



# OFFICE OF THE TOWNSVILLE CORONER

## FINDINGS OF INQUEST

CITATION: **Inquest into the death of Christina Mae WATSON known as Tina WATSON**

TITLE OF COURT: Coroner's Court

JURISDICTION: Townsville

FILE NO(s): COR 124 of 2003

DELIVERED ON: 24 April 2008

DELIVERED AT: Townsville

HEARING DATE(s): 13, 19, 20 21, 22, 23, 26, 27, 28, 29 and 30 November 2007 and 21, 22, 23, 24, 25, 29, 30, and 31 January 2008 and 1 February 2008, and 23 and 24 April 2008 and 19 and 20 June 2008.

FINDINGS OF: David Robert Glasgow Coroner

CATCHWORDS: CORONERS: Inquest – into the death of *Christina Mae Watson* who died on 22 October 2003 whilst diving on the historic Shipwreck "*Yongala*" 48 nautical miles South East of the port of Townsville and whose body was brought to the city of Townsville in the State of Queensland bringing the death within the Jurisdiction of the State of Queensland

### REPRESENTATION:

Mr John Tate of Counsel appeared to assist the Coroner

Mr Steve Zillman of Counsel (instructed by Messrs Roberts Nehmer McKee) appeared for the husband David Gabriel Watson

Mr Harvey Walters of Counsel appeared for the parents of the deceased Mr William Edwin Thomas and Mrs Cindy Thomas

Mr D. L. K. Atkinson (instructed by Messrs MacDonnells Law as town Agents for Messrs Herbert Geer Rundell) appeared for Mike Ball Expeditions Pty Limited

## **CORONERS FINDINGS AND DECISION**

### ***Coroners Act 1958***

1. The inquest was conducted pursuant to section 26 of the *Coroners Act 1958* (“the Act”) because Tina Watson’s death occurred before 1 December 2003, the date on which the *Coroners Act 2003* was proclaimed. It is therefore a “pre-commencement death” within the terms of section 100 of the latter Act, and the provisions of the *Coroners Act 1958* are preserved and continue to apply in relation to the inquest. My findings are therefore delivered pursuant to the provisions of the Act.
2. The purpose of this inquest is to establish, as far as practicable –
  - the fact that a person has died;
  - the identity of the deceased person;
  - whether any person should be charged with any of those offences referred to in section 24 of the Act;
  - where, when and in what circumstances the deceased came by their death.
3. As I outlined at the commencement of these proceedings, the hearing was an investigation by inquisition in which no one had a right to be heard. All parties who requested leave to appear were granted leave and I have endeavoured to ensure the rules of natural justice and procedural fairness were applied as the particular circumstances warranted.
4. Submissions in writing have been received from Mr Tate Counsel Assisting (Exhibit 32) and Mr Zillman Counsel for David Gabriel Watson (Exhibit 33) and Mr Atkinson (Exhibit 34). I ruled for the reasons published by me on 1 February 2008 that Tina’s parents were not entitled at law to make submissions.
5. In making my findings I am not permitted, under the Act, to express any opinion on any matter which is outside the scope of this inquest, except in the form of a rider or recommendation.
6. I am aware the findings I make here are not to be framed in any way which may determine or influence any question or issue of liability in any other place or which might suggest that any person should be found guilty or otherwise in any other proceedings.

### **Introduction**

7. Tina Watson was born on 13 February 1977 at Ramstein Germany. A citizen of the United States of America, she resided at 306b Oak Leaf Circle Hoover Alabama. She died at approximately 1127 hours on 22 October 2003 whilst diving on the historic Shipwreck “Yongala” approximately 48 nautical miles South East of the port of Townsville and 12 nautical miles east of Cape Bowling Green. Tina was transported to

Townsville by the motor vessel "Spoilsport" and later transferred to the Townsville Morgue by Morley's Funerals.

8. Tina was married to David Gabriel Watson on 11 October 2003 at Birmingham, Alabama and they were on their honeymoon at the time of her death.
9. The form 4 report of death dated 22 October 2003 (exhibit 1) stated:
  - a. *"There appears to be no suspicious circumstances surrounding this death at this point in time.*
  - b. *Approx 1030 hours on Wednesday the 22<sup>nd</sup> Day of October 2003, the deceased person entered the water with her husband as her dice (dive) buddy, to SCUBA dive on the historic shipwreck the "Yongala". At a depth of 45 feet the deceased signalled to her husband that she wanted to surface, they both began swimming against the current towards the dive vessel; the deceased became fatigued so her husband began towing her. The deceased panicked and grabbed her husbands' dive regulator, looked into her eyes and saw her eyes were wide open but there was no response. The deceased then sank to the sea floor. A dive instructor in the area at the time has seen the deceased on the sea floor; he retrieved her and made an emergency ascent to the nearest dive vessel "Jazz II" where full resuscitation commenced".*

### **Autopsy report**

10. On 23 October 2003 an autopsy was performed by Professor David Williams Consultant Forensic Pathologist ("the pathologist") of Queensland Health Pathology and Scientific Services at Townsville.
11. The pathologist recorded that Tina's height was 174cm and her weight was 63 kg. His report (Exhibit 4) records a formerly healthy young lady aged 26 years.
12. After listing his observations the pathologist commented:
  - *Radiology: The body shows florid evidence of air embolism*

*Histology:*

  - *Heart: The myocardium shows no convincing evidence of myocarditis, ischemic fibrosis or recent infarction. The coronary arteries are widely patent and show negligible amounts of atheroma.*
  - *Brain: There is no evidence of either meningitis or encephalitis.*

13. The pathologist listed the cause of death as;

a. 1(a) *Drowning.*

### **Investigation in to Tina's death**

14. As a Coroner I am an Independent Statutory Officer. At the time of Tina's death and subsequently this office was not, as in other Coronial Jurisdictions, resourced with independent investigators. Coronial investigations in Queensland are carried out by Officers of the Queensland Police Service, Work Place Health and Safety and Department of Mines to name three Departments who assist with such investigations. Each of those organisations has its own statutory obligations in relation to investigation and prosecution of offences which may have occurred. We have evidence in this Inquest of such a prosecution being conducted by Work Place Health and Safety of the dive company and I refer to that prosecution later in my findings.
15. The speed with which such investigations are completed are in many instances determined by the availability of staff and the ability and willingness of Officers in Charge to expend funds to carry through the Investigators and/or the Coroners recommendations.
16. In this case there was a significant delay in completing investigations which caused significant concerns to family of the deceased and other persons interested in the outcome. Such delay also contributed to the fact that as time progressed memories of events for some witnesses became less clear and, of necessity, Investigators were required to revisit witnesses to obtain further statements to clarify information obtained by previous interviewers.
17. Upon being fully resourced, Detective Gary Campbell has produced to my Inquiry as detailed and complete a picture as I have seen in my role as a Coroner.
18. Gabe Watson has submitted that Police investigators *"have, at some point, determined that Gabe was guilty of murder and have endeavoured to construct a case to that end rather than to simply gather evidence."*
19. I have seen no evidence of that. There are only two persons who know or knew what in fact actually occurred. One is Tina who cannot tell us and the other, Gabe.
20. It appears certain that at some point in time Investigators considered some of Gabe's explanations lacked credibility and it further appears to me that Investigators gave Gabe the opportunity to clarify matters which may have caused concern. Investigators took thorough steps to review and investigate all statements in their endeavour to determine what did occur during the fatal dive.

21. It also is clear to me that some witnesses to events and/or conversations with Gabe have personal views on how events did “probably” unfold under the water during the fatal dive. In considering my findings and the decisions I have made today, I have endeavoured to hear and observe witnesses objectively and to account for those issues and the memory loss which often occurs when there is significant delay in concluding processes.

### **Summary of events**

22. Christina Mae Thomas (Tina) was married to David Gabriel Watson (Gabe) on 11 October 2003 at Birmingham, in the State of Alabama in the United States of America. They had planned to come to Australia as part of their honeymoon to experience diving on the Great Barrier Reef. Gabe was an experienced diver having carried out many diving trips and having completed his rescue diving course in 2001. Tina had dived previously but was regarded as an inexperienced diver.
23. Tina and Gabe left on their honeymoon on 13 October 2003 arriving in Sydney Australia on 17 October 2003 where they spent some days sightseeing before leaving for Townsville where they arrived on 21 October 2003.
24. Gabe had, prior to his departure from the United States, made contact with representatives of Mike Ball Dive Expeditions Pty Limited (the dive company) to arrange for a dive trip to the historic shipwreck “Yongala” on the motor vessel “Spoilsport”. Gabe and Tina brought with them their own diving equipment - excluding air tanks which were provided by the dive company.
25. Gabe and Tina boarded the “Spoilsport” at about 10pm on 21 October 2003 along with a number of other guests. The vessel departed the port of Townsville at approximately 11-30pm that evening for the “Yongala” dive site a distance of some 48 nautical miles south east from Townsville and 12 nautical miles east of Cape Bowling Green. The “Spoilsport” moored at that site at approximately 2am the following morning.
26. The “Yongala” is a shipwreck protected under the *Historic Shipwrecks Act 1976 (Cth)* and lies in approximately 30 meters of water. The upper section of the wreck lies approximately 16 meters below the surface of the water. Its position, general layout and current status are more particularly described in the numerous documentary and photographic exhibits provided to the Inquest. It is unlawful to penetrate the wreck or remove items but may be visited by dive companies who have obtained permits to visit and anchor at various designated mooring points.
27. Once on board, staff of the dive company obtained from each diver in writing, including Gabe and Tina, details and particulars of their diving experience and history of completed dives. Briefings were provided on the operation of the “Spoilsport” and safety requirements whilst on board the vessel.

28. Following a briefing by staff between 9am and 9-30am, Gabe and Tina readied for their first dive and after equipping themselves with their diving gear travelled in a tender with four other divers to the bow access point of the "Yongala" where they entered the water.
29. After some few minutes in the water, Gabe and Tina returned to the "Spoilsport" to correct a malfunction with Gabe's dive computer worn on his wrist. After repositioning the batteries in his dive computer both Tina and Gabe returned to bow access point of the "Yongala" where they re-entered the water to commence their dive (the fatal dive).
30. The events which occurred in the time between the commencement of the fatal dive and when Tina's body was being brought to the surface by Wade Andrew Singleton has been closely examined by me as have the versions of the events of that day as recalled and explained by Gabe to Police Officers and other persons.

### **Gabe's explanation**

31. Gabe's counsel submitted that Gabe did not give numerous versions of the events of the fatal dive and that suggestion by Mr Tate of multiple and inconsistent versions, is not accurate. I have spent considerable time reviewing Gabe's written and oral statements (including the video records) and have noted many inconsistencies which in some instances were clarified to some extent in a later interview and others not.

### **Submissions of Counsel**

32. A submission was received from Mr Atkinson (exhibit 34) following an invitation from me for his client to consider two matters which I was contemplating to include in a rider to my findings. Those matters were;
  - i. Whether before the commencement of a dive, a dive school should be required to verify that prospective participants hold the level of certification which they assert, and
  - ii. Whether or not, where a diver training organisation issues a diver with a rescue diver's certification, that certification should expire after a certain period.
33. Submissions were received from Mr Tate (Exhibit 32) Mr Zillman (exhibit 33) in relation to the possibility of adverse findings being made by me in relation to Gabe Watson.

### **Comments by way of rider section 43 (5A) Coroners Act 1958**

34. There is not much gained by the public process of an inquest unless there has been consideration of improvements for the future which aims to reduce the likelihood of another death occurring in similar circumstances.

35. I am indebted to Mr Atkinson for his detailed submissions and accept that it would be problematic (for the reasons outlined by him) that a rescue diver's certification, incorporate an expiry date.
36. I accept the Code (detailed in item 3.8 of Exhibit 34) effectively addresses what I did initially consider to be a problem which should be resolved by production of the license held by a diver.
37. I do not propose to include any rider in relation to these matters addressed by Mr Atkinson in his submissions.

### **Prosecution of the Dive Company**

38. Mike Ball Expeditions Pty Limited was convicted in the Cairns Magistrates Courts on 9 May 2007 for the offence:

*“That on the twenty-second day of October 2003 at Townsville in the Magistrates Court District of Townsville, Mike Ball Expeditions Pty Limited being a person on whom a workplace health and safety obligation prescribed by section 28(3) of the Workplace Health and Safety Act 1995 is imposed, did fail to discharge that obligation contrary to section 24(1) of the Workplace Health and Safety Act 1995 in that it being an employer the said Mike Ball Expeditions Pty Limited did fail to ensure that other persons were not exposed to risks to their health and safety arising out of the conduct of the employer's business or undertaking.”*

39. Having pleaded guilty to the charge the company was fined the sum of \$6,500-00, and ordered to pay investigation costs \$750-00, and Professional costs of \$750-00.
40. This charge related to a failure of the company to comply with its own procedures as set out in its manual (Exhibit 10 A, B, C and D). These standards, I am advised, are significantly higher than that of State requirements.
41. I accept the evidence of the company's representatives that training procedures were immediately reviewed following Tina's death and steps implemented to ensure that the company's procedures are maintained and followed by all employees and guests on its vessels at all times.

### **Cause of Tina's death**

42. As I have recorded today, the pathologist listed the cause of death as Drowning. I accept his assessment.
43. Mr Zillman submits there are four possible explanations which may support a finding of accidental drowning they are;

- An arrhythmia,
  - Obstruction caused by vomiting,
  - Laryngospasm; and
  - Anxiety and panic.
44. These explanations are set out in detail on pages 7 to 17 of Exhibit 33 and it is submitted that Dr Griffith's evidence does not exclude (or leaves open) any one as a possible explanation for accidental drowning.
45. I understand Dr Griffith's evidence to be that he:
- a. Excludes Tina's pre-existing heart condition as a possible cause,
  - b. Views vomiting was unlikely as a preliminary event,
  - c. Accepts unconsciousness was possible following a Laryngospasm, but discounted this as the cause of death, and
  - d. Whilst accepting anxiety and panic could have been a factor in a death by drowning, did not accept the postulation of such being the cause of Tina's death.
46. It was submitted that none of the four explanations can ever be capable of detection in an autopsy examination. I understand that to be true in a case such as Tina's as there was delay in the examination caused by the necessity of transporting her body from the site of her death to the city of Townsville. I understand the medical evidence to be that detection is possible in some instances, but much depends on the nature and extent of attempts at resuscitation and any delay in an examination.
47. I am satisfied that the four possible explanations have been excluded by the evidence we have heard and I am unable to conclude that Tina's death was an accidental drowning as a result of one or more of those four explanations.
48. I am also satisfied there is no reasonable likelihood of any medication taken by the deceased prior to her commencing her dive on the "Yongala", causing or contributing to her drowning.

### **Possible explanations for Murder**

49. Mr Zillman submitted that there is no logical and identifiable motive that might be able to explain this death as one of murder. He sets out on page 4 of his written submission (Exhibit 33) three instances where he postulates such could conceivably occur. They were;

- Where the killing occurred in the heat of passion, or
  - Where the husband was so mentally deranged as to do an act of murder for no apparent reason, or
  - Where the husband had motive.
50. I accept there was no evidence before me that Gabe was suffering from an identified mental condition.
51. In relation to motive, it was argued that the hearsay evidence of Mr Thomas is inadmissible as it does not fall within the exceptions set out in section 93B of the *Evidence Act 1977* for it fails to meet the requirements of that section.
52. Mr Thomas' evidence is that he discussed with Tina shortly prior to her marriage to Gabe, Gabe's request that she not only increase her Company insurance to the maximum but make him the beneficiary. Mr Thomas said that it was resolved that Tina would tell Gabe that such had been done. Evidence was also given by Company officers of Gab's inquiry to the company about Tina's insurance after her death. I am of the view Mr Thomas' evidence would be admissible in criminal proceedings against Gabe and may be such to provide a possible motive.

#### **Evidence of witnesses Mr. Han Gyu Kim and Miss Sun Min Jeon**

53. Gabe states that in his ascent completing the fatal dive; he addressed a diver underwater of Asian appearance and signalled to that person the difficulties Tina was in. All other divers in the water that day with the exception of Mr Kim and Miss Jeon were called and excluded themselves as the diver referred to by Gabe.
54. In neither of the statements by Miss Joen and Mr Kim, admitted as Exhibits in these proceedings, was Gabe's claim of contact referred to but each deponent has responded by email to the effect such an occurrence stated by Gabe did not occur with them.
55. Mr Zillman submits that this email contact, though admissible at the Inquest, would not be admissible in a criminal proceeding and that being so, I could not take such denials in to consideration in determining if a prima facie case of murder was established against Gabe. He submits as a consequence I cannot dismiss Gabe's claim that he did contact a diver during his ascent.
56. Faced with the denials on the one hand and Gabe's contrary assertion on the other I would be less than humane not to concede this has caused me concern as Coroner. I do accept Mr Zillman's submission that I cannot take the email denials into account in my determination. I therefore treat this issue as if I have no comment from these two divers in that issue.

## **Evidence of Dr Stutz**

57. I listened carefully to the evidence of Dr Stutz who is a significant observer of the events under the sea at the time of Tina's death and have reviewed his evidence subsequently. I found him to have provided an honest and reliable account of his recollections.

## **Findings pursuant to section 43 Coroners Act 1958**

58. On 22 October 2003 at about 1127 hours the deceased died whilst in the course of a scuba dive on the Historic Shipwreck "Yongala" sited some 40 Nautical Miles south east of the city of Townsville in the State of Queensland.

59. The cause of death was drowning.

## **Consideration of section 41 Coroners Act 1958 regarding committal for trial for a criminal offence.**

60. The coroner is required to consider whether "the evidence taken at the Inquest is sufficient to put a person upon the person's trial – (a) where a death has occurred – for murder, manslaughter" or other specified offences.

61. Is there sufficient evidence which establishes a *prima facie* case of murder upon which a properly instructed jury could return a verdict of guilty?

62. Mr Zillman submitted that the evidence relied upon by Mr Tate to support his submission that Gabe Watson should stand trial for the murder of his wife Christina Mae Watson, is largely circumstantial and as such, must be "such as to exclude any reasonable hypothesis consistent with innocence".

63. Counsel also relies upon what he submits to be inconsistencies in the evidence of witnesses and, in particular the evidence of Dr Stutz, as well as conclusions and assumptions drawn by witnesses and police from their misinterpretation of the evidence including;

1. Evidence of dive computer readings
2. The estimates of Gabe's ascent rate following his separation from Tina
3. Gabe's previous and recent dive experience
4. Gabe's actions as a trained rescue diver
5. The evidence of the rate of flow of the current on the day

to establish that there are clear discernable explanations which are consistent with the innocence of his client Gabe Watson.

64. I am satisfied there is evidence of sufficient reliability on each of these identified matters which, when viewed in the context of all of the evidence, satisfy me, that a properly instructed jury, could make a finding of guilt against David Gabriel Watson on a charge of Murder.
65. David Gabriel Watson is not present today but has been and continues to be represented by Mr Zillman of counsel instructed by the Messrs Roberts Nehmer McKee throughout these proceedings.
66. Mr Watson was given the opportunity to give evidence at this Inquest but the Inquest was advised that Mr Watson claimed privilege and was thus not required to be sworn as a witness.
67. In Mr Watson's absence I now propose to formally charge him and then address him through his solicitor Mr Armstrong (in the absence of Mr Zillman his counsel who yesterday I gave leave to retire as he has other commitments today) in the terms of section 104 of the *Justices Act 1886*;
68. David Gabriel Watson I formally charge you

***That on the 22<sup>nd</sup> day of October 2003 at the site of the historical shipwreck "Yongala" forty-eight nautical miles south east from the port of Townsville in the state of Queensland David Gabriel Watson murdered Christina Mae Watson.***

69. Mr. Armstrong I request you advise your client that I have today addressed him in the following terms;
70. "David Gabriel Watson, you will have the opportunity to give evidence on oath before me and to call witnesses but first I am going to ask whether you wish to say anything in answer to the charge. You need not say anything unless you wish to do so and you are not obliged to enter any plea. You have nothing to hope from any promise and nothing to fear from any threat that may have been held out to induce you to make any admissions or confession of guilt. Anything you say will be taken down and may be given in evidence at your trial."
71. I now ask David Gabriel Watson through his solicitor Mr. Armstrong;
72. Do you wish to say anything in relation to this charge or enter any plea to the charge?
73. Response: No, Your Honour
74. David Gabriel Watson is committed for his trial to the next Criminal Sittings of the Supreme Court to be held at Townsville in the State of Queensland on a date to be advised by the Director of Public Prosecutions.

75. I request you Mr Armstrong if you will bring to the attention of Mr Watson the provisions of the requirements of S.590A of the Criminal Code regarding the calling of alibi evidence at his trial.
76. I direct a Warrant for the commitment for Trial pursuant to section 108(1) of the *Justices Act 1886* issue for the arrest of the Defendant David Gabriel Watson.
77. I order the exhibits in this Inquest currently held by Police be retained by them until such time as a request by the DPP is made for their delivery to that office.
78. I direct all other exhibits held by this court be delivered to the DPP Townsville.

David Glasgow  
Coroner

Friday, 20 June 2008