup> t. 30.1.2020, p.42

<sup>31</sup> t. 30.1.2020, p.39

<sup>32</sup> t. 30.1.2020, pp. 6 and 8

<sup>33</sup> t. 30.1.2020, p.41

<sup>34</sup> t. 30.1.2020, p.43

<sup>35</sup> Ex 1, tabs 2 and 7

Mr Marbin had been on leave from the station and had not returned. There does not seem to be any clarity about the reference to Michael Chestnut being his last contact, as opposed to Wally Smith.

The OB record Willy Marbin on behalf of the Muludja Community attending the police station and reporting Mr Marbin missing. They were worried for both his welfare and his safety and reported he had been to Bayulu Community where he was staying with Wally Smith before he left after breakfast on 12 December 1992 and had not been seen since. As far as the community in Muludja was aware Mr Marbin was intending to spend his weekend holiday with them and had last been at Fossil Downs Station on 11 December 1992. They reported that Mr Smith had stated Mr Marbin was wearing a blue checked shirt, blue jeans and fawn stockman's boots. The Bayulu people had gone to Halls Creek for a carnival, but Mr Marbin was not with them.

The Fitzroy Police checked with the hospitals at both Fitzroy Crossing and Halls Creek and received no information Mr Marbin was with either hospital. It appeared his most regular check-ups were with the Fitzroy Crossing hospital. Although the OB entry states no recent medical treatment, that was at odds with the letter from Dr Beverley stating Mr Marbin had been x-rayed on 9 December 1992 and a poorly healed fracture of his left ulna noted. The letter does not explain if the fracture was the reason for the x-ray or a side diagnosis for some other issue.

Enquiries at surrounding local communities revealed no knowledge of his whereabouts and enquiries were then extended throughout the communities by radio.

A search was conducted between Bayulu and Muludja communities by the police, local SES and local trackers. No tracks for Mr Marbin were located,

but due to information received that Bayulu members had gone to Kalgoorlie, the Kalgoorlie police were contacted. Kalgoorlie police reported there was no evidence Mr Marbin had gone to Kalgoorlie with those community members.

The call from Fossil Downs recounting that Mr Marbin had been taking time off indicated they understood he was spending two days at Muludja. Fossil Downs considered Mr Marbin was always reliable in returning to the station, and the fact he did not, was unusual. Continued searches around both Bayulu and Muludja failed to find any definite tracks related to Mr Marbin.

On 18 December 1992 authority was given for the use of a helicopter to search the area between the two communities and a grid search was undertaken by the helicopter. The area was searched over one and a half hours before returning to its base and advising there was no indication of Mr Marbin during the helicopter search.

The OB indicated that between 19 December 1992 and 11 January 1993 both police and locals conducted additional searches including the use of helicopters and aircraft with no result. The communities did not report any sign of Mr Marbin and he was still recorded as missing on 11 January 1993. No further information with respect to his whereabouts came to light.

On 15 January 1993 some of the local “witches” told police they had “*seen what happened to Mr Marbin and that he had been murdered.*” They took police to a location where they explained he had been murdered. Police were unable to find any evidence that Mr Marbin had been there, although the witch concerned said his body had been moved. The witches were unable to see where Mr Marbin’s body had been moved to. Police did note an old set of vehicle tracks near the trees identified by the witches. Mr Marbin went missing on 12 December 1992, but there is no indication whether police

considered the set of vehicle tracks may be relevant to the search or not. There was no further input from local sources either cultural or otherwise.

Police from Fitzroy Crossing responded to any information provided to them between 1993 and 2001.<sup>36</sup>

Enquiries by the MPU to Fitzroy Crossing police in May 1993 drew the response :

*“To date Marbin has not been located and it appears that he never will. This is due to the large area flooded in February this year. If Marbin died in bush area, it is likely his remains would be swept away and scattered”.*<sup>37</sup>

The police OB note there were numerous rumours in the community about Mr Marbin being “murdered, sung, or cut to pieces and that this was as a result of a payback by the Balgo Aboriginals.” The police were unable to find any evidence to support those rumours and Ms Malo indicated Mr Marbin did not know anybody from Balgo, although she did agree the family believed that something bad had happened to Mr Marbin. Generally the fact that a missing person’s body was not located does tend to concern community members a body has been deliberately concealed as a result of foul play.

### **Unidentified Skeletal Remains**

In 1996 Dr Karin Margolius was asked to examine incomplete skeletal remains from Anna Branch River Crossing, Fitzroy Crossing. Dr Margolius believed they belonged to a female somewhere between 20-40 years of age, but due to the lack of complete remains asked they also be assessed by Dr Alana Buck, forensic anthropologist. Dr Buck agreed with Dr Margolius and assessed them as belonging to a Western Australian Aboriginal female,

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<sup>36</sup> Ex 1, tab 7 : Occurrence Book/Running Sheets Fitzroy Crossing

<sup>37</sup> Ex 1, tab 4

who had died at least 50 years earlier. They had been recovered on 24 January 1996.

Nevertheless the x-ray of the 9 December 1992 was significant in the ability of forensic pathologists to determine that skeletal remains located in the area in which Mr Marbin may have gone missing were not his.<sup>38</sup> They may assist in future identification

### **HAS DEATH BEEN ESTABLISHED?**

I am satisfied beyond all reasonable doubt Mr Marbin is deceased and died in the time frame between 12-17 December 1992 on his way between the two communities out of Fossil Downs.

The evidence of Mr Henwood, Ms Malo and Ms Marbin make it abundantly clear there was no apparent reason for Mr Martin to go missing. Although 57 year of age he was relatively well and perfectly able to continue his work as a horsetailor, which he loved. There is no evidence of a medical reason for him to suffer a medical emergency despite the medical report provided by Dr Beverly for the purposes of skeletal indicators for identification. Had there been an indication Mr Marbin suffered a known medical condition which may account for his disappearance between communities I am sure it would appear in the OB. It is also likely the searches following 17 December 1992 would have located his remains had he died naturally, even if subject to predation.

However, it is also possible some form of accident befell Mr Marbin which prevented his return to those who cared about him and led either directly or indirectly to his demise. He may have sought refuge somewhere in the bush and died concealed from discovery. Without any evidence I am unable to

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<sup>38</sup> Ex 1, tab 9,t. 30.1.2020, pp.17, 21 and Ex 1, tab 2

consider the circumstances of his death further, but am satisfied he appeared to enjoy his life and would have returned to his partner and his communities had he been in a position to do so.

The fact of no remains discovered during the extensive searches elevates the suspicion something untoward happened to Mr Marbin and it is clear that is his community's belief. Unfortunately the quantity and quality of rumours make it impossible to do more than speculate Mr Marbin came to harm deliberately, at the hand of others.

## **MANNER AND CAUSE OF DEATH**

I am unable for the above reasons to determine with any clarity the manner or cause of Mr Marbin's death. While I consider it possible other people were involved in his death and later concealment of his body, without more cogent information I am unable to take the available information further because there are other reasonable scenarios.

I make an Open Finding into the death of Mr Marbin.

## **CONCLUSION**

The evidence of Mr Henwood as to the character and demeanour of Mr Marbin was invaluable to me in forming an understanding of the nature of the communities and their relationship to Fossil Downs, and the unlikelihood of Mr Marbin simply walking away from his life. It is clear he liked his life and was valued for his gifts.

The evidence of Ms Malo and Ms Marbin was likewise very significant for my understanding of how the local people, especially those of Mr Marbin's generation, interacted with life on the station. Fossil Downs was their land and where they were comfortable. Mr Marbin was clearly part of the Muludja Community, with ties to the Bayulu Community, as well as a valued part of Fossil Downs. He knew the area, was comfortable with the area and there was no reason for him to disappear. Their evidence more than any other simple fact certainly satisfied me beyond all reasonable doubt Mr Marbin died in the time frame and vicinity of his disappearance.

I thank them both and Mr Henwood for their cooperation with the court in providing me with their evidence.

E F VICKER  
**CORONER**

28 May 2020