



# MAGISTRATES COURT of TASMANIA

## CORONIAL DIVISION

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### **Record of Investigation into Death (Without Inquest)**

*Coroners Act 1995*

*Coroners Rules 2006*

*Rule 11*

**(These findings have been de-identified in relation to the name of the deceased, family, friends, and others by direction of the Coroner pursuant to s57(1)(c) of the Coroners Act 1995)**

I, Robert Webster, Coroner, having investigated the death of UR

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

- a) The identity of the deceased is UR;
- b) UR died when his foot became entangled in a spear fish line after he dove to free his spear which had been fired and caught in rocks on the sea floor. As a result of being entangled UR became suspended under the water and was unable to free himself.
- c) UR's cause of death was drowning; and
- d) UR died on 7 November 2021 at Lighthouse Bay, South Bruny in Tasmania.

#### **Introduction**

In making the above findings I have had regard to the evidence gained in the comprehensive investigation into UR's death. That evidence includes:

- Police Report of Death for the Coroner;
- Affidavits establishing identity and life extinct;
- Affidavit of Dr Donald Ritchey, forensic pathologist;
- Forensic Science Service Tasmania toxicological and analytical report;
- Affidavit of XA;
- Affidavit of Ms Lecong Ma;
- Affidavit of SE;
- Affidavit of Mr Lianguan (Leo) Yu;
- Affidavit of Mr Xin Bi;

- Affidavit of Constable Tim Mitchell;
- Affidavit of Mr Charles Wendell – Smith;
- Affidavit of First-Class Constable Nikki Mackintosh;
- Affidavit of Senior Constable Chris Williams;
- Affidavit of Senior Constable Todd Melville;
- Affidavit of Constable Nicholas Monk; and
- Photographs and forensic evidence.

## **Background**

UR was an overseas exchange student who was enrolled at Taroona High School. As at the date of his death he was 16 years of age and in year 10 at that school. He was born in Xinjiang in China. He was known to family and friends as Harry. He resided with his host parents, XA and her husband WS. He had lived with his host parents since February 2018 when he commenced grade 7 at Taroona High School.

XA was personally known to UR's family who asked that she care for him while he attended school in Tasmania. He was popular and well liked at school. UR's parents reside in China.

UR had no health issues. He was a fit and healthy 16-year-old. XA describes him as “*very energetic and a real adventurer.*” She says he was a strong swimmer who had undertaken swimming lessons for 2 years since 2018 and who had been swimming competitively for a number of years at school.

XA says UR attended a scuba diving training course in Hobart for 4 days in 2020. She says he was, at that time, too young and did not cope that well so he wasn't permitted to dive under water. Additional one-on-one training sessions were organised through his parents and he had up to 10 lessons from March 2019 onwards.

XA purchased a wetsuit for UR in April 2021. He asked on many occasions if he could go out with different people to dive. He was not permitted to go with anyone who was not a proficient diver and whom XA did not know or people who she thought may not give him the supervision he needed.

On Thursday 4 November 2021, via a WeChat<sup>1</sup> message between UR, his mother and XA, UR indicated he wanted to go diving on Saturday, 6 November 2021 with Mr Xin Bi. XA knows Mr Xin Bi to be an experienced diver and she trusts him. UR also told XA he was

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<sup>1</sup> WeChat is an instant messaging, social media, and mobile payment app developed and released in China in 2011. It has a wide range of functions including text messaging, hold-to-talk voice messaging, broadcast (one-to-many) messaging, video conferencing, video games, sharing of photographs and videos and location sharing.

going diving with SE and his family on Sunday 7 November 2021. I infer XA was happy to let UR go diving on this day because she knew SE's father is a very cautious man who would look after UR in the water.

XA says UR went diving on Saturday, 6 November 2021 and returned home safely. Mr Xin Bi says he is part of a WeChat group where people can organise to go diving together around Tasmania. He had done a diving course approximately 1 to 2 years ago. He first met UR on 17 April 2021 when they both went diving with the same WeChat group. They became friends. He estimated UR had been out with that group on about 10 occasions. He says UR was good at diving. They went free-diving<sup>2</sup> for crayfish and would dive to depths of approximately 10 to 15 m. Mr Xin Bi says he would have done this with UR about 10 times. On each time they went diving he would teach UR some extra skills. He saw his diving had improved. Each time they went diving Mr Xin Bi would tell UR not to dive alone and this message was reinforced by all their friends in the diving group. He told UR free-diving is very dangerous for everyone no matter their age. His advice was also that UR not use a spear gun and that he could not use a spear gun when he went diving with Mr Xin Bi.

On 6 November 2021 a group of 5 people including UR and Mr Xin Bi went to Southport. Mr Xin Bi estimates UR spent about 3 hours in total in the water. For one hour he was fishing for abalone and for 2 hours he was fishing for crayfish. Mr Xin Bi says UR did not tell him he intended to go diving the next day. Mr Xin Bi says he cannot believe UR went diving the day after they went diving at Southport because he says it is important to rest 'after going for a big dive like we did at Southport.'

UR held a current recreational scallop dive licence, a rock lobster pot licence and an abalone dive licence. He also had his own equipment which included snorkelling gear, an esky, an orange marker buoy, a wetsuit, fins, a torch, a weight belt and a diver's knife. XA says UR purchased 2 spear guns from a local Hobart dive shop which she and her husband did not like him using. They told him to take them back as they thought the spear guns were dangerous. She believes he kept the spear guns hidden from them and she thought he was still using a spear gun so she told him that if he used one then he must be very careful.

### **Circumstances leading to UR's death**

On Saturday, 6 November 2021 UR contacted a friend, Ms Lecong Ma, and requested a lift to Kettering for himself and his 14-year-old friend SE for the next morning. They were both picked up by Ms Ma at approximately 9.00am on Sunday, 7 November 2021 and driven to

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<sup>2</sup> Free-diving is a form of underwater diving whereby the diver relies on holding his or her breath until resurfacing rather than using a breathing apparatus such as that used in scuba diving.

the Sealink ferry terminal at Kettering. Once at Kettering UR and SE walked onto the ferry with dive bags and a blue plastic esky. After a short ferry ride to Bruny Island they were collected by Mr Lianguan Yu who was 29 years of age.<sup>3</sup> UR knew Mr Yu through a boxing club.<sup>4</sup> They had only met twice previously. He had been camping on Bruny Island since Friday, 5 November 2021 and through WeChat he asked to join the diving group that UR was a part of. Mr Yu was an amateur diver with little experience.

Mr Yu picked up UR and SE in his vehicle and drove approximately 60 km to Lighthouse Bay which is near the southernmost point of Bruny Island. This location was UR's suggestion. On the journey UR spoke enthusiastically of his diving experience and hoped they would catch some abalone and lobster. Mr Yu told UR he was not a very experienced diver and that he had only snorkelled. The diving gear the 3 of them had comprised of snorkelling equipment only. No scuba or hookah<sup>5</sup> (fixed air) diving equipment was to be used.

The party arrived at the Lighthouse at South Bruny and Mr Yu parked his car in the car park. From this point he took a number of video clips on his GoPro camera however they are not time stamped. The diving gear was sorted out and repacked into the bags. SE, who was feeling the effects of a COVID-19 immunisation he received the day before, stayed in the vehicle while Mr Yu and UR walked down to the water. Mr Yu says he struggled to catch up with UR who appeared keen to get to the water. UR was seen carrying bags and a long black and grey spear gun. Once at the water's edge UR rinsed his wetsuit and put it on. Mr Yu says UR told him that he was going to look for lobster and he suggested Mr Yu hunt for abalone. Mr Yu had a yellow handled abalone diver's knife whereas UR was carrying a small silver knife. They shared the marker buoy, spear gun and catch bag. UR told Mr Yu that when they caught things they would put what they caught in the catch bag.

The 2 of them spent some time in the water with UR observed swimming in deeper water than Mr Yu. Mr Yu was having difficulty with his weight belt so he got out of the water and explained what he was doing on the recording on his GoPro camera. In the background of this recording UR can be seen swimming towards a rocky island towing his dive buoy on the surface. His flipper is seen as he dives from the surface. Mr Yu entered the water again and concentrated on looking for abalone in the shallows. He became more confident diving in deeper water and checked for UR and saw him swimming around. He found another abalone and then went to swim towards the marker buoy. He then saw 2 more abalone but as he was already holding one he spent some time trying to determine the best way he could get

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<sup>3</sup> At around 11.00pm on Saturday, 6 November 2021 UR contacted Mr Yu and asked him if he could pick him and his friend up at the Roberts point Ferry terminal on Bruny Island at about 10.30am.

<sup>4</sup> XA did not know Mr Yu and would not have let UR go diving with him.

<sup>5</sup> Hookah diving consists of a petrol or battery-powered air compressor that delivers air, through a long hose called a down-line, to the diver under the water.

the other 2. He finally collected those abalone and then swam across deeper water towards where UR's dive buoy was situated. UR is observed on the GoPro camera footage to be suspended motionless under the surface of the water. Mr Yu appears not to realise there was anything wrong because he continues his search for abalone and then gives an 'okay' (thumbs up) signal towards UR. At this point Mr Yu realises something is wrong when UR does not respond to his signal and he appears to panic. Mr Yu then attempts to tuck his GoPro camera into his wetsuit however he fails in that endeavour and it floats away. Mr Yu says he swam towards UR and tried to pull his arm. He says that was unsuccessful and UR felt heavy. Mr Yu says UR's head was not too far from the surface but despite trying hard to get him up to the surface he could not get UR above the surface of the water. He attempted to use the buoy to lift UR to the surface but that did not work. He realised he needed help and he tried calling out to people on the beach but they did not hear him. He was exhausted and could not catch his breath. He was cramping in his right leg. He got out of the water and called for help. When that was not successful he got his phone and tried to call 000 but there was no signal. He then ran up to the Lighthouse car park but could not find anybody. He called 000 a number of times and finally got through. He then ran to his vehicle and found SE sitting in the car. He, SE and another bystander then went back down to the water with Mr Yu swimming back out to UR where he again tried to assist UR.<sup>6</sup> His efforts were unsuccessful. He then got out of the water and waited on the rocks nearby.

## **Investigation**

### *(i) Police*

The local police officer, Senior Constable Todd Melville, was dispatched to attend Lighthouse Bay and he arrived at 3.20pm. His body worn camera footage shows the weather was fine and conditions on the water were calm.

In addition a Polair helicopter unit was tasked to attend the scene and it arrived at approximately 3.20pm. A second Polair unit was dispatched soon afterwards. The first unit hovered above the location where the orange dive buoy was located. UR could be seen suspended under the water. Constable Mitchell and intensive care flight paramedic Mr Wendell-Smith were winched down onto the nearby rocks where Mr Yu was sitting. Constable Mitchell, who is a qualified police diver, entered the water and observed UR. His head was approximately 2 m from the surface of the water. Constable Mitchell dove down and unsuccessfully attempted to pull UR to the surface. It was only after Constable Mitchell removed UR's fins that he noticed the nylon line of the spear gun wrapped around UR's ankle. That line was difficult to see because of the amount of bull kelp growing in the area.

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<sup>6</sup> On this occasion Mr Yu noticed UR did not have his weight belt on.

Constable Mitchell returned to the surface and notified Mr Wendell-Smith of his observations before collecting a dive knife and returning to the water. It is estimated that UR was approximately 10 m from the rocks. Constable Mitchell cut the line and removed UR from the water. There he was assessed by Mr Wendell-Smith who did not attempt resuscitation because it was believed approximately one hour had elapsed between the time UR got into difficulty and when he was first assessed by Mr Wendell-Smith. The assessment by Mr Wendell-Smith determined UR was unresponsive, not breathing and he was pulseless.

UR was removed from the scene and flown to the Royal Hobart Hospital. Constable Mitchell then re-entered the water and retrieved UR's gear which included one swim fin, the spear gun body, a blue catch bag and the orange dive float with orange bungee line. As the second Polair unit prepared to transport Mr Yu from the scene, Constable Mackintosh located Mr Yu's GoPro camera which had washed up onto the beach.

The next morning Tasmania Police marine and rescue services returned to the scene. Senior Constable Williams entered the water with 2 other police divers and they conducted a systematic search of the area and recovered the spear gun shaft and barb, a blue weight belt and a single swimming fin. When Constable Williams found the spear gun barb it was not lodged in the seabed or in any kelp.

Constable Mitchell is an experienced diver and has spearfished regularly. He says all the equipment belonging to UR which he observed was of high quality and in good operational order. I accept his opinion in that regard.

#### *(ii) Post Mortem Examination*

UR's parents, as is their right, objected to a full autopsy. They also objected to a limited autopsy. It was explained to them in correspondence from me<sup>7</sup> what a limited autopsy would include. I also informed them in that correspondence of my view that I could not fulfil my statutory obligations without a limited autopsy taking place and I would therefore order that to occur. Finally I advised them of their right to apply to the Supreme Court of Tasmania for an order that a limited autopsy not be performed. I provided them with a copy of s38 of the *Coroners Act 1995* which sets out their rights in that regard.

Dr Ritchey performed a limited autopsy on 11 November 2021. As a result of his examination Dr Ritchey was able to determine that UR's cause of death was drowning. Toxicology was negative for alcohol and illicit drugs. I accept Dr Ritchey's opinion.

#### **Why did UR drown?**

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<sup>7</sup> Which was translated into their language.

By analysing the GoPro footage there is a period of approximately 15 minutes between the time UR is observed swimming in deeper water and when Mr Yu realises he is in trouble. UR drowned in water which was around 4 to 5 m in depth. Doing the best I can with the evidence on file I find the drowning occurred after 1.30pm but before 2.00pm on Sunday, 7 November 2021.

The drowning was not observed by Mr Yu or captured on his GoPro camera. What occurred must therefore be determined from what Constable Mitchell observed when he entered the water. Constable Mitchell says he observed UR in an upright position and he was tethered to the seafloor by a translucent blue nylon line which attached the spear gun body to the spear shaft. The shaft had been fired and was observed to be amongst rocks on the seafloor. Constable Mitchell believes that a fish had been shot and was still attached to the spear shaft as there was a lot of fish activity in the area of the spear. He believes the spear shaft had likely become stuck in a rock crevice on the seafloor and as UR attempted to free it, the nylon line which was connected to the spear shaft has wrapped around UR's ankle which was covered by his neoprene dive boot. This has tethered UR to the spear shaft which was wedged between rocks on the seafloor. This would explain Mr Yu's difficulties in attempting to lift UR above the surface of the water.

A weight belt belonging to UR was found on the seabed underneath where UR was found. In an effort to free himself Constable Mitchell believes UR had unclipped his weight belt which has increased his buoyancy and that together with the flotation properties of his wet suit resulted in UR floating upwards. Later at the Royal Hobart Hospital a small silver knife which was attached to a small black tether loop was located with UR. This was not noticed by Constable Mitchell when he recovered UR. It is likely the knife was carried in a wetsuit pocket but that it was inaccessible in the emergency which ensued.

I accept the evidence of Constable Mitchell as to why UR drowned.

### **Comments and Recommendations**

I am satisfied, given the evidence in this case, UR died at Lighthouse Bay, South Bruny after 1.30pm and before 2.00pm on Sunday, 7 November 2021 as a result of the cause identified by Dr Ritchey. I am also satisfied that had XA and WS known of UR's intention to go diving at this site with 2 very inexperienced divers they would not have permitted him to go.

Free-diving is a hazardous unregulated leisure activity. The most obvious hazard is a lack of access to air to breathe. This, as can be seen in this case, can result in asphyxia from drowning if the diver does not reach the surface while still capable of holding their breath and resuming breathing. The extent of the risk depends on several factors which include the

depth and duration of the dive. Latent hypoxia<sup>8</sup> is a specific hazard of free-diving. This effect can cause hypoxic blackout<sup>9</sup> during surfacing. There are also a wide range of environmental dangers specific to the site and water and weather conditions at the time of diving. In this case police have reported Lighthouse Bay is not a common destination for such an activity as changing weather conditions make it a dangerous location, which is rarely visited by even experienced divers.

Given these very significant risks **I recommend** to people that wish to participate in this activity that they undertake a free-diving course before doing so. There are a number of commercially available courses, depending upon a diver's experience, available in Tasmania. Those courses, from my research, provide amongst other things advice on what steps to take to ameliorate the risks involved in this pastime. The following steps could have been taken in this case, and if taken, UR's tragic death may have been avoided:

- Never free-dive alone. A free-diver should always dive under the direct observation of a dive buddy or partner and he or she should never dive at the same time as their partner. The dive buddy should be familiar with all safety and rescue procedures and be capable of rendering assistance if required. If a free-diver becomes entangled in a spear gun line and tethered below the surface of the water because the spear has become trapped on the seafloor, as occurred in this case, then the buddy is able to cut the spear gun line and release the diver. The diver should also be able to easily access a knife in the event it is required in an emergency.
- A thorough dive plan should always be prepared with the dive partner and the dive site should be evaluated so that the weather forecast, currents, visibility, water temperature, swell and surface traffic are well known. Each diver in the pair should know exactly what the other is doing throughout the course of the trip.
- A person should never dive when they are tired or cold as that can impair a person's judgement and their ability to hold their breath. This is what Mr Xin Bi was referring to when he said, as referred to above, it is important to rest after a big dive which is what occurred at Southport the previous day.

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<sup>8</sup> Latent hypoxia occurs when a diver under pressure has a tissue oxygen concentration that is sufficient to support consciousness at that pressure, but insufficient at surface pressure.

<sup>9</sup> Hypoxic blackout, also known as 'shallow water blackout', occurs when there is a loss of consciousness underwater due to a lack of oxygen. This often occurs due to the person holding their breath or they intentionally hyperventilate before going underwater.

The circumstances of UR's death are not such as to require me to make any further comments or recommendations pursuant to Section 28 of the *Coroners Act 1995*.

### **Acknowledgements**

I extend my appreciation to investigating officer Senior Constable Todd Melville for his thorough investigation and report.

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

**Dated:** 11 November 2022 at Hobart in the State of Tasmania.

**Robert Webster**  
**Coroner**