



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 15th and 16th days of March 2017 and the 18th day of December 2017, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Jason Wilson.

The said Court finds that Jason Wilson aged 40 years, late of 11a Sheffield Crescent, Blair Athol, South Australia died at Murray River, downstream from Draper Street, Berri, South Australia on the 2nd day of February 2013 as a result of drowning. The said Court finds that the circumstances of his death were as follows:

1. Introduction and reason for Inquest

- 1.1. Jason Wilson died on 2 February 2013. He was 40 years of age. An autopsy was carried out by forensic pathologist, Dr Stephen Wills, who gave the cause of death as drowning¹ and I so find.
- 1.2. Mr Wilson was attempting to swim across the River Murray when he became too weak to continue. Just before he entered the river he had been approached by police for questioning in relation to a theft that had occurred earlier that day. In an attempt to evade the police he entered the river and attempted the crossing. As a consequence his was a death in custody within the meaning of that expression in the Coroners Act 2003 and this Inquest was held as required by section 21(1)(a) of that Act.
- 1.3. Mr Wilson was an Indigenous man. At post-mortem examination Dr Wills noted extensive post-surgical scarring upon the abdomen and a small catheter emerging through the right side of the abdominal wall. In the months preceding his death

¹ Exhibit C2a

Mr Wilson had been an inpatient at The Queen Elizabeth Hospital. He had initially presented on 15 November 2012 with haematemesis and hypotension following which endoscopy diagnosed a bleeding duodenal ulcer which was treated endoscopically following which he was discharged on 19 November 2012. However he presented again on 21 November 2012 with haematemesis and hypotension and required an emergency laparotomy with partial gastrectomy, stenting of the pancreatic duct (with external drainage) and a gastroduodenostomy. Although his prognosis was considered quite poor, his condition improved but he developed sepsis and a pelvic abscess requiring further laparotomy and drain insertion. His condition progressed and a further drain was inserted under ultrasound guidance. Prior to discharge at the end of December 2012 an attempt was made to remove the pancreatic stent but this was unsuccessful and he was discharged, or discharged himself (the medical records contain self-discharge documentation). On discharge he had one drain with the pancreatic stent insitu. He was seen in the outpatient department on 10 January 2013 with one drain producing 100mls of pus per day and the stent producing 300mls to 400mls per day. The notes recorded that he was coping well but looked malnourished. He planned to move to Berri and arrangements had been made for him to be followed up in Berri with a review in six weeks at The Queen Elizabeth Hospital. The surgeon made a statement² detailing this medical history. The surgeon gave the opinion that at the time of his death Mr Wilson would not have been back to full physical strength, but could carry out normal daily duties. The surgeon would not have expected him to be well enough for fulltime employment due to tiredness. The surgeon's opinion was that Mr Wilson would not have been able to swim across the river, although this would have depended to some extent on his pre-existing competency at swimming.

- 1.4. Various records from Berri Hospital, Berri Medical Centre and the Riverland Division of General Practice detail that a number of contacts were made by Mr Wilson with the health system for wound dressings and bag changes.

2. The events of 2 February 2013

- 2.1. At approximately 2:30pm on Saturday 2 February 2013 Alicia Omant³ and Anita Janssen⁴ took their dogs for a walk near the Berri Rowing Club on the River Murray.

² Exhibit C20

³ Exhibit C4a

⁴ Exhibit C5a

They travelled to the club in Ms Janssen's vehicle. Ms Omant left her bag on the front passenger seat and the front passenger window was about half way down. The car was unlocked. Ms Omant and Ms Janssen sat down on the grass about 20 metres away from the car and watched their dogs running around for some time. Soon after this Ms Omant noticed that there was a man standing next to the car. She saw him '*pulling himself out of the front passenger window*'. Knowing that her bag was in the car she had no doubt that the man was either taking the bag or stealing something from it. She said the man was of Aboriginal appearance and wearing a dark coloured baseball cap. He was wearing a dark blue top. The top had a white number written on the back. The man left the car and walked off into the bushes in a northerly direction. The women contacted the police using the triple zero line and in the meantime observed the man walking through the scrub and the bushes heading in a westerly direction towards the rodeo grounds. Ms Omant said that the police arrived some 10 or 15 minutes later and she and Ms Janssen told them what had occurred. Ms Omant was asked to get into the police car to try to locate the man and she did so.

- 2.2. Ms Omant said that the police drove her to a campsite and she saw a man who she believed was the man who had taken her handbag. She recognised him because he had the same gait as the person she had seen and was slightly hunched over. She noticed that the man who walked away from the car had that same demeanour. A short time later a police officer showed her a baseball cap and a blue shirt and asked her if she recognised them and she identified them as being exactly the same as the clothes she had seen the suspect wearing⁵.
- 2.3. Sergeant Haebich gave evidence. On that day he responded to the triple zero call. He was one of the officers in the vehicle that Ms Omant had entered. He gave an account of seeing Ms Omant and Ms Janssen standing next to their car at the grassed area near the rowing club. He noted that the area also has the Berri rodeo grounds and is quite scrubby. He confirmed that the women gave him an account of what had occurred. They drove west along one of the tracks that runs parallel with the River Murray and stopped and spoke with three men at a bush camp near the rodeo grounds. Shortly after this he made inquiries of a man and a woman in a vehicle and then saw another vehicle driving in an easterly direction. They stopped. They spoke to the occupants of that vehicle who told them they had seen a person fitting the description of the suspect

⁵ Exhibit C4a

within the last 10 minutes walking west along the river just past the pump station near the rodeo grounds. Sergeant Haebich then drove the vehicle towards that area. Sergeant Haebich said that the police vehicle passed the pumps near the rodeo grounds and continued west along the track closest to the River Murray. They then came to another bush camp which consisted of a large tent, a caravan and some smaller tents. He and Senior Constable Casey who was with him got out of the vehicle and made their way towards the caravan and called out. Sergeant Haebich said a man he knows as Ronald Wilson exited the caravan and then a man he knew as Andrew Taylor exited the caravan too. Mr Wilson asked why the police were there and they informed him that a person had stolen a handbag a short time ago. Then a younger male exited the caravan and Sergeant Haebich asked if anyone else was there. No-one answered and then Senior Constable Casey put his head through the open doorway and another male left the caravan. That person was around 40 years of age and gave his name as Jason Hunter. He was wearing dark coloured shorts and no top. He had a bandaged area around his stomach. Sergeant Haebich spoke with the man calling himself Jason Hunter who provided his date of birth and the address at which he was staying. He did not have any identification. Sergeant Haebich noted the time at this point as being 1525 hours. Sergeant Haebich noted that the man walked with a hunch. Sergeant Haebich then returned to the vehicle and spoke with Ms Omant and asked her if any of the men looked like the man that took her handbag. She said the one without a shirt looks like him from the way he walks and the hunched over shoulders. At this point Sergeant Haebich noted that Senior Constable Casey was walking towards him from the direction of the caravan and was carrying a navy blue top and a black cap with white writing on the front of it. The navy blue top had a faded '00' on it in white and silver and the black cap had the initials 'NY' typed on the front. Sergeant Haebich had a brief conversation with Senior Constable Casey about arresting Jason Hunter for the theft. They then called over the radio for the cage car to be brought to the location.

- 2.4. Sergeant Haebich then saw the man calling himself Jason Hunter pick up two fishing rods and walk towards the river's edge. He intended to wait until the cage car arrived before making the arrest. He then saw the man step into the water and move further out into the water and then walk through the river but parallel with the bank behind some high reeds. Sergeant Haebich heard Senior Constable Casey saying to the man to come out of the water because they needed to speak to him about a stolen handbag. Sergeant Haebich said that the man became vocally abusive and denied that he had done

anything. Sergeant Haebich followed the sound of the voice along the reeds although he could not see the man at this time. He continued to walk until he found a spot he could see between the reeds towards the river. At that point he noted that the man calling himself Jason Hunter had now swum out into the river. He noted that the man did not appear to be in any difficulty and he informed police communications of what was occurring. He then requested that officers at the Berri base contact the local Marine and Harbours and the SES with a view to obtaining access to a boat. After using the radio he returned to note that the man was now close to the middle of the river. There were no boats in sight and he was concerned that the man was trying to avoid being arrested. He requested the attendance of a patrol on the opposite side of the river and then moved his car to a high point a short distance away and activated the lights to provide any patrols on the other side of the river with a reference point. During this time he could hear Senior Constable Casey and other police yelling for the man to return to the bank. After having moved the vehicle Sergeant Haebich noted that the man had now slowed down and was past the middle of the river.

- 2.5. Sergeant Haebich said that as no boats had come into the vicinity and there was no sign of SES or Marine and Harbours and the man had passed the centre of the river, he removed his gun belt and asked another officer to lock it away. He informed the other officers that he was going to swim out to the man and try to get him to the other side before he went under. As he was taking off his boots he was informed by Senior Constable Fearn that she was a strong swimmer and would go with him. Sergeant Haebich said that he stripped to his underclothes and with Senior Constable Fearn swimming behind him he entered the river and made out for the man. He said that as he swam he could see the man now appeared to be treading water and that the current had taken him downstream. Sergeant Haebich and Senior Constable Fearn swam in the man's direction. Sergeant Haebich said the water was now becoming choppy and every now and then he would look up to get his bearings on the man's position. He said that when he was within what he estimated to be about 60 metres from the man he looked but could no longer see him. He said that he could not accurately gauge the distance he was from the man at this point because the water was choppy and he had no points of reference. They continued to swim to where they last saw the man but could not find him. After remaining in the vicinity of where they thought the man had been they swam to the other bank of the river.

- 2.6. Sergeant Haebich said that his intention was to arrest the man describing himself as Jason Hunter to establish his identity. As it turned out the man was in fact Jason Wilson. Sergeant Haebich said that he did not enter the water until Mr Wilson was at least half way across because he did not want to discourage him from returning to the western side of the river. He said that as soon as he realised that Mr Wilson was in difficulty though, he decided to get in but this was when Mr Wilson was two thirds to three quarters of the way across.
- 2.7. Senior Constable Casey gave evidence at the Inquest. He confirmed that he was with Sergeant Haebich. His account corresponds with that of Sergeant Haebich. Senior Constable Casey described asking the first man to emerge from the caravan if he could have a look in the van and that he was permitted to do so. He said that he entered the van and saw a dark coloured top and a hat. He removed them from the caravan and noted that the top had big white numbers on it and the hat was black with a white motif on the front of it. These items were shown to Ms Omant to see if she could identify them. Ms Omant told the police that she thought they were the items worn by the offender but could not be 100% sure. The items were placed in bag for further testing and at that point he discussed with Sergeant Haebich that there was reasonable cause to suspect that the man calling himself Jason Hunter was their suspect for the crime⁶. Senior Constable Casey gave an account of Mr Wilson entering the river which is consistent with that of Sergeant Haebich. Senior Constable Casey said he informed Mr Wilson that he was investigating a handbag theft and needed to talk to him and that Mr Wilson denied that he had taken a bag. Mr Wilson then went around the reeds as described by Sergeant Haebich. Shortly after this Senior Constable Casey saw Mr Wilson swimming out into the river and he yelled out for him to come back. It was Senior Constable Casey's belief that Mr Wilson was going to evade police by swimming to the other side of the river.
- 2.8. Senior Constable Casey gave an account of Sergeant Haebich and Senior Constable Fearn entering the river and swimming towards Mr Wilson. Senior Constable Casey watched them and then noted that Mr Wilson was no longer swimming. Senior Constable Casey described him as bobbing up and down when he was at least three quarters of the way across the river. Senior Constable Casey said that his estimate of the distance between Mr Wilson and Sergeant Haebich and Senior Constable Fearn

⁶ Transcript, pages 93-94

when he last saw Mr Wilson above the water was 20 metres. He said that Sergeant Haebich and Senior Constable Fearn swam to the spot where Mr Wilson had last been seen. They obviously could not find Mr Wilson and then went to the far bank.

- 2.9. Senior Constable Colligan also gave evidence. His account as to the circumstances in which Mr Wilson entered the river and what happened to him thereafter accord broadly with the accounts given by Sergeant Haebich and Senior Constable Casey. He was asked whether he recalled some of Mr Wilson's friends on the riverbank suggesting that the police should leave and that they would bring Mr Wilson into the police station later. He acknowledged that this offer or something like it was made, but said that he did not think it was a viable solution. He said that he did not report that suggestion to Sergeant Haebich who he thought was near enough to have heard it in any event. He said that it was simply not a tenable approach to policing.
- 2.10. I agree. The police had attempted to engage with Mr Wilson to establish his identity and had an intention to arrest him. It would have been inconsistent with the normal tenets of policing for them to have withdrawn at that point. I acknowledge that the offending in question was minor, but on the other hand Mr Wilson's refusal to cooperate escalated the situation to a point where police could have no confidence that the matter could be resolved with any prospect that the reported crime would be solved.
- 2.11. Senior Constable Colligan was questioned about the exchanges that took place between the civilians on the riverbank and the police. I have reviewed video footage that was tendered. It was taken on the mobile phones of some of the civilians present on the riverbank. It shows some provocative language being used by the civilians and police responding robustly. I have not found it helpful closely to analyse what was said and by whom. It did not in any way delay the entry of Sergeant Haebich and Senior Constable Fearn into the river to effect the necessary rescue. It did not delay them once they were in the river. Although it was clearly not constructive, it had no bearing on the tragic outcome.
- 2.12. Senior Constable Fearn also gave evidence. She explained that she had a background in surf life saving and is the holder of a bronze medallion which has been twice renewed, although her experience is in the sea rather than the river. She said that she believed that Mr Wilson was getting into difficulty after he was already halfway across the river and decided to attempt a rescue. She saw that Sergeant Haebich was removing

his clothing and she said that she intended to assist him. She said that they entered the river together. She said that she swam freestyle but with her head above water in order to maintain observations on Mr Wilson. Senior Constable Fearn said that when she and Sergeant Haebich were halfway across the river they saw Mr Wilson go under water three or four times. At that point she estimated that he was 20 metres away when she lost sight of him. She said that she and Sergeant Haebich went to the area where they had last seen Mr Wilson and swam for two to three minutes. She tried to go below the surface to see him but could see nothing. Before entering the water she had asked members of the public if they had a flotation device or rope in order to assist, but without success.

- 2.13. I heard evidence also from Mr Grant Watkins, Aquatic Safety Officer and President of the Royal Life Saving Society. He said that the river is a very dangerous place because a swimmer cannot see what is under the surface, nor how cold it is, nor how fast flowing. He noted that hazards within the river including dead wood will be moved by the current and they can change their location from day to day. He noted that fresh water is less buoyant than sea water and that the temperature of the water becomes colder the further you go out. He said that the colder the person gets, the more difficult it is to breathe. He said that he would not recommend anyone attempting to swim across the river. He said that when considering a rescue attempt it is necessary to consider personal fitness and swimming ability. He said that it is '*a big call*' to swim out 100 metres to try to save someone and that he would not recommend it. He also said that a fatigued rescuer will find it difficult to fend off the person being rescued if they do manage to reach them. He said that it might be an acceptable risk to try to rescue a person within 10 to 15 metres of the bank. In short, he said that he would not recommend someone swimming to effect a rescue in the river, but instead to use a boat or other vessel.
- 2.14. The police witnesses, particularly Sergeant Haebich, were questioned about the decision to take one of the two civilian witnesses with them on the basis that it could prejudice an identification process later. The response from Sergeant Haebich was that the person was in a position to assist with the hope of achieving a quick result and that they still had one eye witness in Ms Janssen whom they had left behind at the Berri Rowing Club and whose evidence would not be tainted to carry out a proper identification later.

3. **Conclusion**

- 3.1. The handbag was never found in the caravan or the camp site, or at all. It is certainly not safe to conclude that Mr Wilson was in fact the person who stole the handbag, and certainly not to the requisite standard of proof required for a prosecution. There was however a circumstantial case and I make no criticism of the police decision to question and arrest Mr Wilson to establish his proper identification. His action in entering the river and evading police tends to suggest he had some motivation for avoiding them, although that could easily be attributable to past negative experiences with police and authorities. Nevertheless, the primary responsibility for entering the river must rest with him and it cannot be suggested that he was chased into the water or forced into the water by any action of the police. The behaviour of Sergeant Haebich and Senior Constable Fearn in entering the river to effect a swimming rescue was highly commendable. Their actions were conspicuously fearless, although as the evidence of Aquatic Safety expert Mr Watkins suggested, not best practice. However, the police officers found themselves unable to resist an act of humanity and, while not to be recommended, their valour is certainly to be admired.
- 3.2. Mr Wilson's story is another tragic example of an Aboriginal death in custody. An account of his life is to be found in a statement of Maria Wilson, his sister⁷. She said that Jason was born on 28 November 1972 in Broken Hill, although the family lived in Wilcannia on the riverbank in a camp or tin hut. She said that Jason's brothers ran amok after their father died and were all in trouble with the police. Tragically of Jason's seven brothers, six are now deceased, along with Jason as well. Jason was sent to a home in Sydney called Mount Prenang and was also in Tamworth Boys Home for a while. When he got older his trouble with the police led him to spend time in and out of gaol. Jason was never married and did not have a specific house where he would live. He was very family oriented and a happy person. When he had money he would always take the children and buy icecream for them. Even though he moved around a lot he still considered Wilcannia his home. He was a Paakanj man and Wilcannia is Paakanj country.

⁷ Exhibit C19a

4. Recommendations

4.1. I do not have any recommendations to make in this matter.

Key Words: Death in Custody; Drowning

In witness whereof the said Coroner has hereunto set and subscribed his hand and

Seal the 18th day of December, 2017.

State Coroner

Inquest Number 01/2017 (0190/2013)