



MAGISTRATES COURT of TASMANIA

CORONIAL DIVISION



Record of Investigation into Death (Without Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Simon Cooper, Coroner, having investigated the death of Donald Joseph Marshall

Find That:

- a) The identity of the deceased is Donald Joseph Marshall;
- b) Mr Marshall died in the circumstances set out further in this finding;
- c) Mr Marshall died of a gunshot wound to the head;
- d) Mr Marshall died on 4 June 2013 at Badger Island, Bass Strait in Tasmania; and
- e) Mr Marshall was born in Wellington, New Zealand on 17 April 1935 and was 78 years of age at the time of his death; he was a married but separated man who was a retired painter and decorator.

Background:

Donald Joseph Marshall was born in Wellington, New Zealand on 17 April 1935. In 1957 he moved to Sydney, New South Wales where he started work as a painter on the Sydney Harbour Bridge. In 1966 he met and married Kerry in Denmark, Western Australia. He and his wife separated in 1985 but before then had two sons and a daughter. Mr Marshall worked at that time as a whaler out of Albany in Western Australia, and when that industry closed in 1978 he returned to his original occupation of a painter.

In 1985 Mr Marshall started on a lifestyle that continued for the rest of his life. He put to sea in a boat called 'Cimba' and for the next five years sailed around Australia. He sold 'Cimba' and bought in turn the yachts 'Nomad' and 'Aspro 11'. The latter he bought in 1997 and continued to sail around the coast of Australia until his death.

Aspro 11 is, or was, a 23 foot fibreglass sloop rigged yacht. It had a partially removed inoperable inboard engine but was fitted with an outboard engine as an auxiliary source of power.

There is no doubt that Mr Marshall was a very experienced sailor. Notwithstanding his experience, on 11 May 2013 as he attempted to enter the Moyne River at Port Fairy in Victoria, he collided with a sea wall. As a result it was necessary for him to be rescued by marine rescue personnel and members of the Victorian police force. It is apparent that the incident was due to a navigation error on his part.

While on his voyages Mr Marshall stayed in reasonably regular contact with his oldest son Paul. On 21 May 2013 Paul and Mr Marshall spoke by telephone. During that conversation Mr Marshall told Paul about his rescue at Port Fairy.

On 24 May 2013 Mr Marshall spoke again to Paul. During that conversation he explained that it was his intention to sail to Tasmania and from there up the New South Wales coast.

On either 24 or 25 May 2013 Mr Marshall left Port Fairy and sailed south towards Tasmania. The precise date and time of his departure is not recorded anywhere.

Circumstances Surrounding the Death:

On 26 May 2013 Mr Marshall again sought assistance from emergency authorities as he approached Stanley on the North West Coast of Tasmania. He advised that a wave had rocked his yacht, causing him to lose his balance, fall and injure himself. Police organised a local vessel to assist and Mr Marshall was treated at Smithton Hospital for his injuries. He remained overnight in hospital. This seems to have been the last time Mr Marshall was seen alive by anyone. After receiving that medical treatment in Smithton he once again put to sea.

At about 1.25am on 4 June 2013 Mr Marshall made a mayday radio call for assistance via Tamar Sea Rescue (a volunteer marine radio service) utilising VHF radio channel 16, the international VHF distress channel.

Mr Marshall told the volunteer radio operator (Mr Bryn Warrick) that he had run aground on 'Vansittart Shoal', a rocky area east of Franklin Sound near Flinders Island. He told Mr Warrick that his yacht was caught on rocks and was taking on water but that he was not in any immediate danger and was unhurt.

In addition to radioing for help Mr Marshall activated his EPIRB. The EPIRB activated was a registered 406 MHz type. Rescue Coordination Centre Australia (RCC) personnel were able to quickly identify that the beacon was registered to Mr Marshall. Attempts were made to contact him by mobile phone but without success (although contact was made with Mr Marshall's son Paul). RCC recorded the activation beacon at 1.28am. RCC is a component part of the Australian Maritime Safety Authority's Emergency Response Centre responsible for national coordination of both maritime and aviation search and rescue, as well as for the management and operation of the Australian ground segment of the distress beacon (EPIRB) detection system.

Mr Warrick notified Tasmania Police of the Mayday call. Tasmania Police in turn notified RCC at 1.44am, by which time of course RCC was already responding to the EPIRB activation.

Mr Warrick advised Mr Marshall that contact had been made with both police and RCC. He told Mr Marshall that a search was being mounted for him. Mr Warrick describes Mr Marshall as sounding lucid, clear and calm on the radio.

It was identified by RCC at 1.55am, as a result of the activation by Mr Marshall of his EPIRB, that Mr Marshall and his yacht were in fact on the south coast of Badger Island, a considerable distance west of where Mr Marshall told Mr Warrick he was.

Badger Island is south-west of Flinders Island, and north-west of Cape Barren Island in the Bass Strait. It is not permanently occupied, however is sometimes visited. It is a substantial landmass of several kilometres length and has an approximate area of 2500 acres. Vansittart Shoal is 23 nautical miles east of Badger Island. To sail east from the area of Bass Strait near Badger Island to Vansittart Shoal would not be without difficulty. It would necessitate sailing through Franklin Sound, a narrow body of water which separates the southern coast of Flinders Island from the northern coast of Cape Barren Island. Franklin Sound contains at least 20 islands. Navigation lights are located on Pigs Head Point on

Flinders Island as well as on Apple Orchard Point on Cape Barren Island and Great Dog and Vansittart Islands in Franklin Sound itself. Although there is no navigation light on Badger Island there is one on Goose Island just two nautical miles to the west.

There is no room for confusion about the two locations, even without the use of a GPS, and Mr Marshall had a GPS with him.

Mr Warrick was made aware of Mr Marshall's correct position, and after becoming so aware radioed Mr Marshall. He told him that he, Mr Marshall, had given him the wrong position. According to Mr Warrick, Mr Marshall was "initially adamant that he was where he originally stated" but after a while Mr Warrick was able to persuade him that that was not so. Mr Warrick said Mr Marshall seemed confused as to how it was that he was on Badger Island. Mr Marshall was advised to remain on the vessel if safe to do so. He told Mr Warrick that he could reach the rocks, that he was safe, that he was quite comfortable and in no danger. In his last conversation with Mr Warrick at 2.21am he was able to accurately read back (apparently from his GPS) the longitude of his position which placed him on Badger Island. Mr Marshall told Mr Warrick in this conversation that he intended to get back off his boat and sit on the rocks again. Mr Marshall told Mr Warrick that the tide was coming in.

Mr Marshall was advised by Mr Warrick on behalf of RCC to deactivate his EPIRB and in the event that he had to leave his yacht in his life dinghy, or move to the island, he was to reactivate his EPIRB.

Mr Warrick was unable to establish any further contact with Mr Marshall although Mr Warrick attempted to do so several times over the next few hours.

The Tasmania Police Radio Dispatch Service (RDS) contacted First Class Constable Massie at about 1.45am, who was the police officer then stationed at Lady Barron on the southern coast of Flinders Island. The RDS operator advised Constable Massie of the information received from Tamar Sea Rescue. In that conversation the RDS operator advised Constable Massie that a 21 foot runabout with one person on board had collided with rocks at Vansittart Island. This information was obviously wrong. Mr Marshall's boat was not a 21 foot runabout and more importantly it had run into the rocks on Badger Island; although this was not known to Tamar Sea Rescue or Tasmania Police at that time. The information was also wrong because Mr Marshall had told Mr Warrick, (and I am satisfied Mr Warrick accurately recorded that information and accurately passed it on to RDS), that he was on Vansittart Shoal, which is roughly three nautical miles east of Vansittart Island. In this case nothing arises from that miscommunication but it may well have had if Mr Marshall had been where he thought he was.

At about 2.00am Constable Massie contacted Senior Sergeant Judges, the officer stationed at Whitemark on Flinders Island. Sergeant Judges made his way to Lady Barron. Whilst on his way Sergeant Judges was made aware by RDS that in fact Mr Marshall had run aground on Badger Island.

The two police officers launched the police vessel 'PV Protector' after 3.00am from Lady Barron. Lady Barron is approximately 16 nautical miles east of Badger Island. The two officers headed to a position indicated by coordinates provided by RCC.

At approximately 5.20am, the PV Protector arrived at that position on the southern coast of Badger Island. Sergeant Judges and Constable Massie found the Aspro 11 submerged, with a small section of mast visible above the water. There was no sign of Mr Marshall on board, or on the shore of the island close to the vessel. A search was conducted of the surrounding shoreline from the water. A parachute rocket flare was discharged in an attempt to gain Mr Marshall's attention. An air horn fitted to the PV Protector was sounded every minute or so.

No sign of Mr Marshall was located. After about 20 minutes the two police officers headed to nearby Goose Island where they sheltered until daylight. At 7.30am they returned to Badger Island.

Sergeant Judges and Constable Massie conducted a search of the surrounding shoreline from the water. No sign was found of Mr Marshall. The two officers landed on Badger Island and the few huts and sheds present on the island were all checked for any sign of Mr Marshall.

By now two helicopters had joined the search. One helicopter transported a police dive team to the island to dive on the wreckage of the yacht.

The police vessel was tasked with a further search area, and information to assist calculation of further search areas was provided by data from RCC.

During a search of the sea surrounding Badger Island police search and rescue personnel on board a helicopter located Mr Marshall's body at 12.20pm in the water roughly three quarters of a nautical mile from the wreck of his yacht. His body was winched to the helicopter and transported to Launceston, where he was conveyed to Launceston General Hospital. It was noted that Mr Marshall was not wearing a PFD at the time he was recovered; he also was not in possession of an EPIRB. It appeared Mr Marshall's body had been in the water for some hours.

At the Launceston General Hospital Mr Marshall's body was positively identified by his son Paul.

The body was then transported to Hobart where an autopsy was carried out by Dr Donald McGillivray Ritchey, forensic pathologist. The autopsy revealed an entrance gunshot wound in the roof of Mr Marshall's mouth. There was no exit wound. The entrance gunshot wound was notable for the presence of copious soot surrounding it. Dr Ritchey offered the opinion, which I accept, that the cause of Mr Marshall's death was an intra-oral gunshot wound to the head. A projectile was recovered from inside the skull.

This discovery caused investigations to take a different path. Until the discovery of the gunshot wound at autopsy an assumption had been made, not unreasonably in my view, that the cause of Mr Marshall's death was most likely drowning.

Police divers returned to the scene of the wrecked yacht at Badger Island the following day. Those divers located a sawn off .22 bolt action rifle under debris on the floor of the cockpit of the yacht. The rifle was taken possession of and found to still contain a spent .22 cartridge.

On the same day Mr Marshall's sons, Paul and Robert, flew to Badger Island and conducted a search of the shoreline. Amongst the debris on the shoreline they located two EPIRBs, a camera, a blue inflatable life jacket (yoke type) and a Garmin GPS. The EPIRBs and camera were subsequently taken possession of by Flinders Island police.

On 6 June 2013 police personnel again returned to Badger Island for the purpose of removing the yacht from the water so a more thorough examination could be completed. This was done and a further search of the vessel was completed. Nothing of any significance was located as a result of this procedure. More searches of the coastline where debris was located were also conducted. Nothing of any interest was located during those searches.

On 26 June 2013 the .22 rifle that had been recovered from the yacht was examined by Constable Simon Taylor, an officer of the Police Ballistic Section. Following that examination

Constable Taylor expressed the opinion that the rifle was in working order and capable of propelling a projectile, by means of an explosive, which could inflict a lethal wound upon a human being. Constable Taylor was of the view that the pressure required to operate the trigger was normal for that type of weapon. Standard safety tests conducted by him on the rifle revealed that it was not prone to accidental discharge when handled in a normal manner. I accept Constable Taylor's opinion.

The spent bullet recovered at autopsy was examined and a comparative macroscopic examination was conducted between it and bullets test fired from the sawn-off rifle. Those tests and that examination proved ultimately inconclusive although the projectile was identified as being of the same calibre as the recovered rifle. I am however satisfied on the balance of probabilities that the spent projectile found at autopsy in the skull of Mr Marshall was fired from the weapon recovered by police divers in the cockpit of the yacht. There is no other logical conclusion.

The investigation into Mr Marshall's death involved, *inter alia*, a review of the search and rescue operations which commenced as a result of his mayday call and activation of the EPIRB. There is room for a mild degree of criticism in relation to a failure of coordination as between RDS, the officers actually directly involved in the search and rescue efforts, the appropriate police duty officer, and the district search and rescue coordinator.

That having been said, there is nothing to suggest that the failure of coordination in any way hampered the search for Mr Marshall. More importantly, it must be recognised that irrespective of how the search and rescue efforts proceeded (and I am satisfied that broadly speaking they were an entirely appropriate response to the circumstances), no deficiency whatsoever played any part in Mr Marshall's death. There was no delay in the search commencing and no failure to provide information to, and obtain information from, Mr Marshall. Information that a search was being commenced and that police would be at his location within a matter of hours was passed onto Mr Marshall. Mr Marshall gave Mr Warrick to understand that he was safe and at no immediate threat. It is clear to me that the efforts in particular of the Flinders Island police officers, Sergeant Judges and Constable Massie, were commendable.

My conclusion is that in the circumstances, for whatever reason, Mr Marshall took his own life by the infliction of a gunshot wound through the roof of his mouth. The acts which led to his death were voluntarily undertaken by him with the express intention of ending his own life. It is impossible to make any finding as to why Mr Marshall chose to take his own life. It may well be that having twice, in a very short time, needing to be rescued, the third and final incident of running aground on Badger Island and the resultant confusion on Mr Marshall's part as to his correct location caused him a level of distress and despair that led to him undertaking those actions.

Comments and Recommendations:

The circumstances of Mr Marshall's death are such that it is unnecessary for me to make any recommendations or comments pursuant to section 28 of the *Coroners Act 1995*.

In conclusion I wish to convey my sincere condolences to the family of Mr Marshall.

Dated: 21 January 2016 at Hobart in the state of Tasmania

Simon Cooper
Coroner