



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 3rd day of March, the 1st and the 15th day of July 2020, the 3rd day of August 2021 and the 29th day of March 2022, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Kunmanara Cooper.

The said Court finds that Kunmanara Cooper aged 36 years, late of Docker River Community, Via Alice Springs, Northern Territory died at Ceduna Beach, Ceduna, South Australia on the 21st day of January 2017 as a result of drowning. The said Court finds that the circumstances of his death were as follows:

1. Introduction, cause of death and reason for inquest

- 1.1. Kunmanara Cooper was a 36 year old Indigenous man who died on 21 January 2017. He met his death when he drowned at a beach at Ceduna, on the west coast of the State. Kunmanara Cooper was evading police arrest when he walked into the water and swam out of his depth. This occurred not long after 6pm on Saturday 21 January 2017. Kunmanara Cooper was approximately 300 metres offshore when he submerged and failed to resurface. His body was located by police the following morning. His body was recovered from the water.
- 1.2. A post-mortem examination was conducted by Dr Neil Langlois who is a forensic pathologist at Forensic Science South Australia (FSSA). Dr Langlois' post-mortem report¹ was tendered at the inquest. On the morning of 22 January 2017, which was the day on which Kunmanara Cooper's body was recovered by police, Dr Langlois

¹ Exhibit C2a

travelled by air to Ceduna where at the Ceduna Hospital mortuary he examined Kunmanara Cooper's body. Dr Langlois made external observations of the body. There was no trauma to the body apart from some abrasions, grazes and lacerations to the forehead region and the left palm and lower limbs. These were regarded as reflecting minor trauma. There is no suggestion that in any attempt to arrest Kunmanara Cooper any physical contact between police and Kunmanara Cooper had occurred. In his report, Dr Langlois opines that these minor injuries were in keeping with having been occasioned in falls.

- 1.3. Dr Langlois performed an autopsy in respect of Kunmanara Cooper's remains. Dr Langlois reports as follows:

'There are no diagnostic tests that can be applied to prove drowning. The presence of white froth emanating from the mouth is a strong supporting sign (although not specific). The presence of heavy lungs is also supportive. The biochemical analysis of the vitreous fluid from the eyes had high levels of sodium and chloride, which is regarded by some as a sign in keeping with drowning in salt water. However, the levels were not high in the sample of cerebrospinal fluid.

Expert neuropathological examination of the brain found it to be congested and swollen with minor patchy recent subarachnoid haemorrhage. Congestion and swelling of the brain are non-specific findings and can be regarded as in keeping with drowning. Subarachnoid haemorrhage refers to blood on the surface of the brain. It is also a non-specific finding and has been observed in cases of drowning.'²

Dr Langlois added that a meaningful estimate as to the time of Kunmanara Cooper's death could not be performed as he had been submerged in water and then retrieved to a mortuary fridge.

- 1.4. Dr Langlois states that the cause of death is '*attributed to drowning*'. It is the finding of this Court that when taking into account Dr Langlois' post-mortem examination together with the circumstances surrounding Kunmanara Cooper's death, indeed the cause of his death was drowning and I so find.
- 1.5. Other relevant observations concerning Kunmanara Cooper's body included the presence of a bandage that was attached to a bag around the deceased's right shoulder. This object was attached to the deceased when he was recovered by police from the water. This white elasticated bandage was attached to a green plastic bag. Kunmanara Cooper had been seen to be in possession of this object before he entered the water and

² Exhibit C2a

drowned. Kunmanara Cooper also had what Dr Langlois describes as a flap laceration of approximately 1 centimetre by 2 centimetres attached distally in the region of the left palm of the base of the little finger.

- 1.6. Toxicological analysis conducted from post-mortem samples detected the presence of cannabinoids and alcohol in Kunmanara Cooper's system. The alcohol was at a low level, being 0.01% as detected in preserved peripheral blood.
- 1.7. Kunmanara Cooper had an old, ulcerated area of the right middle finger. He had been receiving medical treatment for this injury since early December 2016 at the Ceduna District Health Service.
- 1.8. It is plain on the evidence that on the day of Kunmanara Cooper's death police had the intention of arresting Kunmanara Cooper and were attempting to do so at the time he drowned. It is also evident that Kunmanara Cooper was evading apprehension by police. His death therefore was a death in custody as defined in the Coroner's Act 2003. For that reason a mandatory inquest was held in relation to the cause and circumstances of Kunmanara Cooper's death. These are the findings of that inquest.

2. Background

- 2.1. Kunmanara Cooper had been living in Ceduna for about six weeks prior to his death. He had lived for the most part in Western Australia but had also spent some time living in Yalata to the west of Ceduna and in the APY Lands as well. He was described as a good swimmer by his sister, Priscilla Cooper.
- 2.2. Kunmanara Cooper had a criminal history that included convictions for the commission of offences in South Australia, Western Australia and the Northern Territory. His history included offences of violence, some of which involved assaults on police. As well, he had convictions for attempting to evade police and for escaping from custody.
- 2.3. On 14 January 2017 Kunmanara Cooper was in Ceduna. On that day he was arrested and charged with illegal interference, with being unlawfully on premises and with dishonestly taking property. On the day of his arrest he was granted police bail for those alleged offences. There is no suggestion other than that Kunmanara Cooper's arrest on this occasion was lawful and appropriate. As part of the police bail agreement there was a condition imposed upon Kunmanara Cooper that required him to stay at the

Ceduna Town Camp until 16 January 2017 on which day he was further required to board the bus and travel to the Yalata Community. There was a further condition that he should not return to Ceduna except for the purposes of seeking medical attention or attending court.

- 2.4. On Monday 16 January 2017 Kunmanara Cooper was located in the Ceduna township by police. It was apparent by then that he had failed to comply with the condition of his bail that he travel to Yalata that day. Constable Ashley Reddaway of SAPOL located Kunmanara Cooper and questioned him. Kunmanara Cooper told Constable Reddaway that he had missed the bus that day and that '*the big boss*' had told him he could go on Wednesday. Constable Reddaway told him that he should go to the Town Camp and remain there until he caught the bus on Wednesday. He was reported by Constable Reddaway for breaching his bail. Constable Reddaway would be involved in the investigation of a further alleged offence committed by Kunmanara Cooper on 20 January 2017. He would also be involved in the incident of 21 January 2017 in which the attempt was made to arrest Kunmanara Cooper and in which Kunmanara Cooper drowned. However, on 16 January 2017 Kunmanara Cooper was not arrested for breaching bail; it was regarded as a minor breach and there were no other reports of other offences having been committed by him at that time.
- 2.5. The course of action in reporting Kunmanara Cooper for breach of bail was not unreasonable having regard to the demands involved in having to keep an individual like him in custody in a remote location and possibly for an extended period of time, before transfer to another centre. And besides, the breach of bail could readily be rectified by Kunmanara Cooper catching the bus to Yalata on the Wednesday. In my view Constable Reddaway's refraining from arresting Kunmanara Cooper was a common sense and appropriate police response.
- 2.6. On Thursday 19 January 2017 Kunmanara Cooper was again seen by police in Ceduna. He walked off as police approached a group of people of which he was part. There is no evidence that he was again seen by police that day.
- 2.7. At around this time of 19 and 20 January 2017 Kunmanara Cooper attended at the Ceduna Hospital. He received treatment on his hand from a paramedic at the day centre on 19 January 2017. At the Ceduna District Hospital on 20 January 2017, he was treated for multiple injuries to both of his hands which were suspected to have been caused

when he fell as he fled from police. A wound to his left hand was bandaged by the treating nurse. As indicated earlier, there was a bandage and a bag attached to his right arm in the vicinity of the shoulder as observed by Dr Langlois.

- 2.8. On Friday 20 January 2017 Kunmanara Cooper was still in Ceduna. It was becoming apparent that his ongoing presence in Ceduna was problematic. Not only was he in breach of his bail by still being in Ceduna, on that day allegations emerged that he had assaulted a Mr Kenneth Ingomar in Ceduna by punching him to the mouth and kicking him in the head. This had allegedly occurred after Ingomar had refused to allow Kunmanara Cooper to go with his daughter. Ingomar reported this to Constable Reddaway. A Police Incident Report was raised. Later that day police attempted to speak with Kunmanara Cooper but he ran away from them on two occasions. He was not located again that day.
- 2.9. Kunmanara Cooper was also suspected of having assaulted others including a Mr Wayne Gibson and a Mr Leroy York in Ceduna. This information was imparted to police on the morning of Saturday 21 January 2017. To my mind, these allegations as well as that involving Ingomar, plus the fact that he was in breach of his bail, gave rise to sufficient cause for police to arrest Kunmanara Cooper. It is evident that this is the course of action that police elected to adopt. He was in breach of his bail and to my mind there would also have been a need to prevent Kunmanara Cooper from committing further alleged offences. There was nothing unreasonable in police pursuing this course of action.

3. The incident of 21 January 2017

- 3.1. This was the day of Kunmanara Cooper's death. On that day police were actively taking steps to locate and arrest him.
- 3.2. At about 6:15pm on Saturday 21 January 2017, Senior Constable Mark Bentley and Constable Reddaway, to whom I have already referred, were on mobile uniform patrol in the vicinity of the Ceduna foreshore. They were alerted to the whereabouts of Kunmanara Cooper.
- 3.3. Both Senior Constable Bentley and Constable Reddaway made statements in the course of the police investigation into this death in custody. Both of these officers also gave oral evidence during the course of this inquest.

- 3.4. I carefully scrutinised the manner and content of the evidence given by both officers. I was impressed with both officers and have no hesitation in accepting their evidence.
- 3.5. Senior Constable Bentley and Constable Reddaway were informed that Kunmanara Cooper was walking towards the foreshore at North Terrace in Ceduna. Senior Constable Bentley and Constable Reddaway drove along North Terrace and saw Kunmanara Cooper walking across a grassed area towards the foreshore. Kunmanara Cooper saw the police vehicle and responded by running towards the beach. The information was that Kunmanara Cooper was in possession of a green shopping bag. When seen by the officers he was in possession of such a bag. This would be the item that was located attached to his right arm when he was recovered by police.
- 3.6. A communication was made via police communications to other officers in Ceduna that Kunmanara Cooper had been located on the beach and was heading towards Dowling Crescent. Kunmanara Cooper proceeded onto the beach and ran in a northerly direction along it. Senior Constable Bentley exited the police vehicle and began to chase him. Kunmanara Cooper by then, had a good lead and was some distance in front of Senior Constable Bentley. Senior Constable Bentley then decided to attempt to cut off Kunmanara Cooper as Kunmanara Cooper was making his way along the beach. In the hope that he would pass Kunmanara Cooper and intercept him further down the beach, Senior Constable Bentley ran along the top of a cliff face that was parallel to the beach. At various times Senior Constable Bentley shouted out to Kunmanara Cooper who either did not hear the shouts or ignored them.
- 3.7. Senior Constable Bentley then saw Kunmanara Cooper walk towards the water's edge and then slowly walk into the sea. He shouted to him to stop and come back to the beach. Kunmanara Cooper continued to walk into the sea. Senior Constable Bentley was still on the top of the rocky cliff face at this stage. He then made his way down to where Kunmanara Cooper had entered the water. By then Kunmanara Cooper was about 70 metres away from him and was still wading his way out. Senior Constable Bentley continued to shout for him to come back to the shore. There was no response. Kunmanara Cooper was slowly getting increasingly deeper into the water, to the point where only his head could be seen above it. At that point, Senior Constable Bentley could hear Constables Reddaway and a First Class Constable Noble shouting at Kunmanara Cooper also and urging him to come back to the shore.

- 3.8. At one point Kunmanara Cooper could be heard to be shouting himself and waving his arms about. He was about 300 metres from the shoreline at that point. Meanwhile Constable Reddaway was approximately 200 metres from Kunmanara Cooper. Constable Reddaway was positioned on a small cliff. He called out to Kunmanara Cooper to stop running. He also observed Kunmanara Cooper enter the water and continue to proceed further out into the sea. He observed Kunmanara Cooper starting to swim. Constable Reddaway updated police communications with the current situation. Constable Reddaway at one point called out to Kunmanara Cooper, even pointing out that there had been sharks in the area and that he should come back. In his statement³, Constable Reddaway asserts that Kunmanara Cooper himself started to call out for help. Constable Reddaway yelled at him to swim to the shore but Kunmanara Cooper still appeared to be trying to swim further out.
- 3.9. Senior Constable Bentley ultimately lost sight of Kunmanara Cooper and could no longer hear him calling out. Senior Constable Bentley made a communication to the effect that he could no longer see Kunmanara Cooper. The sea was scanned by police for several minutes but Kunmanara Cooper was no longer capable of being seen. He had submerged and had not resurfaced. To my mind it is obvious that he had drowned at that point.
- 3.10. During this incident, efforts were made to get a boat or boats on the water to assist in retrieving Kunmanara Cooper. When Kunmanara Cooper entered the water, police at the scene attempted to make contact with the SES to have a boat launched. Within a minute communication was made with a member of the SES in the hope that this person would be able to arrange for the launch of the State Emergency Service (SES) boat. Mr Perry Will, an SES member who had access to the SES boat in Ceduna, was contacted. It so happened that he was washing his own personal boat at that time. Mr Will immediately drove the boat and necessary equipment to the boat ramp where it was launched. In another effort to secure a boat, Constable Reddaway went to the home of an off-duty police officer whose husband worked as a fisheries officer and who had access to a boat. That man was away for work and so access to the boat could not be achieved. In fact, the boat was at Streaky Bay. Other enquiries were made to determine whether a boat was available at the boat ramp to assist in a rescue attempt.

³ Exhibit C22a

No boats were present at any of the three local boat ramps. I am unaware of the existence of a marina or boat haven at Ceduna or nearby Thevenard.

- 3.11. Ultimately Mr Will's boat was on the water at 6:42pm which was approximately 20 minutes after Kunmanara Cooper had entered the water. A subsequent search of the waters by boat, and of the shoreline, failed to locate him. At approximately 9:06pm the search by boat was called off due to darkness. However, foot searches continued intermittently along the beach front during the evening and into the night.
- 3.12. At about 8:30am on Sunday 22 January 2017, members of the SAPOL Water Operations Unit commenced a recovery operation in the sea off the Ceduna foreshore. During this search the body of Kunmanara Cooper was recovered from the water approximately 200 metres from the shoreline.
- 3.13. In my opinion police did everything they could to get a boat on the water to assist in the search for Kunmanara Cooper. The boat that was ultimately launched was the personal boat of Mr Will. Mr Will would have had access to an official SES boat but asserts in his statement that it would have taken longer to access and launch the SES boat than it did for him to launch his own boat. I accept all of that evidence.
- 3.14. The only other issue ventilated at the inquest is whether or not it would have been appropriate for police officers to enter the water in an endeavour to rescue Kunmanara Cooper. In this regard, Senior Constable Bentley in his statement states as follows:

'I did not consider it safe to follow COOPER into the sea, he was about seventy meters away from me, there have been several sightings of large sharks in the area over recent weeks, COOPER could have become violent and thereby placing me in mortal danger and making it into a two (2) person rescue mission. COOPER had ample time to change his mind and return to shore; however he chose to place himself in danger by entering the water and going beyond his limitations in the water.'⁴

For Constable Reddaway's part he states as follows:

'I did not enter the water as I knew that it would put me in danger if I was able to get to him as he would be panicking and likely drown me as well. I am able to swim but not a strong swimmer. I am not trained in any way to rescue someone who is drowning.'⁵

⁴ Exhibit C24

⁵ Exhibit C22a

I accept the validity of what both officers have said in this regard. Furthermore, a statement has been taken from Mr Grant Watkins who is the president and Drowning Prevention Officer of Royal Life Saving South Australia. Mr Watkins was asked to comment on the circumstances of Kunmanara Cooper's drowning, and in particular as to the issue of rescue by police. Mr Watkins asserts that an attempt to swim unaided in order to rescue Kunmanara Cooper would not be recommended. Mr Watkins notes that many victims of drowning were people who were attempting to rescue another person who was in difficulty in the water. I accept that analysis. In my view there was nothing unreasonable about police refraining from entering the water themselves in order to rescue Kunmanara Cooper.

- 3.15. The attempt to arrest Kunmanara Cooper was lawful and appropriate. I am also of the view that any suggestion that in attempting to arrest Kunmanara Cooper police unreasonably pursued him or forced or drove him into the sea to his death must be rejected.
- 3.16. I do not believe that it would have been a realistic proposition for police to have desisted from their attempt to arrest Kunmanara Cooper. I am not certain how that could practicably have been achieved and signified to him, and I doubt whether it would have altered Kunmanara Cooper's behaviour in the water in any case.
- 3.17. The only other matter that requires comment relates to the fact that in the immediate aftermath of this incident, one of the police officers involved in it, one Joshua Noble, originally tested positive for both THC and methylamphetamine. This test result has subsequently been confirmed to have been a false positive due to the testing kit having expired. Indeed, when a proper sample was sent to FSSA for analysis, it was tested as negative. No other police officers recorded positive tests to THC or methylamphetamine. I am perfectly satisfied that none of the police officers involved in this incident were affected by any substance. During the course of this inquest I enquired of counsel whether any one of them was urging me to make a finding to the contrary. Neither Mr Bowen for Kunmanara Cooper's family members nor Mr Damon on behalf of SAPOL indicated that they were urging me to make any such finding.

I indicated at the time that it would be my finding that Mr Noble's test involved a false positive for the presence of illicit substances and I do so find.

3.18. I do not make any recommendations in this matter.

Key Words: Death in Custody; Drowning; Police

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

Seal the 29th day of March, 2022.

Deputy State Coroner