



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 James Lee Osborn

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

- a) The identity of the deceased is James Lee Osborn;
- b) Mr Osborn died as a result of drowning in the circumstances described further below;
- c) The cause of death was drowning; and
- d) Mr Osborn died on 30 June 2016 in the Derwent River, Hobart in Tasmania.

In making the above findings I have had regard to the evidence gained in the comprehensive investigation into James Lee Osborn's death. The evidence comprises an opinion of the forensic pathologist who conducted the autopsy; police and witness affidavits; court records; medical records and reports; and forensic evidence.

Mr Osborn was born on 4 January 1954 in Wichita, Kansas in the United States of America, and was aged 62 years. He was married to Susan Elizabeth Osborn and there were no children of the marriage. They moved to Australia in 1994 and to Tasmania in 1996. They lived in Mount Nelson. Mr Osborn was self-employed as a hypnotherapist and also received a disability pension.

Mr Osborn was fit and active and in reasonable physical health, although suffered scoliosis of the spine that caused ongoing symptoms. The evidence indicates that he suffered mental health issues for many years prior to his death. It would appear from his medical records that he had been prescribed medication for depression from at least 2001. In her affidavit for the investigation, Mrs Osborn stated that she believed that her husband had a difficult childhood which affected him throughout his life. She stated that he had a fear of ageing and did not cope well with criticism.

Mrs Osborn stated that Mr Osborn suffered a rapid deterioration in his mental health in the month before his death – in particular, he became very paranoid.

In early June 2016, Mrs Osborn stated that Mr Osborn had been re-fuelling a petrol tank in an outboard motor when he spilt petrol on himself. He subsequently believed that he had been contaminated by the petrol and that it was affecting his body and contributing towards

his poor mental state. It appears that his distressed and deluded state continued over the following days.

On 10 June 2016 Mr Osborn told Mrs Osborn to leave the home and take the dog as he 'did not know what he would do' and it scared him. Mrs Osborn left the home. After she left, Mr Osborn called an ambulance to attend his residence reporting not having slept for 16 days; that he had ingested petrol; that he was going to hurt his wife; and that he had a range of antique blades and other kitchen utensils that could be used as weapons. Ambulance Tasmania personnel contacted police.

Police officers attended the home and located a note on the front door stating '*You're going to have to take me by force.*' Mr Osborn eventually came to the door. He was shaking and appeared nervous. He stated that he had not ingested the petrol but that he had spilled some on himself and he felt like he was losing his mind.

Mr Osborn was immediately transported to the Royal Hobart Hospital ("RHH") by police and was admitted to the Department of Psychiatric Medicine that day. During this admission he was diagnosed with agitated depression and major depression associated with insomnia, anhedonia, anxiety, nihilistic delusional beliefs and a fear of financial fraud. He was prescribed both anti-depressant and anti-anxiety medications and discharged on 24 June 2016. A referral was made for Mr Osborn to receive further assistance from the Hobart Southern District Community Mental Health Team.

On the day following his discharge, being 25 June 2016, the CAT (crisis) team attempted to visit Mr Osborn at home. However, Mr Osborn did not respond to the door or to calls to his landline or mobile phone. He later called the CAT team and advised that he did not wish to receive home visits. An appointment was made for him to see Dr Matthew Warden, a psychiatrist with Mental Health Services, on 11 July 2016.

At 12.20pm on 30 June 2016 Mrs Osborn rang police on "000" and reported her husband as missing. She advised police that he had left for a walk at 7.00am and was due to meet her at the Wrest Point Casino health club (their regular gym) but he had never arrived. She advised police that Mr Osborn was suffering from sleep deprivation and mental health issues.

Later that afternoon Mrs Osborn provided police with a handwritten note from Mr Osborn which she stated, likely falsely, that she located after reporting him missing. The note read: "*Su, walking down Mtn. Meet later @ pool. Jim*". A second note was later given by Mrs Osborn to police entitled '*Last Will and Testament*', dated 29 June 2016, in which Mr Osborn expresses his desire to leave all assets and possessions to Mrs Osborn. The note concludes with the words "*I alone am responsible for my actions and she is innocent*".

Police commenced an investigation into Mr Osborn's reported disappearance. The following morning, being 1 July 2016, a land and air search was conducted of Mount Nelson and Sandy Bay by Police Marine and Rescue Services. A media campaign seeking public assistance to help locate Mr Osborn was also initiated.

During the course of the search operation, police became suspicious of the account of Mr Osborn's disappearance given by Mrs Osborn. Upon being challenged on her account of events Mrs Osborn revealed that she had not given a true account of her husband's disappearance.

Mrs Osborn told police officers that in the early hours of 30 June 2016 she had, in fact, driven Mr Osborn to the boat ramp at the Hobart Regatta Grounds and driven away at his request. She told the police officers that she knew that he had intended to take his own life there by jumping from the jetty into the Derwent River with a weight attached to his ankle.

At 4.18pm on 1 July 2016 Mrs Osborn was conveyed to the Hobart Police Station where she was interviewed by CIB officers under caution. She stated in the interview that Mr Osborn had taken his own life due to experiencing a downturn in his mental state. She said that she had been hopeful that, after discharge from the RHH, his mental state would stabilise. However, she said that over the last few days he had gone 'downhill' and that he preferred not to live than to be institutionalised. She stated that she was sorry for how things had worked out but that it was her desire to help her spouse '*to not feel so miserable anymore.*' This interview was of 9 minutes' duration with Mrs Osborn declining to provide a detailed account regarding the circumstances surrounding Mr Osborn's death, including details of any plans they made together regarding his death.

At the completion of the interview Mrs Osborn was arrested for investigation of the charge of aiding suicide contrary to section 163 of the *Criminal Code Act 1924*. She was detained in the Hobart Remand Centre for a period of four hours whilst the search for Mr Osborn continued.

At 5.20pm police divers began an operation to retrieve Mr Osborn's body from the Derwent River at the location provided by Mrs Osborn. Divers were confronted by large sharks in the area and therefore, at 6.45pm, an underwater remote operated vehicle ("ROV") was deployed. The ROV, equipped with a camera, located Mr Osborn's body approximately 7 metres from the jetty in water of 7 metres in depth.

The aggressive shark activity also hindered the recovery of the body by the ROV. The camera vision showed the sharks feeding on the body and attempting to prevent the ROV from retrieving it.

At 7.30pm Mr Osborn's body was recovered by the ROV and taken to the surface. The police divers and investigators supervising the operation observed that Mr Osborn's body had been largely stripped of flesh from the waist down due to the scavenging activity of the sharks. It was also observed that a weight was attached to Mr Osborn's left ankle.

An autopsy was performed by pathologist Dr Donald Ritchey. Dr Ritchey observed that the weight around Mr Osborn's ankle weighed 8.8 kg and was a cylindrical shape affixed to his ankle by a short chain and two metallic "D" clasps. Dr Ritchey did not observe any trauma to Mr Osborn's head or neck. In his opinion the cause of Mr Osborn's death was drowning.

Toxicological testing of a post-mortem blood sample identified olanzapine, being one of Mr Osborn's prescription medications, in the toxic range. I note, however, that concentrations of olanzapine in post-mortem blood can increase very significantly where there is an interval between the date of death and the date of autopsy. I am satisfied upon all of the evidence that olanzapine toxicity did not play a part in Mr Osborn's death.

I am also satisfied that bodily trauma caused by shark bites did not play any part in Mr Osborn's death. In this regard Dr Ritchey noted that the pattern of tissue incisions and several bite marks indicated sharks scavenging upon a dead body. He further stated that it is likely that drowning occurred rapidly particularly due to the heavy weight.

Further, the investigating officer, Detective Senior Sergeant Adam Stanwix, has advised that the sharks surrounding the body of Mr Osborn during the retrieval operation were identified as Broadnose Sevengill sharks of between 184 cm and 213 cm in length. They are common in Tasmanian waters and are known to eat human remains. Whilst some attacks by these sharks have been recorded worldwide, there is no evidence of any fatalities. I accept the view of Senior Sergeant Stanwix that the ongoing risk to humans from the presence of Broadnose Sevengill sharks is minimal.

I therefore accept Dr Ritchey's opinion that the cause of death was drowning and I am satisfied on the evidence that Mr Osborn was not attacked by the sharks before he drowned.

In this case, there are several features of the evidence which require discussion.

Firstly, during the course of the search for Mr Osborn on 1 July whilst reported as a missing person, a witness, Mrs Helen Westenberg, contacted police in response to the missing person post on the police Facebook site.

In her detailed statutory declaration for the investigation, Mrs Westenberg stated that just after 8.30am on 30 June 2016 (the previous morning), she had seen and spoke briefly with a person of Mr Osborn's description at Nutgrove Beach in Sandy Bay. She stated that at 8.30am she went to the beach to walk her dogs. She provided a very detailed description of the man she encountered, including his appearance and clothing. In particular she observed that he was wearing a purple rain jacket which she thought was an unusual garment. She also described details of the man's movements on the beach, firstly walking in one direction and then in another. She stated that she left the beach at about 8.50am as it had started to rain. Mrs Westenberg stated that she had taken photos of her dogs on the beach on this occasion and the photos indicated the correct time and date settings.

I am in no doubt that Mrs Westenberg did see Mr Osborn at Nutgrove Beach. However, if she saw him at 8.30am on 30 June 2016 as indicated in her statutory declaration, then there is conflict with the account given by Mrs Osborn that she took her husband to the Regatta Grounds to end his life in the early hours of that morning.

It may be that Mrs Westenberg was mistaken as to the date of seeing Mr Osborn. He was a regular walker around the area and her sighting may have been on a day other than, but close to, 30 June. However, it is possible that Mrs Westenberg is correct in her account of

the date and time that she saw Mr Osborn and that Mr Osborn walked to Sandy Bay before returning to the Regatta Grounds at a later time to end his life in the manner described. However, he was not witnessed by anyone else and it is less likely that he ended his life in the manner described during daylight hours.

Secondly, at 1.42pm on 30 June the sum of \$1000 was withdrawn from an account held by either Mr Osborn alone or jointly with Mrs Osborn. The balance of the account was then left at \$494.77. This withdrawal was made about an hour after Mrs Osborn reported her husband missing. When Mrs Osborn was asked by police officers about this withdrawal, she stated that she had no specific memory of making it. The only other person who may have made it was Mr Osborn. Again, it would seem unlikely that he was alive at that stage and in the area.

Finally, there are significant issues associated with the credibility of Mrs Osborn's account surrounding her husband's death which are discussed in the following part.

Mrs Osborn was not charged with assisting suicide upon the advice of the Office of the Director of Public Prosecutions. She was, however, charged with making a false report to police pursuant to section 44A(1) of the *Police Offences Act 1935*, for falsely reporting that Mr Osborn was missing; her false report being that he had left Mount Nelson at 7.00am on 30 June 2016 intending to walk through bushland to Sandy Bay but had never arrived at the gym at Wrest Point Casino where they intended to meet.

On 15 May 2017 Mrs Osborn pleaded guilty to the charge, acknowledging that she had driven Mr Osborn to the Regatta Grounds jetty between 2.00am and 3.00am on 30 June for the purpose of ending his life and later that day falsely reported him missing. In sentencing, Magistrate Simon Cooper noted the unusual nature of the charge and Mrs Osborn's lack of prior convictions. He also accepted her counsel's submission and the conclusions from a psychologist's report that Mr Osborn was dominant and highly influential in the relationship and placed considerable pressure upon Mrs Osborn to assist in his suicide. Magistrate Cooper recorded a conviction on the charge and required Mrs Osborn to enter into an undertaking to be of good behaviour for a period of three years. The prosecutor made application against Mrs Osborn for recovery of the costs of the unnecessary search operation, which amounted to \$13,000. However, it appears that those costs are unlikely to be pursued by police against Mrs Osborn.

The coronial investigation into Mr Osborn's death was delayed primarily due to a lack of cooperation from Mrs Osborn, who declined to provide an affidavit or statement dealing with a full account of the events surrounding her husband's death. Eventually, on 5 April 2018, she did provide an affidavit for the investigation.

In her affidavit Mrs Osborn repeated her previous statements regarding the serious decline of Mr Osborn's mental health before his death. She said that she wanted him to be "at peace" and that in the last three or four days of his life he was looking at the water tide information which she knew was with a view to ending his life. She stated that on the evening of his death he convinced her to drive him to the jetty. She did so at 2.00am - 3.00am. He had a leg

weight with him, being an item that he used during hypnosis sessions with clients as a “metaphor for life”. She stated that she drove down the roadway close to the jetty and they sat in the car for 10 to 15 minutes after which he got out of the car carrying the weight, walked to the driver side, gave her a kiss and told her that he loved her.

Mrs Osborn stated that she was not able to see Mr Osborn walking to the jetty as it was dark. She waited for 10 minutes and she then heard him breathing and shouting. She stated that the only specific thing she heard was an instruction for her to leave which she did. She then drove around the Queens Domain in North Hobart. She said she did not actually see or hear him jump into the river but she assumed that he had because it went silent after he was screaming and yelling at her to leave. She stated that at 6.30am she drove back to the jetty and could not see him. She therefore believed that he jumped into the water and died. She then returned home to Mount Nelson before proceeding to her regular gym session at Wrest Point Casino where she told people there that she was expecting him to arrive.

Some of the contents of Mrs Osborn’s affidavit are inconsistent with statements made to police in her interview and/or put by her counsel to the magistrate at the sentencing hearing. For example, at the sentencing hearing she told the court through her counsel that she heard him jump in the water. However, in her affidavit she specifically stated that she was unsure as to when he entered the water and drove back to the location at 6.30am to see if he was there. She had previously not mentioned returning to the site at 6.30am, although had suggested that the original trip to drop him off had taken place at that time.

Although the credibility of her account is problematic, particularly in light of her dishonesty surrounding the false report to police, I am able to accept her consistently stated account that she acceded to the wishes of Mr Osborn to drive him to the Regatta Grounds for the purpose of ending his life. This was likely due to a combination of his strong influence over her, her desire to help him with his stated wishes and the difficulty of being in what appears to have been an unhappy and somewhat dysfunctional relationship. I am satisfied that Mrs Osborn did not do any act against his wishes or use any physical force upon him before his death.

I find that, on balance, death occurred on 30 June 2018. It may have occurred later in that day, taking into account the possible sighting of Mr Osborn by Mrs Westenberg and the other anomalies in the evidence. However, it is more likely to have occurred shortly after he was driven to the regatta grounds in the early hours of the morning. Further investigative avenues such as analysis of the telephone records of Mr and Mrs Osborn and consideration of available CCTV footage, have been undertaken and do not assist.

Ultimately, I cannot resolve the issue as to time of death and I do not consider that a public inquest is desirable as the immediate circumstances, manner and cause of Mr Osborn’s death are able to be determined.

I am satisfied that Mr Osborn’s actions of attaching the weight to his leg and entering the water were undertaken by him voluntarily and with the specific intention of ending his own life. I cannot determine whether Mr Osborn would have ended his life had Mrs Osborn not endorsed his decision or agreed to drive him to the Regatta Grounds jetty. However, it would

seem that, in his very poor mental state, Mr Osborn may well have taken such action regardless of her help or support.

Comments

I extend my appreciation to investigating officer, Detective Senior Sergeant Adam Stanwix, for his thorough investigation and report.

The circumstances of Mr Osborn'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 condolences to the family and loved ones of Mr Osborn.

Dated: 12 June 2018 at Hobart in the State of Tasmania.

Olivia McTaggart
Coroner