



MAGISTRATES COURT of TASMANIA

CORONIAL DIVISION



Record of Investigation into Death (Without Inquest)

*Coroners Act 1995
Coroners Rules 2006
Rule 11*

I, Olivia McTaggart, Coroner, having investigated the death of Damian John Johnson

Find, pursuant to Section 28(1) of the Coroners Act 1995, that:

- (a) The identity of the deceased is Damian John Johnson;
- (b) Mr Johnson died as a result of an attack upon him by a white shark whilst he was diving for scallops;
- (c) Mr Johnson died on 25 July 2015 in the waters of Mercury Passage near Triabunna in Tasmania; and
- (d) Mr Johnson was born in Franklin, Tasmania on 13 January 1969 and was aged 46 years at the time of his death; he was married with two children and employed as a mechanic and commercial diver at the date of death.

In making the above findings I have had regard to the evidence gained in the investigation into Mr Johnson's death. The evidence comprises the police report of death, an opinion of the forensic pathologist as to cause of death, expert forensic report, police and witness affidavits and relevant documents. Based upon this evidence I make the following further findings.

Introduction:

Mr Johnson was married to Jane Johnson and lived at Kingston with their two children, Olivia Jane Johnson and Lewis Johnson. Mr Johnson had been a professional urchin diver for 25 years, before commencing employment with the Hobart City Council. He remained working on a casual basis as an urchin diver. He was an extremely experienced and competent diver and boat handler. He held dive qualifications and current commercial vessel tickets. Mr Johnson enjoyed a very healthy and active lifestyle. He was a member of a local underwater hockey team and regularly participated in recreational diving and fishing trips.

Circumstances surrounding death:

At about 4.45pm on 24 July 2015 two recreational scallop divers, Danny Smith and Wade Cleary, had been diving in the waters of Mercury Passage near Lachlan Island on the East Coast of Tasmania. Upon making their way to the surface to conclude their dive, they had an encounter with a large shark that they believed was a "white pointer". The first diver, Mr

Smith, was at a depth of about four metres when the shark brushed him. Shortly thereafter, it made a lunge at Mr Cleary who was on the water's surface entering the boat.

Mr Smith and Mr Cleary were shocked and frightened by the incident and contacted several friends who they believed were diving the next day. In their affidavits for the coronial investigation they stated that their calls to friends were met with disbelief. They did not contact any authorities at this time. As night was falling they returned home and contemplated the incident.

The next morning, Saturday 25 July 2015, Mr Cleary made an attempt to contact Parks and Wildlife Service by telephone to report the incident but could not make contact with anyone. Just prior to 7.45am he contacted Tas Maritime Radio at his father's suggestion and reported the incident to volunteer operator, Mr Derek Blair, who was the duty radio operator at that time.

Tas Maritime Radio monitors the channel for emergency calls and offers regular weather forecast updates and relevant notices over marine radio VHF channel 16. The service also communicates "securite" reports which provide information or warnings to mariners.

At 7.45am on 25 July 2015 Mr Blair broadcast the "skeds", being the regular weather and information broadcast. He additionally broadcast a "securite" report in relation to the previous day's shark encounter, as reported to him by Mr Cleary. At 8.22am, having spoken further to Mr Cleary, he made a further announcement advising mariners of additional information regarding the location and details of the reported incident.

Earlier that same day, at about 6.30am, Mr Johnson and his daughter Olivia commenced driving to the East Coast town of Orford with their 15 foot aluminium dinghy for a recreational scallop dive in Mercury Passage.

The recreational scallop season was due to close on 31 July 2015, and it was Mr Johnson's intention to take Olivia for a dive as she had not previously dived for scallops. At this time Olivia was 20 years of age. She had been diving for six years and was a qualified rescue diver. She held a recreational scallop licence.

Mr Johnson and Olivia travelled to a location north of Lachlan Island, a well-known scallop patch, and dived for approximately half an hour. As the pair returned to the surface they stopped at a depth of approximately four metres for a period of five minutes as a safety stop to avoid the pressure-related illness known as "the bends". Their dive location was in the same area as that of Mr Smith and Mr Cleary the previous afternoon. Mr Johnson and Olivia dived using a hookah line supplying breathing air from their boat.

Upon their return to the vessel at about 9.30am they measured their scallops. After returning several undersize scallops to the water, they realised they were 14 scallops short of their allowable catch of 50 scallops each. Mr Johnson returned to the water alone as it was estimated his second dive to reach the quota would take no longer than five minutes.

After a period of approximately 25-30 minutes, Olivia became worried for her father as he had not re-surfaced. After contacting her mother at 10.08am by mobile phone she decided to re-enter the water. She made observations at this time that she could not see any air bubbles on the water's surface from her father's diving activity and this increased her concern. Olivia put on a snorkel and mask as her father had taken her regulator to use on his dive. She then swam along Mr Johnson's dive hose where it floated on the water's surface to the point where it descended into the water. She then put her face into the water. At this time she saw her father about 10 metres away; he was "face up" in the water and was being held around the waist in the jaws of a large shark. She observed that he was not wearing his dive mask and there were no bubbles emanating from him. She could see his upper torso and face but not his legs. She realised that her father was deceased. In her affidavit for the investigation, Olivia described the shark as grey in colour and "enormous". Her father appeared diminutive in comparison to the size of the shark.

Olivia immediately swam a distance of 50 metres back to their dinghy. During the swim she had the presence of mind to reduce her splashing to avoid attracting the shark to herself. Once back in the boat she telephoned her mother and advised of what had occurred and described her location. Her call was made at 10.20am. She then activated three emergency flares to alert attention and obtain assistance.

There were approximately 15 to 20 recreational vessels fishing or diving in the area. Several vessels attended in response to the distress flares. Mr Malcolm Little, Mr Tony Lumley and Mr Bruce Maher were in the area on Mr Little's vessel and responded to the flares. They reached Olivia in the dinghy and she told them what had happened. They assisted Olivia into another boat belonging to Mr Leonard Gallagher. Mr Maher and Mr Lumley then retrieved Mr Johnson's body from the water into their boat by pulling in his dive hose line. At that time they checked for signs of life but observed that Mr Johnson was clearly deceased. They observed marks on his back, chest and arm that appeared to be bite marks, and that his legs were completely severed just above the knee. Olivia returned to Triabunna in Mr Gallagher's vessel.

At 10.27am Mr Little sent a mayday message to Tas Maritime Radio that was received by Mr Blair. Mr Blair then notified police.

At 10.40am Constable Michael Hinchin from Triabunna police station received a call from police Radio Dispatch Services. Constable Hinchin attended East Shelley Beach and located Mr Johnson's vehicle and boat trailer. He then went to Deep Water Jetty at Triabunna to receive Mr Johnson's body. A short time later Mr Johnson's boat was also brought to the jetty.

At 11.15am Constables Smith and Langford, from Hobart based Marine and Rescue Services, were alerted to the incident. They then attended the site of the incident and commenced a search of surrounding waters and shores. In this process they advised vessels in the area of the incident. At that time no persons were diving. Searches were repeated the next day, being 26 July 2015. However, the conditions were extremely poor with winds gusting up to approximately 50 knots and limited visibility. Further patrols were

resumed both on the water and by helicopter on 28 July when the weather had abated. The shark was not able to be located.

On 27 July 2015 Dr Donald Ritchey, forensic pathologist, conducted an autopsy upon Mr Johnson's body. He observed multiple incised injuries of the upper chest and upper back consistent with shark bites. He further observed that the visible markings upon both legs were consistent with the serrations seen on the teeth of many large shark species. He formed the opinion that Mr Johnson died as a result of exsanguination (blood loss). I accept the opinion of Dr Ritchey as to the cause of death. I note that toxicology testing revealed no drugs or alcohol in Mr Johnson's blood.

In the investigation I have had regard to a comprehensive report from CSIRO shark experts Mr Russell Bradford, senior experimental scientist, and Mr Barry Bruce, senior research scientist. Mr Bruce and Mr Bradford examined Mr Johnson's dive gear and had access to the evidence in the investigation, including autopsy photos. They underwent a detailed analysis of the bite marks, injuries and damage to Mr Johnson's dive gear for the purpose of determining the type and size of the shark and the manner of the attack. I summarise below their conclusions in this regard:

- Tooth scrapes on both the plastic weight belt buckle and Mr Johnson's left femur were consistent with the serrated dentition of a white shark, *Carcharodon carcharias* (also known as a "great white").
- The injuries sustained to Mr Johnson and the damage to the dive gear suggest at least two major bites from separate angles, one diagonally across the legs which resulted in amputation of both legs at the knee joints and a second across the right shoulder and torso.
- Estimates of tooth base width based on measurements taken from the dive gear suggest a shark of 3.9 - 4.2 metres in length was responsible for the damage sustained.
- It appears, consistent with white shark attack strategies, that the initial bite was to the legs and is likely to have been from left to right with the upper jaw anteriorly across them; this occurring in mid water with Mr Johnson in a vertical position (for example, during an ascent or safety stop) and the shark presenting from below, behind and across Mr Johnson's right side.

I accept the above conclusions of Mr Bradford and Mr Bruce. I am satisfied that, whilst diving, Mr Johnson was bitten at least twice by a white shark of 3.9 - 4.2 metres in length. It would seem that it was the same shark as encountered by Mr Smith and Mr Cleary but the evidence does not permit an affirmative finding in this regard. I cannot make positive findings as to how the incident occurred. However, it appears that the injury resulting in the loss of Mr Johnson's legs occurred initially, before Olivia saw him in the water being held by the shark. In this case unconsciousness through blood loss would have occurred quickly.

Comments:

Mr Johnson died, most tragically and unexpectedly, as a result of an attack by a white shark on 25 July 2015. The waters of Tasmania are the natural environment for a number of shark species. Despite reasonably frequent shark sightings, there have only been 11 attacks since 1820 attributed to white sharks in Tasmanian waters. Of these, six attacks have been fatal, including the death of Mr Johnson. There have been no previously recorded attacks in Mercury Passage. Mercury Passage is formally classified as a shark refuge area by the Department of Primary Industries, Parks, Water and the Environment ("DPIPWE"), and sightings of white sharks in the area are not unusual. White sharks are also wholly protected under Commonwealth legislation.

White sharks are not territorial and may be encountered in Tasmanian waters during all months of the year but captures and sightings are more common from November to January. This also corresponds to a seasonal peak in water and vessel use in Tasmanian waters and thus may not necessarily reflect the seasonal abundance of white sharks in the State. The majority of captures of white sharks are reported from the southeast of the State, again corresponding to the most populated region of water use.

In 2015 the Tasmanian recreational scallop season ran from 28 March 2015 to 31 July 2015. DPIPWE records indicate that 3,352 persons purchased licences for the season.

Mr Johnson's diving site in Mercury Passage was a well-known scallop bed. It was popular and productive in the 2015 season. There were regular police patrols of the waters and shore. The level of diving activity in these specific waters has not been recorded. However, anecdotally, and through local knowledge and experience, it is a very popular location. The patch varies in depth from approximately 8 metres to 15 metres and has an open sandy bottom. Strong currents run through the channel. This environment leaves the divers in open and exposed water. On the day in question the water was described as not being perfectly clear but having visibility of about three metres on the bottom.

I am satisfied that Mr Johnson and Olivia conducted the dive employing safe and lawful practices. There was no reason to anticipate the presence of a shark or the events that followed.

Tas Maritime Radio volunteer Mr Derek Blair was prompt in his broadcast of the shark sighting, and diligent in subsequently providing details of the type and size of the shark and its location. Mr Blair was also prompt in subsequently conveying the mayday call to police. It is to be observed that Tas Maritime Radio, manned solely by volunteers, provides an invaluable service to the maritime community.

Mr Johnson did not have a marine radio on his boat on the day in question. It would be speculation to find that if he had had such a radio, it would have been operational, that he would have heard the broadcast, and that he would have desisted in diving.

Tasmania Police were not notified of the shark attack until they were advised of Mr Johnson's death. Since that time it has implemented the following processes in response to any confirmed shark sighting or attack:

- Tasmania Police will ensure the community is notified by way of media releases, the community alert system and social media sites.
- Tasmania Police will advise the relevant emergency distress channel for mariners to broadcast a warning to boaters in the area.
- Tasmania Police will advise Parks and Wildlife Service in the relevant area.
- If assessed as appropriate, Tasmania Police will launch patrols to advise and warn boaters and other water users in the area.

I encourage members of the public to contact Tasmania Police in the event of a shark sighting, in order that it may immediately employ the above measures to notify the wider community.

The actions of Olivia were remarkable in her ability to return to and enter the boat, and call for help in the face of encountering the most traumatic situation imaginable. Her clear thinking may well have saved her life.

I commend the actions of those who first came to Olivia's assistance and recovered Mr Johnson's body.

I appreciate the comprehensive investigation and report provided to me by Senior Constable Eileen Langford of Marine and Rescue Services.

The circumstances of Mr Johnson's death are not such as to require me to make any recommendations pursuant to section 28 of the *Coroners Act* 1995.

I convey my sincere condolences to the family and loved ones of Mr Johnson.

Dated: 6 December 2016 at Hobart in the State of Tasmania.

Olivia McTaggart
Coroner