



CORONERS COURT OF NEW SOUTH WALES

- Inquest:** **Inquest into the death of Daneeka Priscilla NIXON**
- Hearing dates:** 25 May 2009 to 29 May 2009
29 November 2010 to 3 December 2010
- Date of findings:** 3 December 2010
- Place of findings:** Lismore
- Findings of:** Deputy State Coroner M. MacPherson
- Findings:** **I find that Daneeka Priscilla NIXON, born 11 July 1980, died between 8:00pm on 16 April 2006 and 4:00pm on 20 April 2006 at Lot 254 The Channon, Lismore, but the evidence adduced does not enable me to determine either the manner or cause of her death.**
- Recommendations:** I recommend that:
1. The New South Wales Commissioner of Police give consideration to negotiating a Charter of Agreement between himself and the Queensland Commissioner of Police in relation to the shared use of each Service's police diver resources in the areas close to the New South Wales / Queensland border, similar to the Charter of Agreement apparently in place between the New South Wales Commissioner of Police and the

Victorian Commissioner of Police in relation to the shared use of each Service's police diver resources in the areas close to the New South Wales / Victorian border.

2. The Officer in Charge of this Coronial investigation is to forward a file of the evidence in this matter to the Cold Case Division of the Homicide Squad. I further recommend that these investigators assess the viability of diatom testing of retained physical samples, in consultation with Professor Jacob John, Curtin University, Western Australia.

File number: 1494 of 2007

Representation: Warwick Hunt, counsel assisting, instructed by Jamal Maroon, solicitor, of the Crown Solicitor's Office; Andrew Boe of counsel, instructed by Renee Williams, solicitor, of Boe Williams Solicitors, appearing for Paul and Maureen Nixon and other members of Daneeka's family by leave; and Patrick Saidi of counsel, instructed by Stuart Robinson, solicitor, of the Office of the General Counsel, appearing for the New South Wales Commissioner of Police by leave. It is noted that I was assisted by Sergeant Duane Carey, Police Advocate, in relation to the 2009 sitting of this Inquest.

INTRODUCTION

- 1 No parent should have to bury their child, it is not supposed to happen that way and it is tragic when the death is by a natural cause or misadventure but in the circumstances of the death of Daneeka, her death is devastating for her parents and brothers and has touched everyone involved in the investigation and the Inquest.

FACTUAL BACKGROUND

- 2 Daneeka Priscilla Nixon was a 25 year old single female, born on 11 July 1980 to her parents, Paul and Maureen Nixon. Daneeka had two younger brothers, Dallas and Ashley and had been living with her mother at Main Beach, Queensland at the time of her death.¹

¹ Statement of Maureen NIXON, dated 18 October 2006, para 18 (Coronial Brief of Evidence) (Exhibit 2)

3 According to her parents, Daneeka was of "good health",² "a natural athlete"³ and a good swimmer.

4 The evidence suggests that Daneeka was also a social drinker and a recreational user of drugs,⁴ occasionally experimenting with cannabis and ecstasy.

5 In November 2004, Daneeka was diagnosed with depression and was prescribed anti-depressants. Prior to her death, Daneeka ceased taking the anti-depressants and began to consult a naturopath.

6 Relevantly as to the events which had preceded the discovery of Daneeka's deceased body on 20 April 2006, it is known that a party had been organised for the 2006 Easter long weekend, which was to take place at a secluded rural property that was leased by Ms Sheree McInerney at Lot 254 The Channon, Lismore (hereafter referred to as 'The Channon property'). Evidence available confirms that Daneeka was invited to that party by Ms Sally Fields, and had driven alone to The Channon property to attend the party, travelling in a maroon Toyota Camry 415 EYH (QLD), and arriving at approximately 3:00pm on 15 April 2006.

7 From the time of Daneeka's arrival at The Channon property until approximately 6:00pm to 8:00pm on 16 April 2006, her appearance, behaviour and demeanour is reportedly said to have changed from being relaxed, in good spirits and happy, to being withdrawn and disoriented.

8 While some witnesses did not observe anything unusual about Daneeka's demeanour, during the late afternoon and early evening of 16 April 2006, other party attendees were of the view that Daneeka's apparent withdrawal and disconnection appeared to be consistent with Daneeka having ingested an illicit drug.

² Above n 1, para 53.

³ Statement of Paul NIXON, dated 22 November 2006 [para 6] (Coronial Brief of Evidence) (Exhibit 2)

⁴ Above n 3, para 24.

- 9 A number of civilian witnesses who had attended the party gave evidence suggesting that alcohol, cannabis, ecstasy and LSD⁵ were distributed and consumed during the course of that party by a number of the guests.
- 10 On the evidence before me, Daneeka was last sighted shortly after nightfall on 16 April 2006. Through written statements and oral evidence, a number of witnesses have detailed their observations and encounters (however minor) with Daneeka during that evening. There is conflicting evidence as to whether there were concerns raised about Daneeka's absence on the evening of 16 April 2006.
- 11 After it became apparent that Daneeka's motor vehicle was still parked on The Channon property and in an attempt to locate Daneeka, some party attendees informally searched The Channon property on 17 April 2006.
- 12 On 18 April 2006, Daneeka was formally reported to Police as missing by her mother and Ms Fields. By 4:30pm on 18 April 2006, Police had been called to The Channon property in relation to that missing person report.
- 13 A search plan was subsequently established and activated with a formal search of The Channon property commencing on 18 April 2006, and continuing on 19 April 2006. During that period, a number of search methods were adopted to locate Daneeka. These search methods ranged from the viewing of close circuit television of local businesses; line searches of The Channon property and surrounding areas by State Emergency Service personnel; the utilisation of thermal imaging patrol equipment and the engagement of a local rescue helicopter to conduct an aerial visual search of The Channon property. Unfortunately the results of these formal searches were unsuccessful.
- 14 At approximately 4:00pm on 20 April 2006, police investigators were alerted that a body had been found floating face down in the waterhole on The Channon property by Ms McInerney's neighbour, Peter. Police attended and arranged for NSW Police divers and forensic officers to be called to the scene.

⁵ Lysergic acid diethylamide, commonly known as 'acid'. (See Expert Report (No. 2) prepared by Dr Judith PERL, dated 12 November 2010, page 3 (Exhibit 14).

- 15 It should be noted that on 20 April 2006, investigating police had submitted a request for the assistance and deployment of police divers and cadaver dogs to assist in the search. Relevantly, the available NSW Police divers were required to travel from the NSW South Coast and were en-route, and almost at the scene, when the body was first sighted.
- 16 When the NSW Police divers arrived, a search of the waterhole commenced at approximately 8:20pm as the body had disappeared from view. The attending police divers subsequently recovered a body from that waterhole at 8:48pm on 20 April 2006.⁶
- 17 A preliminary examination of the recovered body revealed that this body was that of Daneeka. Subsequently, Daneeka's body was taken to Lismore Base Hospital Mortuary, where she was formally identified⁷ and pronounced life extinct.⁸

ROLE OF CORONER

- 18 My role as Coroner is to establish, if possible, the identity, the date of death, the place of death and the manner and cause of death. The formal finding will be recorded at the Registry of Births, Deaths and Marriages.
- 19 A Coronial Inquest is essentially an inquiry. It is not a criminal or civil trial in which two opposing parties engage in legal combat. It is not the role of the Coroner to attribute fault or make findings in relation to negligence or breach of duty of care. In fact a Coroner is prohibited from indicating in his/her formal findings that any known person has committed an offence.
- 20 Another important function of an inquest is the making of recommendations, which are necessary or desirable in relation to any matter connected with a death. In this way the coronial proceedings can be forward looking, aiming to prevent future deaths, rather than allocating blame.
- 21 There is no doubt that a Coroner's role has been clearly identified as being one that places a responsibility on the Coroner to protect the interests of the deceased. In short,

⁶ See generally COPS Event Ref No. E26887418 (Coronial Brief of Evidence) (Exhibit 2).

⁷ See generally statement of David Charles WRIGHT, dated 24 April 2006 (Coronial Brief of Evidence) (Exhibits 1 and 2).

⁸ See Northern Rivers Health Service, Notification of Hospital Deaths and DOA, prepared by Nicola ALLISON, dated 20 April 2006 (Coronial Brief of Evidence) (Exhibits 1 and 2).

the Coroner has to ensure that the evidence is examined with a view of determining whether any person has committed an indictable offence in relation to the death. It is not the role of the Coroner to determine, apart from the matters I have referred to above, whether a person is guilty of a criminal offence in relation to the death, but to examine the evidence and then apply the law as set out in s.78 of the *Coroners Act 2009*.

22 I say this for the benefit of the family of Daneeka and members of the public who may not always appreciate and understand the role of a Coroner or the Coronial Inquest.

FINDINGS

23 On 20 April 2006 the body of Daneeka Priscilla Nixon (aged 25 years old) was discovered deceased in a waterhole dam which was situated on the property known as Lot 254 The Channon, in a rural area outside Lismore. Since that day, a cloud of uncertainty has been hanging over Daneeka's family and this unfortunately will continue because sadly I am of the view that there is insufficient evidence to establish that there is a reasonable prospect that a jury would be likely to find proved that any known person has committed an indictable offence in relation to the death of Daneeka. I am of that view, notwithstanding careful written and oral submissions made to me by counsel appearing for the family on that issue. As a result I will only make limited findings.

24 This does not mean that the investigation into Daneeka's death is now finalised, however. The investigation will continue. In fact I intend that the comprehensive brief of evidence that has been compiled by Detective Senior Constable Adam Rhodes and transcripts of the oral evidence given and tendered exhibits be forwarded by him to the Cold Case Division of the Homicide Squad. In that regard, it will be my further recommendation that investigators assess the viability of diatom testing of retained physical samples, in consultation with Professor Jacob John, Curtin University, Western Australia.

25 Returning to the formal findings to be made, there is no doubt that the body that was found on the 20 April 2006 was that of Daneeka. As stated previously, given the formal identification statements in Exhibit 2 and the entirety of the evidence, I am comfortably satisfied that the identity of the person recovered from the waterhole is that of Daneeka Priscilla Nixon, born on 11 July 1980. Similarly I am comfortably satisfied on all of the

available evidence that the place of her death was in or around the property known as Lot 254 The Channon, Lismore.

26 On the evidence of various witnesses who attended the party whose statements and/or oral evidence was before me during the Inquest, it is well open to me to be comfortably satisfied on the balance of probabilities that Daneeka was last seen alive on 16 April 2006. There was no evidence before me to suggest that Daneeka, either alive or dead, was seen by anyone on 17, 18 or 19 April 2006.

27 On my assessment of the evidence, although it is more likely that Daneeka died during either the latter hours of 16 April 2006 or the early hours of 17 April 2006, on all the evidence, the only formal finding I am properly in a position to make as to the time of death is that Daneeka died sometime between 8:00pm on 16 April 2006 and 4:00pm on 20 April 2006.

MANNER AND CAUSE OF DEATH

Post Mortem Report

28 A post mortem examination of Daneeka was undertaken by Dr Timothy John Lyons on 23 April 2006.⁹ Having regard to the findings prepared by Dr Lyons as detailed in his post mortem report and subsequent oral evidence during the part heard hearing on 28 May 2009,¹⁰ I note some observations that were made by Dr Lyons of Daneeka during his examination

Decomposition changes were “significantly present”¹¹

29 Examples of identified decomposition changes of Daneeka included:

- *Purging of body fluids from the nose and mouth*¹²

According to Professor Lyons:

“...it is routine to see purging of body fluids when there has been some degree of decomposition and when you get some decomposition you get fermentation of

⁹ Dr Timothy LYONS, Post Mortem Report (PM No. 06265cd), dated 19 July 2006 (Coronial Brief of Evidence) (Exhibits 1 and 2)

¹⁰ See generally Transcript, 28 May 2009

¹¹ Above n 9, page 2.

¹² Above n 9, page 2.

fluid in the gastrointestinal tract and that forces fluid up the food pipe, the oesophagus into the mouth which then flows out the mouth and nose."¹³

- *On the torso and limbs (where clothing was not present) the skin had a dark brown colour*¹⁴

*"...the skin had to a degree become stained by materials in the water and I think where the clothing was had protected the skin from becoming stained with I presume mud or materials in the water."*¹⁵

30 By way of clarification, Dr Lyons expressed his view that the rate of decomposition in any case may be "extremely variable" and could be affected by "multiple" factors including: body morphology, external temperature conditions, water conditions, submersion in water and the location/environment where a body is found.¹⁶

31 Further, according to Dr Lyons, there was *no* evidence of any injury, interference or "significant trauma" to any part of Ms Nixon's body, other than her face. For example there was:¹⁷

- no puncture wounds, abrasions, scratches or bruising;
- no damage to the airway "that might occur in strangulation";
- no evidence of stab wounds; and,
- no "presence of any blood or anything in the chest cavity which would have been indicative of a penetrating injury".

32 Dr Lyons observed that Daneeka's face had showed signs consistent with interference by marine life, commenting that "*the nature of the small injuries around the edge of the wound [on Daneeka's face] was suggestive that it was animal predation that led to this*".¹⁸

33 This view was similarly supported by NSW Police investigating officers such as Sergeant Noel Paine, who in his experience, noted that it is not unusual to see injuries to

¹³ Transcript, 28 May 2009, page 28, lines 32-41.

¹⁴ Above n 9, page 2.

¹⁵ Transcript, 28 May 2009, page 29, lines 13-16.

¹⁶ See generally, Transcript, 28 May 2009.

¹⁷ See generally, Transcript, 28 May 2009.

¹⁸ Transcript, 28 May 2009, page 30, lines 3-6.

the face, which have been caused by aquatic life such as crustaceans or fish.¹⁹ Similarly Senior Constable Brendan Christopher Nix, who is attached to the Marine Area Command Police Dive Unit in Balmain, Sydney, gave oral evidence that during his search of the waterhole he had observed a relatively large amount of underwater life, including shrimp, eels and cat fish in that body of water.²⁰

34 Having regard to his examination of Daneeka, Dr Lyons was unable to ascertain the cause of Daneeka's death, although he attempted to "eliminate some possibilities". Dr Lyons noted:²¹

- Drowning was *unable* to be excluded as a possible cause, however the lungs were not particularly heavy with a combined weight of about 800g and there was no excess fluid in Daneeka's lungs, chest cavities or stomach;
- Third party involvement was *unable* to be "totally" excluded as a possible cause, however Dr Lyons could exclude "...certain injury patterns" such as those earlier identified;
- Unnatural mechanisms *were* excluded as a cause of death; and,
- There were "*no* obvious significant pathology that could have led to [Daneeka's] death" (emphasis added).

35 Dr Lyons conceded that factors contributing to the difficulty in determining the cause of Daneeka's death, included:

- The degree of decomposition;²²
- The tissue was beginning to break down due to post mortem autolysis; and,
- The time which had elapsed between Daneeka's death and the recovery of her body: "*...the longer the time interval from death [to recovery] the more routine pathological observations will be obscured.*"²³

¹⁹ Statement of Sergeant Noel PAINE, dated 2 August 2010, para 30 (Supplementary Coronial Brief of Evidence, Volume 1, Tab 3) (Exhibit 12)

²⁰ Transcript, 26 May 2009, page 28, lines 14-22.

²¹ See generally, Transcript, 28 May 2009

²² Transcript, 28 May 2009, page 30, lines 25-26.

²³ Transcript, 28 May 2009, page 31, lines 11-22

Expert Report of Professor Anthony Ansford

36 Given the equivocal findings of Dr Lyons, another expert assessment of the forensic pathology material was commissioned from Professor Anthony Ansford.²⁴ His expert report, responded to the following questions in relation to Daneeka:

- Did she fall into the dam and drown ?
- Was she pushed into the dam and drowned ?
- Did she voluntarily go into the dam and drown or was she already deceased and placed in the water ?

37 Having regard to the above, Professor Ansford stated that "*[f]rom the perspective of a forensic pathologist, there is really no evidence available to indicate which of these options is likely.*"²⁵

38 Further Professor Ansford considered that the lack of water in Daneeka's lungs, chest cavities and stomach on post mortem examination "*may suggest the body was already dead or was so drugged or incapacitated by some other means that little water was inhaled. However I have seen cases where the deceased has clearly been incapacitated from natural disease or violence when entering the water and has showed classical signs of drowning.*"²⁶

39 Other relevant extracts from Professor Ansford's report, include (references omitted):²⁷

"Drowning victims are usually found floating face downwards with the buttocks upwards and the arms hanging vertically...A photographic image of the body in the water shows the classical drowning position of the body. Whilst this is suggestive that she may have drowned I do not believe it could be used in a court of law to say she actually dead[sic – did].

There is nothing in the examination of the scene, such as it was, to indicate that there was any struggle at least in the vicinity of the pond. No drag marks into the

²⁴ Expert Report, prepared by Professor Anthony ANSFORD, dated 27 November 2010 "(Exhibit 13)

²⁵ Above n 24, page 7.

²⁶ Ibid.

²⁷ Above n 24, page 8.

water were noted and there was nothing on the body to suggest that it had been dragged, even given the degree of decomposition.

...

There were no observable injuries but she was under the influence of cannabis or other drugs, it may have been possible for her to be smothered/suffocated. Nothing was seen to indicate manual or ligature strangulation but some form of pressure on the neck cannot be absolutely excluded as the degree of decomposition would render soft tissue bruising and petechiae of the eyes and skin (pinpoint haemorrhages which are supportive evidence of asphyxia) difficult to recognise."

Toxicology Analysis

40 With reference to the Certificate of Analysis dated 22 June 2006,²⁸ the only prohibited drug that was detected in Daneeka's blood was cannabis. Alcohol was not detected. I observe in passing that the balance of evidence from witnesses who attended the party supports a determination that Daneeka had certainly been drinking beer following her arrival at the party on 15 April 2006.

41 Further in light of witness accounts suggesting that Daneeka had consumed LSD at the party at The Channon property in April 2006, a further toxicology report was commissioned from Chem Centre Expert Solutions located in Western Australia.²⁹ That analysis determined that LSD was not detected in the received sample (preserved) of Daneeka's blood.

42 During the course of the Inquest hearing, commencing on 29 November 2010, an expert report of Dr Judith Perl was tendered as Exhibit 14, without Dr Perl being required for oral evidence.³⁰ As to the effects of the administration of LSD, Dr Perl relevantly stated that:³¹

"2. Time that it takes for LSD to take effect ?

Effects of LSD which can be felt within minutes of ingestion include weakness, tremors, nausea, sleeplessness, restlessness, paresthesia

²⁸ See Certificate of Analysis, prepared by Dr Vincent ZURZOLO, dated 22 June 2006 (Coronial Brief of Evidence) (Exhibits 1 and 2).

²⁹ Expert Report, prepared by Francois Jacobus OOSTHUIZEN, dated 10 August 2009.

³⁰ Above n 5.

³¹ Above n 5, pages 3 to 4.

(sensation of tingling, crawling or burning on skin), piloerection (hair on body being erect), blurred vision, dry mouth and tachycardia. Within about 30 minutes or one hour after ingestion effects of LSD usage include visual or other hallucinations, separation from reality, disturbances in cognition and perception, a dream like experience, there can also be hysterical behaviour, hyperactivity, psychotic reasons, rapid mood changes. These effects generally peak around 2 or more hours after ingestion."

Review of the Evidence

43 To assist one to assess the possible causes of Daneeks's death it is important to consider what Dr Lyons referred to as the general four core principles of water-related deaths including:³²

- a) The victim was alive or dead before entry into water;
- b) The victim drowned;
- c) The reasons the victim got into the water in the first place; and,
- d) The reasons the victim was unable to survive in the water.

44 A number of possibilities were identified during this Inquest as to why Daneeka's body was found in the waterhole at The Channon property on 20 April 2006, including that:

- Daneeka involuntarily entered the waterhole by:
 - Falling into the waterhole and drowning.
 - Being pushed into the waterhole and drowning.
- Daneeka voluntarily entered the waterhole and drowned.
- Daneeka was already deceased, when she was placed in the waterhole.

45 It is impossible on the evidence before me to exclude any of these possibilities and I so find.

46 It must be clear from my opening comments, and my open finding as to the cause of Daneeka's death, that I am also unable to be satisfied as to the manner of Daneeka's death.

³² Transcript, 28 May 2009, page 37, lines 29-39.

47 It is at this point that some analysis of the civilian evidence requires consideration particularly as to the movements of Daneeka and apparent fluctuations in her mental state whilst at the party at The Channon property. Generally speaking, on the evidence before me, Daneeka had been variously described (during this period) as looking 'a bit tired', 'dazed' and 'spaced out'.

48 Some selective examples of apparent encounters between Daneeka and witnesses at The Channon property on 16 April 2006 prior to her last sighting at about 8:00pm that same day, include:

- Between 2:00pm and 3:00pm on 16 April 2006, Mr Brian Woodham was leaving the party at The Channon property (after staying for one night), when he stopped to assist in towing two wheel drive vehicles that had been "bogged" at the top of a hill on The Channon property, with his four wheel drive vehicle.³³

After doing this for at least one hour and probably even for a longer time, Mr Woodham recalled that *"we noticed [a] girl come out of the bushes"* with twigs and grass in her hair.³⁴ Although Mr Woodham did not recognise that girl, it was his opinion that the girl *"appeared to have a vacant stare...something I seen with drug users. She had a permanent smile on her face and was laughing to herself for no apparent reason. I believed this girl was in need of help and looking after."* Further, Mr Woodham stated to Police that: *"I can't see how she [the girl] could have actually gotten to that spot without having been sitting there in the bush for hours"*.³⁵ Mr Woodham clarified his opinion by saying that *"I can't see any way that she could have got to that spot without having been there prior to us"*.³⁶

Mr Woodham gave evidence that he held the girl's hand *"to help her through the boggy mud"* during which time he *"kept trying to talk to her"*, with no response from her.³⁷ Having regard to the description of the girl who was seen by Mr Woodham,

³³ ERISP Interview between Brian WOODHAM conducted by Detective Senior Constable Rhodes, on 4 August 2010, q.64 (Supplementary Coronial Brief of Evidence, Volume 1, Tab 15) (Exhibit 12).

³⁴ Above n 33, q.68.

³⁵ Above n 33, q 110.

³⁶ Above n 33, q 111.

³⁷ Above n 33, q 98.

noting in particular a comparison of her physical features and clothing, I find that this girl was Daneeka.

- After 4:30pm on 16 April 2006, evidence available suggests that Daneeka was seen sitting at The Channon property near where a number of people were eating. Daneeka at that time is said to have indicated that she was cold and, in response Ms Maria Ferry gave Daneeka a black poncho (which belonged to Ms Ferry) to wear. According to Ms Ferry, at that time, Daneeka appeared to be quiet, a bit withdrawn, a “*bit vague*” and “*a little bit spacey*”.
- The statement of Mr Stan Claessens further recalled that he had been seated around a campfire when he “*became aware of a young woman*” (later known to be Daneeka).³⁸ Spending a “*short time with the group*”, Mr Claessens suggested that “*she was behaving as though she was affected by something. She was defiantly (sic) intoxicated and was very unsteady on her feet*”.³⁹ According to Mr Claessens, that young woman “*seemed to be drifting in and out of it. She was finding it hard to stay on her seat. I remember that on one occasion when she went to sit down she missed the seat all together and fell onto the ground.*”⁴⁰
- Evidence available suggests that Daneeka then walked away from that group allegedly wearing Ms Ferry's black poncho and walked in the direction of the driveway that leads away from the house on The Channon property and towards the main road.
- After an hour and a half later, Ms Ferry recalls that Mr Douglas Radjenovich began to express some concern for Daneeka, as she had not returned. Ms Ferry said Mr Radjenovich went to look for Daneeka. Ms Ferry recalled that Mr Radjenovich returned to the communal area approximately an hour and a half later and at that time, he held in his hand “*a shawl*”. Evidence available confirms that the “*shawl*” was the black poncho that Ms Ferry had lent to Daneeka earlier that same evening. Further, it should be noted that this black poncho/'shawl' was forensically examined

³⁸ Statement of Stan CLAESSENS, dated 11 November 2010, para 15 (Supplementary Coronial Brief of Evidence, Volume 3, Tab 90) (Exhibit 12)

³⁹ Above n 38, para 17.

⁴⁰ Above n 38, para 18.

by the Division of Analytical Laboratories⁴¹ and resulting from that examination, it was found that:

- The DNA profiles recovered from three areas of the 'shawl' are consistent with originating from the same unknown female individual and could not have originated from Daneeka;
 - Traces of DNA of a male individual were also recovered but at levels too low to determine an individual profile; and,
 - Semen was not detected on the 'shawl'.
- At approximately 7:00pm to 7:30pm, that same evening Ms Danielle Egan, who had also attended this weekend gathering, gave evidence before me that she recalled "a girl" (who I now find on Ms Egan's evidence to be Daneeka) approach her group of friends and sit with them. Ms Egan stated *"she [Daneeka] appeared in a daze, and was quite disoriented. I also observed that she appeared to be withdrawn and was very difficult to draw into conversation."*⁴²

According to Ms Egan, after sitting with her group with little interaction, Daneeka then wandered off and in the direction of the creek to the west.⁴³ However Daneeka returned to that same group of people less than thirty minutes later, asking that same group "which way it was to the party". Mr Rory Caleb Stevens (Ms Egan's acquaintance) is then said to have given Daneeka some directions to that location and Daneeka then left, walking over the grid toward the house (on Mr Stevens' account in his statement).⁴⁴

- At 8:00pm on 16 April 2006, Ms McInerney (lessee of The Channon property) had recalled going to bed and at that time, seeing a girl who she now knows to have been Daneeka, standing on the verandah of her house.⁴⁵ According to Ms McInerney, she observed that Daneeka "didn't say anything", was swaying, and appeared to be lost.

⁴¹ Certificate of Analysis (Report No 2), prepared by Rebecca WILLIAMS, dated 9 August 2010 (Supplementary Coronial Brief of Evidence, Volume 2, Tab 40) (Exhibit 12)

⁴² Statement of Danielle EGAN, dated 21 April 2006, para 3 (Coronial Brief of Evidence, Volume 4, Tab 133) (Exhibit 12)

⁴³ Above n 42, para 4.

⁴⁴ Statement of Rory Caleb STEVENS, dated 24 April 2006, para 10 (Coronial Brief of Evidence) (Exhibit 2).

⁴⁵ Statement of Sheree McINERNEY, dated 20 April 2006, paras 30 and 33 (Coronial Brief of Evidence) (Exhibit 2).

- 49 Various witnesses concur that Daneeka was wearing a long sleeved hooded jacket and white/blue patterned board shorts during the late afternoon/evening on 16 April 2006. These observations accord with the clothes on Daneeka's body when she was found and retrieved from the waterhole on 20 April 2006. Forensic testing of these pieces of clothing failed to disclose material capable of viable DNA analysis.⁴⁶
- 50 Having regard to the evidenced change in Daneeka's demeanour and conduct (particularly during the late afternoon/evening of 16 April 2006) and noting the evidence of civilian witnesses (which I accept) as to some likely consumption of illicit drugs at the party, with particular reference to LSD, Dr Perl has relevantly and usefully stated as follows:⁴⁷

"3. Time period in which the drug remains on the system ?

The analysis for LSD is complicated by the fact that the blood levels of LSD can be extremely low for there to be pharmacological effect on the subject using the drug. In fact an oral dose of just 20ug (0.000020 grams) in an adult can produce obvious central nervous system effects. Furthermore LSD degrades readily in biological specimens exposed to light and elevated temperatures (and it is possible to have degradation of drugs due to bacterial activity eg. The process of decomposition) and the LSD can bind to the container in which the specimen has been placed with the passage of time."

...

4. Time period in which a person continues to be affected by the drug ?

"The effects of LSD after an oral dose can persist for 10-12 hours, although there is unpredictable recurrence of hallucinations ("flashbacks") which can occur weeks or months after the last dose in some users."

- 51 It is impossible to exclude on my finding that Daneeka may have in an altered state, whether induced voluntarily or otherwise, wandered in a fashion consistent with earlier

⁴⁶ Expert certificate prepared by Alison SEARS, dated 25 November 2010 (Supplementary Coronial Brief of Evidence, Volume 4, Tab 133) (Exhibit 12).

⁴⁷ Above n 5, pages 4 to 5.

observations of her and accidentally found herself by misadventure in the waterhole, resulting in her death.

52 Further there are other possible scenarios, some for example explored in Mr Boe's written submissions that cannot comfortably be excluded either on all of the evidence before me.

THE INVESTIGATION

53 Daneeka's family, through their legal representatives, have made some actual and implied criticisms of the police investigation, particularly in the early stages, that have been properly available in my view. Mr Saidi of counsel for the NSW Commissioner of Police, frankly conceded a number of these difficulties.

54 Without being exhaustive, the particular matters of concern which had been raised by Daneeka's father, included that the police had:⁴⁸

- Taken too long to locate his daughter;
- Delayed the search of the waterhole;
- Required divers to search the body of water of “this [small] size”;
- Inhibited his ability to assist with his daughter’s search; and,
- Lacked compassion and sensitivity during the investigation.

55 Whilst some of Mr Nixon's concerns were properly available, in relation to the issue raised by Mr Nixon about the prohibition of non-police divers to search bodies of water, there was evidence exhibited before me of a NSW Police Intranet document, entitled "Use of Non-Police Divers".⁴⁹ I am satisfied that there is a proper basis for that protocol and that it was properly implemented in this case.

56 A further concern that was made out in the evidence before me was that Detective Manitta, one of the initial investigating officers in charge, had formed an early view that Daneeka's death was occasioned by an accidental drowning and subsequently he had failed to undertake some important tests at the early stages of the investigation. This

⁴⁸ See generally statement of Paul NIXON, dated 22 November 2006.

⁴⁹ Exhibit 7.

position was conceded by Detective Manitta during the course of his oral evidence before me.

57 I have been assisted by what was ultimately a thorough investigation and a brief of evidence comprising of six volumes of material was exhibited during the hearing of the Inquest.⁵⁰

58 Whilst the initial difficulties and understandings must have added to the family's frustration, I am not persuaded that any different determination would have been made if matters took a different course.

59 It is always a cause for frustration for myself and I am sure the family and investigators, when the evidence (as it sadly does in this case), means that I am obliged to make open findings as to the manner and cause of Daneeka's tragic death.

PERSONALITIES

60 I thank my team Warwick Hunt of counsel and his instructing solicitor Jamal Maroon of the Crown Solicitor's Office for their assistance and I make special mention of Andrew Boe of counsel and his instructing solicitor Renee Williams whose thorough and careful advocacy should be acknowledged.

61 The work done in the investigation into the death of Daneeka Nixon by Detective Senior Constable Adam Rhodes, the Officer in Charge, and Acting Inspector Matthew Kehoe, who was involved after the first Inquest, should also be acknowledged.

FORMAL FINDING

62 **I find that Daneeka Priscilla NIXON died between 8:00pm on 16 April 2006 and 4:00pm on 20 April 2006 at Lot 254 The Channon, Lismore, but the evidence adduced does not enable me to determine either the manner or cause of her death.**

⁵⁰ Exhibits 2 and 12.

63 **I extend the court's sympathies, and mine, to the relatives of Daneeka.**

RECOMMENDATIONS

64 Although Daneeka's family contend for a recommendation for a protocol that freshwater deaths ought to be treated as suspicious and other measures to preserve relevant forensic material and improve dialogue between investigators and pathologists, I am unpersuaded of the utility of such a recommendation, given the breath of incidences that would be caught by it, and the number of existing protocols that are currently attached to death related investigations.

65 **The New South Wales Commissioner of Police should give consideration to negotiating a Charter of Agreement between himself and the Queensland Commissioner of Police in relation to the shared use of each Service's police diver resources in the areas close to the New South Wales / Queensland border, similar to the Charter of Agreement apparently in place between the New South Wales Commissioner of Police and the Victorian Commissioner of Police in relation to the shared use of each Service's police diver resources in the areas close to the New South Wales / Victorian border.**

66 **The Officer in Charge of this Coronial investigation is to forward a file of the evidence in this matter to the Cold Case Division of the Homicide Squad. I further recommend that these investigators assess the viability of diatom testing of retained physical samples, in consultation with Professor Jacob John, Curtin University, Western Australia.**

M. MacPherson
Deputy State Coroner
3 December 2010
LISMORE