



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 3/18

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the suspected death of **Luke Anthony MURRAY** with an Inquest held at Carnarvon Coroners Court, Carnarvon Court House, Corner Robinson Street and Babbage Island Road, Carnarvon, on 18 & 19 January 2018 find the death of **Luke Anthony MURRAY** has been established beyond all reasonable doubt, the identity of the deceased was **Luke Anthony MURRAY** and that death occurred on 15 August 2016 in the Indian Ocean, West of Cararang Peninsula, Western Australia, as the result of Drowning in the following circumstances:-*

Counsel Appearing:

Sergeant L Housiaux assisted the Deputy State Coroner

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INTRODUCTION

Luke Anthony Murray (the deceased) was a deck hand aboard a commercial crabbing vessel (the Napoleon) which had left Denham on the afternoon of 14 August 2016. He was last seen alive on the vessel in the early minutes of 15 August 2016, but had disappeared before 6.30 am that morning. The vessel at that time was approximately 46.5 nautical miles south west of Steep Point, Cararang Peninsula in the Indian Ocean.

A marine search and rescue (MSAR) operation was immediately implemented, but no trace of the deceased has ever been found.

He was 40 years of age.



Exhibit 1, tab 3, page 5 – Figure 2.1 – Google Extract – Initial Report Location – Man Overboard Luke MURRAY

In November 2016 the mother of the deceased's daughter wrote to the Office of the State Coroner (OSC) asking that the disappearance of the deceased be investigated and outlining the known circumstances. As a result the State Coroner had reasonable cause to suspect the deceased was dead and that his death was a reportable death for the purposes of the *Coroners Act 1996* (WA) (the Act). A reportable death includes a suspected death pursuant to that Act.

By section 23 (2) an inquest into the circumstances of a suspected death are mandated to enable a coroner to establish whether death has been proved beyond all reasonable doubt and where possible, the cause and manner of death.

An inquest into the suspected death of the deceased was conducted in Carnarvon on 18 & 19 January 2018. The inquest relied on both documentary evidence (Exhibits 1-3) and the oral testimony of a number of witnesses.

BACKGROUND

The Deceased

The deceased was born on 2 May 1976 in Perth, Western Australia. He was the youngest of four in the family, with three older sisters. His parents separated shortly after his birth and his father had little, if any, contact with the deceased after that time. His mother was later informed the

deceased's father had committed suicide in the Adelaide River.¹

The deceased's mother reported that the deceased grew up in Western Australia and was educated in and around Perth. He left school in either year 11 or part way through year 12. Following his schooling the deceased moved to the country and worked in and around Kalgarin where he bought a house in the late 1990s.

In March 2007 the deceased was involved in a house fire at his home in Kalgarin and was saved as the result of his dog, 'Names', waking him in time for him to be able to leave the home. He suffered severe injury requiring ongoing hospital treatment, but fully recovered.

The deceased commenced working as a deck hand on a commercial deep sea fishing vessel operating out of Denham in approximately 2008. He had started working on the Napoleon in January 2010.²

Although the deceased never married he had a long term relationship which produced a daughter, 6 years old in 2016.³ The deceased and his partner had separated in 2010, reportedly due to the deceased's alcohol consumption. Following the separation from his long term partner the deceased remained in Denham while his ex-partner and

¹ Ex 1, tab 2

² t 18.01.18, p73

³ Ex 1, tab 9

daughter moved to Carnarvon where the deceased visited his daughter from time to time.

The mother of the deceased's daughter had been liaising with the deceased about the possibility of a change of surname for his daughter which had been an ongoing issue, although apparently on the deceased's mind more at the time of his death.⁴

While in Denham in 2011 the deceased met Cathleen McGill and in 2013 commenced a relationship with Ms McGill. The deceased and Ms McGill lived together in Denham with Ms McGill's son. While the deceased was living with Ms McGill Names died and this greatly upset the deceased.⁵

In February 2015 the deceased was assaulted and suffered a deep laceration requiring surgery for his Achilles tendon which ultimately recovered to full capacity.

The deceased and Ms McGill had separated shortly before 15 August 2016 and the deceased had been staying with his friend, Christopher Davey, in Brockman Street, Denham. Mr Davey had also recently suffered a relationship breakdown and reported to the court that while the two men were company for one another they did not discuss their personal feelings about their respective relationship difficulties.⁶

⁴ t 18.01.18, p27, 34

⁵ Ex 1, tab 5

⁶ t 18.01.18, p65-67, 83

The deceased also had an ongoing issue with the Australian Taxation Office (ATO) due to an unpaid income tax bill over the previous years. The skipper of the Napoleon, Andrew Wassman, advised the inquest there had been a change in the payment of wages with respect to the crew of the Napoleon. The company responsible had moved from the employee being responsible for tax payments, to an employer PAYE system.⁷ This made the unpaid debt significant for the deceased who was now clearly in the ATO's sight.⁸

Mr Davey reported he and the deceased occasionally used marijuana and methamphetamine, but that it was not a regular occurrence, and very much recreational.⁹ The deceased's history, however, would indicate he did drink quite heavily, fairly regularly, when on land.¹⁰ Mr Davey was adamant the skipper of the Napoleon was very conscious of appropriate drug and alcohol use and the deceased would not abuse that trust.¹¹

On 12 August 2016, the Thursday before the deceased's disappearance, Mr Davey had driven the deceased to Carnarvon to enable him to visit his daughter prior to her birthday party on the Saturday, which the deceased could not attend due to his work commitments. Mr Davey reported they had dinner with the deceased's daughter and

⁷ t 18.01.18, p72

⁸ Ex 1, tab 9

⁹ t 18.01.18, p28, 34

¹⁰ Ex 1, tab 9 & t 18.01.18, p23

¹¹ t 18.01.18, p32 & Ex 1, tab 9

that the deceased drove his daughter to school on the Friday morning before the deceased and Mr Davey returned to Denham. The deceased had a good relationship with his daughter although he did not see her particularly frequently and Mr Davey believed things were fine between the deceased and his daughter.¹²

The two men returned to Denham on the Friday, after dropping the deceased's daughter at school, and Mr Davey believed the deceased seemed well and they played cards at home. They drank a reasonable amount of alcohol and both were ready for bed by 11.00 pm.

On Saturday 13 August Mr Davey woke up at about 7.00 am and went outside to see the deceased driving into the driveway in a utility. Mr Davey said in evidence the deceased was an early riser and he thought nothing of the fact the deceased was up that early,¹³ but he did notice the deceased removed a towel and piece of hosing from their outside washing machine from the utility.

In evidence Mr Davey said he believed the deceased may have used the hose to pump out a boat and he thought nothing further of it. Later in the day the hose reappeared on the washing machine and Mr Davey said nothing about the towel or hosing to the deceased. They stayed home for the rest of the day watching television and went to the Shark Bay Hotel later in the evening. Mr Davey noticed

¹² † 18.01.18, p24

¹³ † 18.01.18, p26

nothing unusual about the deceased and the deceased fell asleep on the couch while watching television.

Evidence given by the deceased's long term friend, Jeremy Draper, was that although the deceased had many difficulties in his life he was a resilient, happy go lucky person, and none of those issues would have caused him undue concern. While he agreed the deceased was very distressed at the death of his dog Names, he also believed the deceased had moved on from that incident. The deceased had selected a new puppy from the litter of Mr Draper's dog and was looking to the future.¹⁴

Mr Draper stated he lived in Geraldton and had known the deceased for nearly 15 years since they were shearers together in the Murchison and Gascoyne areas. Due to the deceased's separation from Ms McGill the deceased was in the process of making arrangements to move in with Mr Draper and his wife and there were no issues with that arrangement. Similarly Mr Draper had recently obtained a job through the deceased on the Napoleon and this would provide them both with a good work/living relationship.

As far as Mr Draper was concerned the deceased, while having stressors in his life, was certainly future planning and he was quite confident the deceased was in a positive space despite the issues with the ATO and his daughter. Mr Draper believed the issue with his dog was probably the

¹⁴ † 18.01.18, p37

most significant thing in the deceased's life, but was being resolved by the selection of a new puppy.

Evidence from the skipper of the Napoleon and another friend and crew member, Richard Thorn, may indicate the deceased was more concerned with his difficulties than his family or Mr Draper may have believed. This raises the issue of exactly how comfortable the deceased was with his life over the weekend on 13–14 August 2016.

The Crabbing Vessel

The deep sea crabbing vessel upon which the deceased was a crew member was the 'Napoleon'. Its registration number was LSBG124 and its unique identifying number 5116.



Exhibit 1, tab 4, Page 1 – Napoleon Vessel

The vessel was owned by AUSASIA Ocean Fishing Pty Ltd and is registered as a commercial fishing vessel which in August 2016 was engaged in deep sea crabbing off the West Australian coast. The company operated under the West Coast Deep Sea Crustacean managed fishery licence number 2902.

Its usual skipper was Andrew Wassman and in August 2016 it carried three crew members when deep sea crabbing. These were the deceased, Jeremy Draper and Richard Thorn. Crew were originally subcontracted and responsible for their own tax out of the earnings from each catch, however, the system had changed in the financial year of 2015/2016 to the tax being deducted by the company.

The Napoleon drug and alcohol policy allowed for the consumption of two cans of beer per crew per day, with a no drugs policy.

The Napoleon is a 23.9 metre surveyed fibreglass vessel, powered by a 447 kW diesel engine, licenced to operate within 200 nautical miles off shore (Australian waters) and was last surveyed on 24 February 2016 without issue.¹⁵

The deck area of the Napoleon had a gunnel with a minimum of 750 mm height from the deck, with aluminium grab rails along the top of the gunnel and non-slip matting on the deck. There was also netting on the deck of the

¹⁵ Ex 1, tab 4 & 5

Napoleon fitted between the top of the grab rail and the full length canopy secured by thick rope wrapped around the aluminium grab rails on the gunnels and the canopy. While the netting created a barrier for crew in rough seas, Mr Wassman was anxious to point out the netting was mainly for the purposes of holding the crab pots onto the decking during fishing. There are two areas in the netting which are gaps to allow for fishing work over the side.¹⁶

The crabs were kept alive and shipped into Denham from where they were transported by road to Perth, some for Asian markets. It would be usual for the trip from Denham out to the usual fishing grounds, 50 nautical miles off Dirk Hartog Island, to take about nine hours.

The crabs were harvested by the use of baited pots on the ocean floor and the Napoleon has winches capable of pulling the pots from depths between 550-750 metres below the surface. The vessel can take 1,024 pots for processing which are then returned to the sea floor. It takes approximately 2-3 days to complete a run before the vessel returns to Denham with the live crabs.¹⁷

Information from Ms Sue Matthews of the Department of Transport indicated that the Napoleon was an existing vessel at the commencement of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (National Law)* to which the United Shipping Laws code (USL) standards

¹⁶ t 18.01.18, p99, 94

¹⁷ Ex 1, tab 5

applied. This did not contain any requirement for vessels to have a means by which persons could board a vessel if they were overboard.¹⁸ Since the incident with the deceased on 15 August 2016 Mr Wassman has had a ladder, seen in the photograph below, attached to the rear of the Napoleon to allow access to the Napoleon for a person in the water.



Exhibit 1, tab 18, Photograph 7 – Napoleon Vessel – back end looking forward.

The Skipper

The skipper of the Napoleon, Andrew Wassman, is a qualified skipper with a Master 5 and MED 2 qualifications. He has over 35 years experience in the fishing industry and

¹⁸ Personal Communication 19.1.2018 from Ms Matthews to Sergeant Housiaux following an issue raised during the course of the inquest on the morning of Friday 19.1.2018

is clearly a very experienced mariner. He had operated the Napoleon for the 11 years prior to August 2016 excluding 30/06/2015 and 30/06/2016.¹⁹

Mr Wassman is also an active member of the Shark Bay Volunteer Rescue Group and, as commented by Sergeant Peter Trivett OIC Water Police, clearly competent to undertake a MSAR operations in conjunction with those services. Due to the position of the Napoleon at the time of the deceased's disappearance, the Water Police had to rely on Mr Wassman's expertise as the only asset available to them immediately to implement a search pattern for the deceased. The MSAR conducted for the deceased also had to rely on Mr Wassman's input as to the appropriate search drift model due to his local experience and expertise.²⁰

During the course of the inquest it was apparent Mr Wassman had a good relationship with all of his crew²¹ and Richard Thorn indicated it was his intent to learn as much as he could from Mr Wassman. It was also apparent Mr Wassman had a good relationship with the deceased and knew enough about the deceased's personal situation to be aware of matters which may affect the appropriate running of a fishing trip. While Mr Wassman was aware of the deceased's circumstances, and in hindsight agreed the deceased had been slightly quieter than usual, there was nothing about the deceased's demeanour to cause

¹⁹ † 18.01.18, p72

²⁰ † 19.01.18, p3,5

²¹ † 18.01.18 (Draper) 18.01.18 (Thorn)

Mr Wassman to be concerned there would be a risk to the fishing expedition from the deceased's behaviour.²² If there had been Mr Wassman was clear he would never have left Denham.

EVENTS 14-15 AUGUST 2016

When Mr Davey woke on Sunday 14 August 2016, he observed the deceased was already packed and ready to go to work. While he thought the deceased was quieter than usual he did not really believe it was anything untoward. At approximately lunch time Mr Draper arrived at their address prior to he and the deceased crewing the Napoleon later that day. The three men had some beers before Mr Draper left and the deceased again went inside to lie on the couch.

Mr Davey asked the deceased whether he wanted to go to work and the deceased replied "*nah not really*" but said no more.²³

At approximately 2.30 pm Mr Draper returned to their address and Mr Davey drove both men down to the jetty in Denham to board the Napoleon. That was the last time Mr Davey saw the deceased and while he thought he was a little quiet he was not concerned about the deceased.

²² t 18.01.18, p83

²³ Ex 1, tab 9 & t 18.01.18, p27

The Napoleon left Denham at approximately 3.00 pm to travel to Steep Point roughly 32 nautical miles west of Denham. They reached Steep Point at approximately 7.00 pm, slightly longer than usual due to a low tide through the main channel. At Steep Point the Napoleon was put on autopilot while heading towards the fishing grounds south west of Steep Point.²⁴

From Steep Point the crew took approximately 2 hour watches each while the vessel was on autopilot heading out to the fishing grounds. The first watch was conducted by the deceased, handing over to Mr Draper, who handed over to Mr Thorn. The skipper went to bed when the deceased commenced his watch.

Mr Wassman woke at about midnight when the Napoleon had reached their fishing location between 42 and 57 nautical miles from Dirk Hartog Island. Mr Wassman took over from Mr Thorn and saw both the deceased and Mr Draper asleep in their bunks. Mr Wassman checked the Napoleon's location and set the navigation system up to record a drift track with their location being 26°28.2S and 112°24.00E. Mr Wassman ensured the AIS system was switched on and working to sound an alarm in the presence of any oncoming vessels.

The weather conditions were good with a light to moderate south west wind and intermittent 1-2 metre swell. Mr

²⁴ † 18.01.18, p73

Wassman switched the engine off at 12.19 am on 15 August 2016 with the generator running. The deck lights were left on and Mr Wassman returned to bed on the starboard side of the Napoleon. The three crew were in bunks on the port side.

Mr Wassman read in his bunk for a while before falling asleep and is sure the deceased did not get up while he was still awake.²⁵ Mr Wassman last saw the deceased in bed at 12.45 am.²⁶

Evidence during the course of the inquest outlined the toilet was on deck and if crew wished to relieve themselves during the night they would need to go up on deck to perform that function. It was usual for the crew to urinate directly onto the deck at specific points which were cleaned by sea wash overboard and protected from the prevailing weather, rather than use the toilet. The areas individuals picked for urination were usually constant depending on the weather conditions, and not in places vulnerable to accidental wash overboard.²⁷ Mr Draper appeared to have a different view,²⁸ but I am satisfied Mr Wassman was familiar with his crews' individual preferences and I accept his description of the deceased's preferred points for relieving himself. This was not in an area which would make him vulnerable to an accidental fall overboard in the vicinity of any of the gaps in

²⁵ t 18.01.18, p84

²⁶ Ex 1, tab 5

²⁷ t 19.01.18, p61

²⁸ t 18.01.18, p43-44

the netting. These were in any event protected by the gunnels when fishing was not in progress.²⁹

Mr Wassman had set his alarm for 6.00 am on 15 August 2016 and once he was out of bed he started the engine at 6.15 am. At that time the location was 26° 30.4S and 112° 23.6E. That indicated a drift of only 2.1 nautical miles since midnight. It was not usually necessary for Mr Wassman to wake the crew as the engine starting would usually alert crew they were expected to get up and be ready. Mr Draper was already up and Mr Thorn got up and started having breakfast, but the deceased did not appear. This was unusual according to Mr Draper because the deceased was usually one of the first up either having a cigarette or breakfast.

Mr Wassman went down to the deceased's bunk at 6.20 am to check on him, but did not find him in his bunk. When he returned to the deck he asked the others if they knew where he was and none of them had seen him since they had been awake.

Mr Draper had woken up at about 5.40 am and had gone on to the deck to put the kettle on. He then went and had a smoke, but did not see the deceased.³⁰

Once Mr Wassman had alerted the others to the fact he could not find the deceased they searched the entire boat

²⁹ † 18.01.18, p80

³⁰ Ex 1, tab 6

calling for him and looking into the ocean. Mr Thorn regarded the search for the deceased as very thorough.³¹ The sea was not rough and there was no indication there was anything amiss with the netting or deck.

Mr Wassman rang his wife via the satellite phone and gave her their current coordinates and asked her to ring the Water Police to advise them of the need for a search for a man overboard.³²

Mr Thorn and Mr Draper went to the bow of the boat to try and get things organised for a man overboard search for which there were established protocols.³³

THE SEARCH

Having alerted Water Police to the situation Mr Wassman set about commencing the search for the deceased. There was enough light to give people aboard the Napoleon about 200 metres visibility at the time of the commencement of that search and Mr Draper and Mr Thorn were either in the bow or on the roof of the wheel house giving them good visibility in all directions across the sea.

Mr Wassman gave specific instructions for their visual search along the troughs and peaks as he traversed the drift line back to their start point.³⁴

³¹ Ex 1, tab 7

³² Ex 1, tab 5

³³ t 18.01.18, p81

³⁴ t 18.01.18, p78

Once the Napoleon had returned to the start point of their drift line, Mr Wassman drove 400 metres west of the drift line and tracked back in a line parallel to the drift line which he then repeated 400 metres to the east of the drift line to form an initial rectangular search around the drift line. The deceased must have left the Napoleon, however he left, at some point along the drift line between the coordinates 26°28.2S and 112° 24.0E at the start of the drift line, to the location at the end of the drift line at 26° 30.4S and 112° 23.7E, a distance of 2.32 nautical miles.³⁵

The official marine search and rescue operation and police investigation commenced at 6.47 am on Monday 15 August 2016.³⁶ Under the *Emergency Management Act 2005* police are the authority responsible for coordinating a response to persons missing in a marine environment.

Sergeant Trivett was the senior officer of the WA Water Police on duty at the time and placed a call to Mr Wassman for information about the details of the deceased's disappearance. As a result of that information he declared the incident to be in the distress phase of a search and assumed the duties of a Search and Rescue Mission Controller (SARMC). That involved delegating duties to an incident management team at the Water Police and allocating a forward commander at the local police station in Shark Bay. The Water Police then worked with Mr

³⁵ Ex 1, tab 3, p6

³⁶ Ex 1, tab 2 & 3

Wassman, and the technical information he was able to provide about the drift line and local conditions, to put together an appropriate search area using a computerised drift model, as amended by Mr Wassman's input with the information on hand, partly due to the creation of a dummy to replicate a person drifting with the sea.³⁷

Sergeant Trivett also contacted the Australian Maritime Safety Authority (AMSA) Joint Rescue Control Centre (JRCC) in Canberra and asked if they could assist with the provision of air assets in the area due to the difficulty for the Water Police in locating any suitable vessels in the area in a position to be able to assist the Napoleon with its search for the deceased.³⁸

Mr Wassman advised the Water Police the conditions were not suitable for the Denham Volunteer Marine Rescue (VMR) as part of the general search. They were appointed at a standby point with extra fuel as an emergency response. Any local vessels which could be contacted, were contacted in an attempt to provide the Napoleon with support as Mr Wassman and his crew continued to search along the suggested grid pattern for a complete coverage of the sea surface in the area most likely to contain the deceased.

³⁷ t 18.01.18, p45, 75, t 19.01.18, p5

³⁸ t 19.01.18, p4, 9

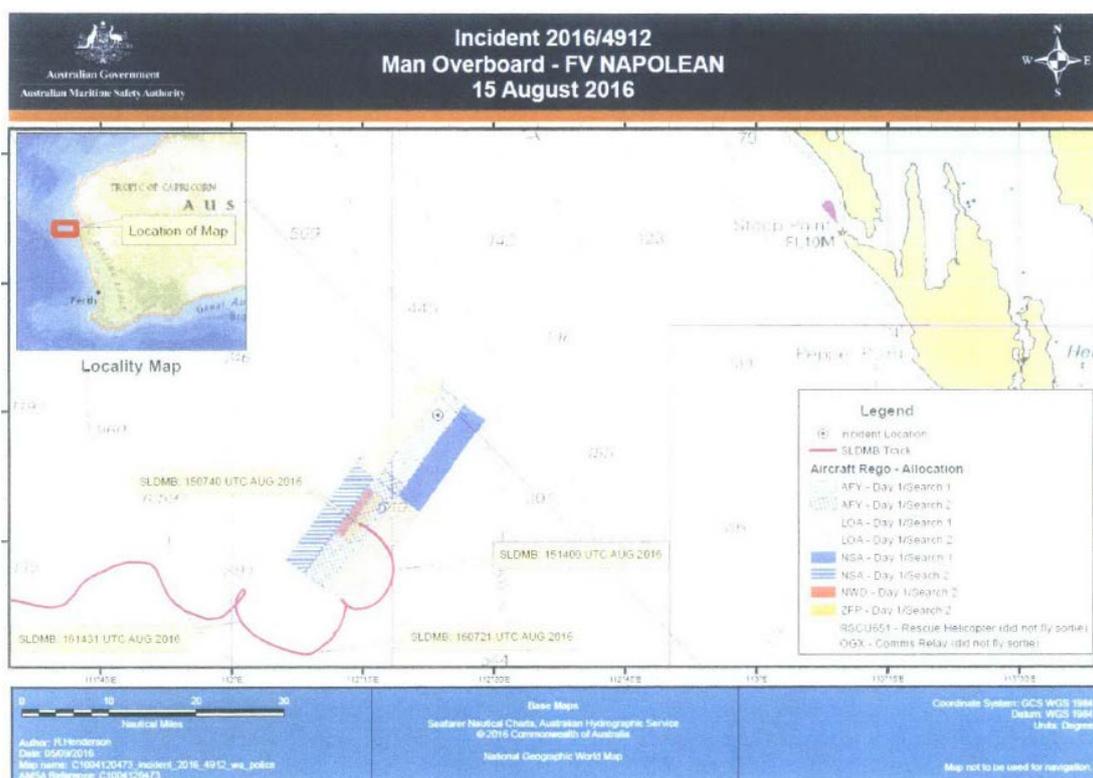


Exhibit 1, tab 3, page 16 – Figure 6.1 – AMSA Air Coordinated air search areas.

Mr Wassman and the crew made a dummy from a float, plastic crate and metal weight to mimic a person in the water. It was first placed in the water at approximately 8.04 am and its drift recorded thereafter at approximately 4-5 minute intervals to give an accurate drift pattern. Mr Wassman did this in conjunction with the Water Police to confirm the area of search, which the Napoleon continued alone, until joined by the fishing vessel the Maverick at approximately 1.00 pm to continue with the search.

An aircraft was provided, coordinated by the forward commander in Shark Bay.³⁹ It was available from approximately 11.00 am until last light on 15 August 2016.

³⁹ Ex 1, tab 2

In the event the aircraft spotted the deceased, the Napoleon was to be used to respond to any sighting, pending which the Napoleon continued with its grid pattern search. A helicopter was also provided at approximately 3.00 pm, and the fishing vessel, Sea Jay, arrived at approximately 5.00 pm as did the Fisheries vessel, Houtman.

The search was continued after dark on the 15th by those that were able to still participate, until approximately 9.00 pm when Maverick returned to Shark Bay. Napoleon, Sea Jay and Houtman all stayed at sea overnight to enable them to return to the search at first light, following some rest.⁴⁰

Dr Paul Luckin, a Respiratory Consultant, Anaesthetist, and member of the Royal Australian Naval Reserve and a recognised Survival Expert was contacted. In his opinion it would be unlikely the deceased would survive beyond last light of that first day, 15 August 2014.

The search on 16 August 2014 commenced at first light with the three vessels out in the search area. Sergeant Trivett was replaced by Sergeant Crawshaw as SARMAC. The Napoleon was able to confirm there were no life jackets missing from the Napoleon and that the deceased, if he was in the water, would be without a life jacket. The air assets were coordinated by the Water Police with the craft available from the Police Air Wing.

⁴⁰ Ex 1, tab 3, p10

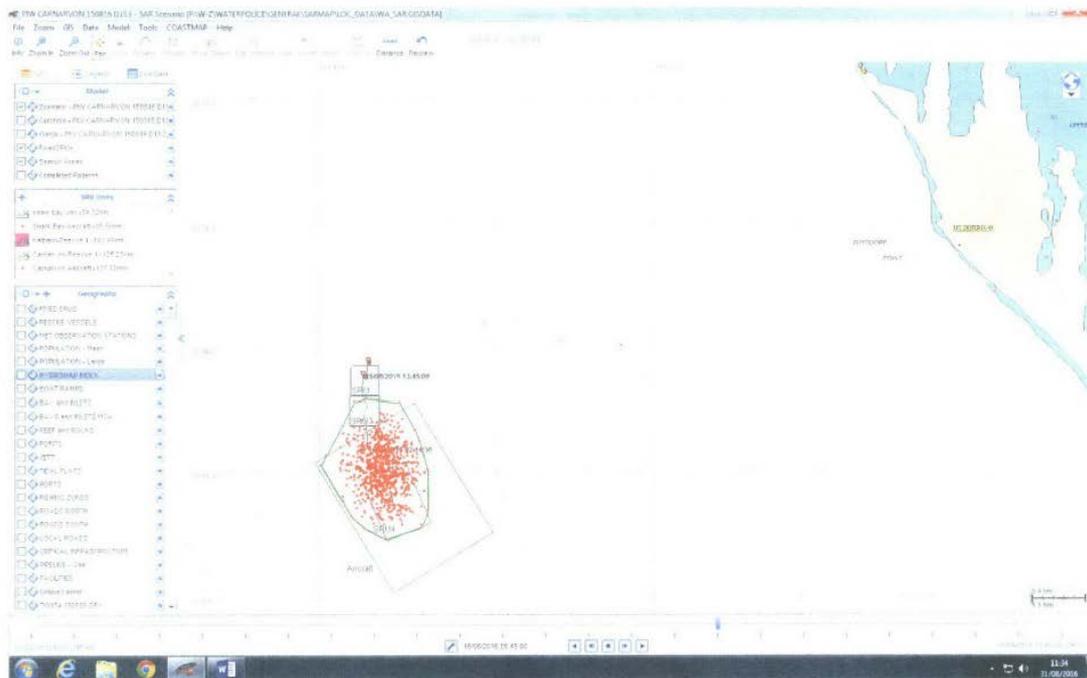


Exhibit 1, tab 3, page 13 – Figure 5.2 – SARMap drift prediction to 0545hrs Tuesday 16 August 2016. Drift indicated by red dots

Although some items were located in the water, on investigation they were confirmed to be debris and not connected to the search for the deceased. Nothing was located to give any indication as to where the deceased might be, if he was still on the surface of the water.

The search was suspended at approximately 2.00 pm on 16 August 2014, however, the Napoleon remained out until they were no longer able to see, and then returned to Denham. They arrived at about 4.00 am on 17 August 2014.

Probability of Detection

One of the purposes of the methods involved in a MSAR is to ensure there is a good probability of detection (POD) with respect to the item being sought. The definition is given as

“the probability of the search object being detected, assuming it was in the areas that were searched”.

It was the Water Police’s belief, using accepted calculations, that the day time searches achieved a 95% POD with the night time search as a 78% POD. This is extremely good coverage. It is generally regarded as impossible to achieve a 100% POD. The Water Police were satisfied that, had the deceased been on the surface he would have been detected if he was in the search area.⁴¹

In view of the method implemented by Mr Wassman immediately on realising the deceased was missing, using their exact drift line in the time period in which he was missing, I am satisfied that had the deceased been on the surface of the water, he would have been located by the search. Once a person is deceased in the water, they sink and remain under water until decomposition changes re-float the body. The area in which the deceased went overboard is between 288 and 360 fathoms deep and at that depth it is unlikely a body would return to the surface due to the water pressure.⁴²

Forensic Assessment

On the Napoleon’s return to Denham the local police boarded the Napoleon and a forensic assessment and search of the vessel was conducted, while the skipper and

⁴¹ Ex 1, tab 3

⁴² Ex 1, tab 3

crew were interviewed by Sergeant South and the Carnarvon Detectives. There was nothing revealed from those interviews or a thorough search and forensic examination of the Napoleon which was able to assist the police with what had happened to the deceased.⁴³

In addition the police undertook a number of experimental exercises to accord with a number of possible scenarios. Mr Wassman was present throughout these exercises and, as he commented in court, he thought the police investigation with respect to the Napoleon was very thorough.⁴⁴

At the conclusion of those investigations it was the view of the police that while there were no environmental conditions which would lead to an accidental man overboard situation, there were means by which a man overboard, experienced with the Napoleon as the deceased was, would have been able to either attract the attention of the crew or hold on to an anchor to remain in contact with the vessel. There was no evidence that any other person had been involved with the deceased going overboard and it was clear the deceased was well thought of aboard the Napoleon.

Evidence from the crew with respect to the possibility the deceased suffered an accidental fall overboard was mixed. Mr Draper preferred to believe something accidental had occurred, but agreed he believed the deceased would be able

⁴³ Ex 1, tab 2

⁴⁴ † 18.01.18, p90

to remain alert until discovered. Mr Thorn was more inclined to believe the deceased may have intended to go overboard and not be located. All of those aboard the Napoleon were fairly dismissive of the possibility of a shark attack at that particular time.⁴⁵

There was also an investigation by the Department of Transport relating to the incident and considering the circumstances from a legislative perspective.⁴⁶ While some breaches were noted, mainly concerning the need for a watch when a vessel is in a recognised shipping channel, I do not consider those breaches to be relevant to the circumstances of the deceased's disappearance. Any breaches did not detract from the effectiveness of the search implemented at first light on 15 August 2014.

One of the improvements Mr Wassman has made to the Napoleon since the disappearance of the deceased is the provision of a ladder which could be accessed by people in the water, back up onto the Napoleon in the event of an accidental man overboard. Although this was not a requirement from the Department of Transport with respect to their breaches, it is an improvement Mr Wassman has made of his own volition in the event the deceased's disappearance was due to an accidental overboard situation and he had attempted to return to the Napoleon, but was unable to do so because of the lack of access from the

⁴⁵ † 18.01.18, p91

⁴⁶ Ex 1, tab 4

water. This improvement does not endanger the vessel's integrity through the rescue door on the port side, which is usually kept closed.⁴⁷

The body of the deceased has never been recovered, nor have any of the people associated with the deceased ever heard from him again and there is no evidence the deceased was alive beyond 15 August 2014.

CONCLUSION AS TO THE DEATH OF THE DECEASED

As a result of the evidence collated by the police and the evidence of all those associated with the deceased, both at the time of his disappearance and in the lead up to his disappearance, I am satisfied beyond all reasonable doubt the deceased is no longer alive.

I find his death has been established beyond all reasonable doubt.

CAUSE AND MANNER OF DEATH

Further, I am satisfied his death occurred by way of drowning. Regardless of the manner of the deceased's death, I am satisfied that on any of the options available, his ultimate demise was as the result of drowning when he, for whatever reason, found himself in the Indian Ocean in the early hours of 15 August 2014 somewhere in the vicinity of 50 nautical miles south west of Dirk Hartog Island.

⁴⁷ † 19.01.18, p29

There are a number of options to consider with respect to the deceased's manner of death. Those are that his death was accidental, was the as the result of an intent to end his life, or was due to natural causes.

The option of natural causes arose largely due to the perception, before the inquest, the deceased may have been a heavy user of methylamphetamine. A heavy user of methylamphetamine can develop heart disease more rapidly than in the normal process of aging. The deceased was 40, which is not young, and it would be entirely possible that, if he was a persistent heavy user of the drug methylamphetamine, he would be vulnerable to a cardiac event, or unexpected arrhythmia, which could lead to an event which unexpectedly resulted in him collapsing and possibly accidentally ending up in the water. There is, however, little evidence to support that as a manner of death for the deceased, after hearing the evidence from his associates.

It is clear from the evidence of Mr Davey that, while the deceased did drink reasonably heavily and indulge in methylamphetamine use from time to time, it was not a continual and persistent exposure, and his lifestyle of hard physical work, substance free, on board the Napoleon would negate an assumption he had a cardiac arrhythmia and collapsed overboard.

In the event there was a medical emergency it would be far more likely the deceased would collapse on board and, in view of the fact there was a non-slip surface on the majority of the deck to which he would be exposed during the early hours of the morning it is likely he would have remained on board.

The other option is an accidental man overboard situation. This could have resulted as the result of a naturally occurring event which rendered him unresponsive, but not deceased, but again the same considerations arise. The evidence is the weather was reasonable and it would be unlikely there was some other accidental event during the course of the deceased returning to the deck during the early hours of 15 August 2014 and accidentally going overboard for some other reason than a medical emergency.

In the event there was not a medical emergency, the evidence would seem to support the fact the deceased was a confident swimmer and mariner and it is likely he would have found some way of alerting those on board to his predicament, or been able to attach himself to the anchor in such a way as would ensure his survival until the others woke.

This leaves the most likely explanation for the deceased's disappearance as a voluntary, and intended result on the deceased's behalf, to end his life. The evidence supporting this proposition is equivocal. There were certainly issues in

the deceased's life which may have been causing him angst, both personal and financial. The financial and the personal circumstances in which the deceased found himself tend to meld together when considering the issue of his daughter.

It may be the deceased recognised he was not in a financial position to support his daughter and the best interests of his daughter, at that point in time may have made him believe it would be better to allow her name change and remove himself from responsibility for her future support. However, those who knew the deceased well, including the mother of his daughter, did not consider he was a likely candidate to end his life, and both Mr Davey and Mr Draper considered he was forward planning.

I have no doubt someone can be forward planning for the majority of the time, but on occasion may impulsively decide they did not wish to continue with the trajectory their life had taken. I am, however, also mindful of the fact those who knew him did not believe he would expose the skipper and the crew of the Napoleon to a scenario of feeling responsible for his demise. While I feel suicide is the most likely outcome on a balance of probabilities, I am cognisant that, for a verdict of suicide, the evidence needs to be more strongly weighted than I feel it is in this particular case.

Overall, on the entirety of the evidence I am satisfied the death of the deceased has been established beyond all reasonable doubt and I so find.

I further find the deceased died as the result of drowning in the Indian Ocean west of Cararang Peninsula sometime between 1.00 am and 6.00 am on 15 August 2016, however, I am unable to determine, to a requisite standard of proof, the deceased died with an intention to end his life.

Consequently, I make an Open Finding as to the death of the deceased.

E F Vicker
Deputy State Coroner
30 April 2018