



Coroner's Court of Western Australia

RECORD OF INVESTIGATION INTO DEATH

Ref: 55/19

*I, Evelyn Felicia VICKER, Coroner, having investigated the disappearance of **Brian Anthony DUFFY** with an inquest held at the **Coroner's Court, Court 83, Central Law Courts, 501 Hay Street, Perth, on 2 October 2019**, find the death of **Brian Anthony DUFFY** has been established beyond all reasonable doubt, and the identity of the deceased person was **Brian Anthony DUFFY** and that death occurred on or about **26 February 1993 at sea in the vicinity of Falcon Bay, Falcon**, in the following circumstances:*

Counsel Appearing:

Senior Constable Craig Robertson assisting the Coroner.

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INTRODUCTION

On the evening of the 26 February 1993 Brian Anthony Duffy (Mr Duffy) was seen walking into the dunes opposite 23 Spinaway Parade, Falcon, in an intoxicated, depressed and irrational state following an argument with his defacto wife, Ivy Needham (Ms Needham). He was never seen again and no trace of him, other than his thongs in the dunes, was located despite extensive family, police, land, air and sea searches.

The inquest into this matter was held in Perth and the only available witness was, now Sergeant, but then Constable Rauch. Although still alive Ms Needham was quite elderly and frail and was not in a position to attend the inquest. Her son, Alan Needham (Mr Needham) was distressed by the events and did not wish to give evidence, but was content for the process to occur. Mr Duffy's daughter, Ms Gillham, provided information to the inquest through Counsel Assisting (CA), and was positive about being kept informed of the process. She currently cares for Ms Needham.

The documentary evidence at the inquest comprised the brief of evidence, Exhibit 1 Tabs 1 to 25 and the public notice of inquest dated 12 September 2019, Exhibit 2. Oral evidence was heard from Sergeant Rauch who had a reasonable recall of events, as refreshed by reading his report. The missing person's report (MPR) was utilised by the police report writer, Senior Constable Mayo with a comprehensive outline of the available documentation.¹

Long Term Missing Person's Project (LTMP)

In 2017 it was established there were a 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 the disappearances occurred at a time when there was limited or no jurisdiction for a coroner to examine the circumstances of a suspected death.

¹ Exhibit 1 Tab 2

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 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 funds were approved 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).

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

THE DECEASED

Mr Duffy was born on 25 July 1940 in Ireland. There is no information as to when he came to Australia and no information about his earlier life is available other than the fact that he was known to have a brother, Des Duffy, residing in Melbourne in 1994.²

² Exhibit 1 Tab 5

Mr Duffy was known to have a daughter, Christine Gillham (Ms Gillham) born in 1959 who resided in Bicton and an ex-wife, Pauline Llewellyn (Ms Llewellyn) who also resided in Western Australia. Ms Llewellyn had been married to Mr Duffy, but they had been divorced for approximately 15 years prior to his death, although they remained on good terms.

At the time of his death Mr Duffy was living with Ms Needham who had a son, Mr Needham, born in 1957. Mr Needham lived close to his mother and Mr Duffy and he and Mr Duffy had a good relationship.

Ms Needham and Mr Duffy had known each other for approximately 30 years and had lived together for 12 years at the time of Mr Duffy's disappearance.

Ms Needham described that she had originally lived with Mr Duffy in Perth, they had later moved to and lived in the Northern Territory and Queensland, but moved back to Western Australia and the address in Falcon on Spinaway Parade in approximately 1991.

Ms Needham stated Mr Duffy had been diagnosed with osteoarthritis in about 1990 and was diabetic. He had severe pain as a result of his osteoarthritis and was taking medication for the pain in his spine and shoulders. He had a liver malfunction due to excessive alcohol consumption, from which he refused to abstain. He also had thrombosis in his right leg with two by-pass operations, one in Queensland and the other in Perth. His doctor confirmed he had a large scar on his right leg for the purposes of possible identification.³

Mr Duffy's daughter, Ms Gillham, Ms Needham and Mr Needham all confirmed that Mr Duffy was in constant pain and taking a number of different medications for his ailments. He was depressed because it was clear his medication was having no effect on his pain, but refused all attempts or requests for him to visit hospital for treatment.

³ Exhibit 1 Tabs 7, 15, 16

He also suffered from high blood pressure and Ms Needham reported Mr Duffy was extremely unfit and unable to walk big distances. She estimated that even when fit he could only walk approximately 200 metres before having to stop to regain his composure. His ex-wife reported he was not a strong swimmer.

It also appears that in July 1992 Mr Duffy had attempted to walk into the sea following drinking and becoming extremely depressed. He had walked into the water, but had been washed back to the shore by the waves. He had also mentioned on occasion to Mr Needham that *“If he was going to do himself in he would prefer the sharks get him than be buried six feet under”*.⁴

In 1993 Ms Needham had recently received an inheritance from her mother and Mr Duffy’s ex-wife, Ms Llewellyn, considered the chances of Mr Duffy voluntarily disappearing, when in a sober state of mind, were slight in that they (Mr Duffy and Ms Needham) had few financial concerns and Mr Duffy’s life was better than it had been for many years.⁵

DISAPPEARANCE

On the late afternoon of Friday 26 February 1993 Mr Needham visited his mother Ms Needham and Mr Duffy at their home address of 23 Spinaway Parade, Falcon. Mr Needham recalled arriving at the home in the late afternoon sometime between 4 and 5 pm. Mr Duffy, Ms Needham, Mr Needham and his wife all drank white wine from a cask and after consuming one cask started upon another.

Mr Needham noted that although Mr Duffy appeared to be in a good mood and they had wide ranging discussions, it was obvious he was suffering badly with his normal pain due to his back problems and circulation in his legs. At that time it was considered Mr Duffy was likely to require an amputation due to the problem with his leg circulation.⁶

⁴ Exhibit 1 Tab 17

⁵ Exhibit 1 Tab 5

⁶ Exhibit 1 Tabs 5, 15 and 16

Mr Needham recalled the fact his mother had recently inherited some money and they had joked about him being provided with a loan, which appeared to upset Mr Duffy, until he was made to realise the joke and settled down. He did recall, however, that during the course of the evening Mr Duffy had said to him *“This is it, it’s all over”*. Mr Needham said Mr Duffy had whispered this to him and he did not think anyone else had heard, and he told him he was being silly. Mr Needham commented that as Mr Duffy became more intoxicated so he became a bit aggressive and was making irrational statements.

Mr Needham and his wife left, he believed, at approximately 4.00 pm, although Ms Needham thought it was earlier. Neither times relate to the given arrival time. At the time they left Mr Needham believed Mr Duffy was no longer upset about the discussion about money and appeared to be in a reasonable mood.

Ms Needham confirmed that on the evening of 26 February 1993 Mr Duffy had become very drunk and as a result was very agitated. She recalled that at approximately 8.00 pm they had a domestic argument although she doesn’t give the reason for the argument. Ms Needham recalled that at approximately 8.45 pm Mr Duffy left 23 Spinaway Parade and walked over the road and into the sand dunes.⁷

The house is directly opposite the dunes which open onto Falcon beach surrounding Falcon Bay, a shallow bay for quite some distance out to sea. It is a short distance across the dunes to the bay.

⁷ Exhibit 1, Tab 16



The above photo depicts the view from 23 Spinaway Parade across the road and into the sand dunes.

A short time after Mr Duffy had walked across the road Ms Needham went across the road to look for him, but was unable to find him. She returned home and waited for him to come home, believing he may have fallen asleep in the dunes. At daybreak on the 27 February 1993 Ms Needham again went to the beach area to look for Mr Duffy, but did not locate anything other than a pair of rubber thongs, which she believed were his, in the dunes. She found no other trace of Mr Duffy.

Communication with Mr Duffy's daughter Ms Gillham, on the day of the inquest advised CA that Ms Needham had found the thongs on the beach directly across from 23 Spinaway Parade. They were close to the road and suggested he had removed them shortly after he had crossed the road.

Ms Needham returned home and telephoned her son who came over to the house and went down to search the beach and dunes, while his mother telephoned the police and other people. Mr Needham was involved in the following searches for Mr Duffy.

INVESTIGATION

Mandurah Police Station is recorded as receiving a missing person query from Ms Needham at 5.56 am on Saturday 27 February 1993. Ms Needham reported Mr Duffy had been missing since the previous evening and at the time he was last seen he was walking towards the sand dunes opposite the home address in an intoxicated and agitated state following a domestic argument. He was wearing shorts, a polo shirt and a pair of thongs and had left his wallet and all personal belongings inside the house. Ms Needham advised police she had located his thongs following the incident and while there was some discussion as to whether that was late in the evening or the early morning, I am satisfied it was early in the morning of 27 February 1993.⁸

Senior Constable Haines and Police Constable Rauch attended at 23 Spinaway Parade and commenced a missing person investigation with inquiries at the household. They were advised that Mr Duffy was 52 years of age and was taking a number of medications daily for a range of medical conditions which rendered him relatively unfit and affected his mobility to a considerable degree. They were advised this caused him to be depressed and could be seen as a motive to end his life. He was unable to walk any distance without becoming fatigued and could not survive on his own due to his numerous health concerns.⁹

23 Spinaway Parade is located on the intersection of Spinaway Parade and Mercedes Avenue, Falcon. The area is immediately adjacent to the beach which is a gradual slope with water not deepening to any extent until some 40-50 metres from the shore. The dune separating Spinaway Parade from the beach is only 1 to 1.5 metres in height and about 20 metres in width. It is grassed and would not provide cover for a person or remains to be obscured when observed from above. The area is extensively used by joggers, walkers and beach goers and it would be highly unlikely Mr Duffy's remains were unlocated in view of the number of persons both searching for him at the time and using the area in the following weeks.

⁸ Personal communication with Mr Duffy's daughter 2 October 2019 by CA t.2.10.19, p.8-9

⁹ Exhibit 1 Tab 2

There is a submerged reef lying to the north north-west at about 100 metres from shore which causes a sheltered leeway on the curve of the shore. Local information indicated that generally any person dying within the bay would be washed ashore on Falcon Beach or further to the north.

Following Mr Needham's return to the house after an unsuccessful search in the vicinity for Mr Duffy the search was resumed with volunteers and police. Sergeant Rauch recalled organising a search of the beach area with the range being approximately a 500 metre radius on either side of the house due to the difficulty with which Mr Duffy moved. There was no sign of Mr Duffy. Sergeant Rauch remained at the house to co-ordinate search plans.¹⁰

Senior Constable Totterdell of the Police Air Wing stated he was recalled to duty on the morning of 27 February 1993 at approximately 11.20 am. He was tasked to crew the police helicopter, Polair One, to conduct an aerial search of the Falcon suburb, south Mandurah. On their way from Jandakot to Falcon the helicopter landed at Halls Head to pick up Senior Constable Holmes due to his local knowledge of the area.

Polair One then commenced a search over the area of Spinaway Parade flying in a search pattern up and down the coast north to south. They commenced approximately 700 metres out from the shore, but the weather conditions were making the visibility of the sea bottom difficult despite its shallowness. The helicopter then commenced a search over the suburb of Falcon checking streets and houses. Those on the helicopter did not find anything that indicated Mr Duffy was visible in the area despite their height over a relatively flat topography. It was Senior Constable Totterdell's view that the search time of 28 minutes covered an area that would have taken many hours to cover on foot. There was no trace of Mr Duffy.¹¹

While there was no tidal information available for Falcon Bay itself, inquiries with Fremantle Port Authority indicated the tidal ebb between the 26 and 27 February

¹⁰ Exhibit 1 Tab 13, and tab 19 t. 2.10.19, p.6-7

¹¹ Exhibit 1 Tab 12

1993 was only 0.2 metres over a nine hour period.¹² An inquiry was made of the Water Police to assist with the search, however it was considered unlikely Mr Duffy's body had been caught in the submerged reef and the request was denied on the 2nd March 1993. Despite extensive land, sea and air searches no trace of Mr Duffy other than his thongs were ever located.

The search of the immediate vicinity continued through Monday 1 March to Tuesday 7 March 1993 with Senior Constable Littleton patrolling the beachfront and searching the grounds of 23 Spinaway Parade. Nothing was located.

Local fishermen thought it was unlikely his body had been washed into the reef and it was unusual that, if he had drowned, his body had not washed ashore north of the point of entry. The comment made by local fishermen was there were a large number of tiger sharks in the vicinity of Mandurah and Rockingham during February to March 1993.¹³ In addition Sergeant Rauch believed it entirely plausible Mr Duffy's body had been caught on the reef then washed out to sea following overnight predation by scavengers. It is unlikely the remains would then have surfaced.¹⁴

On the 4 March 1993 police made inquiries with the deceased's bank and discovered his account had last been accessed on Friday 26 February 1993 and his medical practice advised police they would alert them if he attended at their medical centre. The fact Mr Duffy had such an extensive ongoing medical history with concerns about his medication and leg amputation made it extremely unlikely he would not have been in contact with doctors had he still been alive.

Mr Duffy's immediate family in Western Australia did not hear anything from Mr Duffy, nor is it likely he would have survived effectively in the community without support from other people without coming to the attention of the authorities due to his numerous health and mobility problems. There is no indication the relationship between Ms Needham and Mr Duffy was other than that

¹² Exhibit 1 Tab 18

¹³ Exhibit 1 Tab 2

¹⁴ t. 2.10.19, p.13

of a normal couple with the occasional disagreement. Certainly no motive for abandoning a comfortable lifestyle with no alternative.

A final report dated 25 January 1994 by Acting Superintendent Tree to the Missing Person Bureau (MPB) concluded Mr Duffy had been missing since Saturday 27 February 1993 and the local police had no recorded sighting or trace of him since that time. The local police believed he had taken his life by walking into the ocean although there is some comment in the papers that it could not be determined conclusively whether the act was intentional or accidental.

Later inquiries by MPB in June 1999 indicated there was no record of Mr Duffy leaving or re-entering Australia since 1980 and that the last records relating to Mr Duffy as an Invalid Pensioner were dated February 1993.¹⁵

In December 2008 the MPB records were updated into an electronic format and included the inquiries to date and the Missing Person poster produced as a result of the photographs provided by Ms Needham. None of the families had heard from Mr Duffy when contacted and no government agency appears to have a record of any transactions on his behalf since 1993, and there is no registration of his death.¹⁶

HAS DEATH BEEN ESTABLISHED?

Had Mr Duffy been alive in 2019 he would have been 79 years of age. Ms Needham is still alive and 80 years of age although frail. Had Mr Duffy's state of health in 1993 been good it is quite possible he would still be alive.

However, it is quite clear from the descriptions of those who knew Mr Duffy in 1993, that he was an extremely unwell person with limited mobility although only 52 years of age. The proximity of 23 Spinaway Parade to the ocean makes it highly likely that Mr Duffy, in an agitated state, walked into the water from the point at

¹⁵ Exhibit 1, Tab 2

¹⁶ Exhibit 1, Tabs 20-25

which he left his thongs on the beach. Had he walked in any other direction it is likely the search would have located his body or remains in the following days.

Mr Duffy's state of health and the circumstances described by those close to him, and the lack of any real motive for disappearing to another life, satisfy me beyond a reasonable doubt that Mr Duffy is deceased and became deceased overnight between 26 to 27 February 1993. Although not a strong swimmer the evidence would indicate he would have been in a position to walk as far as the water, and once in the water the buoyancy provided would have lessened his pain as far as walking onwards is concerned.

While I am satisfied the water is shallow for a long way, I also note Mr Duffy was very intoxicated at the time and in an agitated state of mind. While it is entirely likely his walk into the water was intentional, I suspect the outcome of disappearing and losing his life was either impulsive or reckless due to his agitation and intoxication. It is likely that agitation and intoxication gave him the impetus to keep walking regardless of the outcome, and his state of health was such that once he collapsed in the water it would be highly unlikely he would survive for very long. He may well have had a medical emergency which proved fatal because he was in the water. What happened to his remains after that can only be a matter of speculation in view of the usual occurrence of debris being washed ashore.

I note comments about the likelihood he was taken by a shark, although I suspect he was likely to be unconscious or deceased by that time if that was the case.

MANNER AND CAUSE

Mr Duffy's state of health was such that he would not have survived in the community without coming to the notice of the authorities, and as such I am satisfied beyond a reasonable doubt Mr Duffy died overnight between the 26 and 27 February 1993 and the fact his remains were not located was because he managed to walk some distance out into the bay. Once immersed his body would

have sunk and the fact no remains came to the surface by the 3 or 4 March 1993 would indicate he was no longer recognisable.

I am however unable to determine exactly what occurred other than the fact I am satisfied beyond all reasonable doubt he is deceased and died at that time in the waters off Falcon Beach.

I make an Open Finding as to the manner of death.

CONCLUSION

I am satisfied that on the evening of 26 February 1993 Mr Duffy, in an intoxicated and agitated state, walked away from the family household, over the road, removed his thongs on the sand and then walked across the dunes into the water.

I do not believe he was highly motivated to end his life, but rather impulsively and irrationally became reckless as to his welfare in his depressed state.

I speculate only that he walked out to sea and just kept walking until he collapsed. His state of health was such that he was very vulnerable to drowning once he was out of his depth or collapsed.

In addition, his state of health was likely to have induced a medical event from which he could not recover in the water. I am unable to determine his death was necessarily premeditated, but rather it was impulsive and reckless and occurred at a time he was in considerable pain and faced the prospect of becoming even less able to mobilize easily.

It was noted by all those who knew him that aside from his health, which caused him great pain and depression, Mr Duffy's life at the time of his disappearance was as good as it had been for a long time. He was in a loving family environment, and

was close to his family, with no significant bad feeling with other family members. It is highly likely that had he been sober this would not have been his intended course of action.

E F Vicker

Coroner

15 November 2019