

**CORONER'S COURT
AT TOWNSVILLE**

GLASGOW, CORONER

TOWN - COR-00000124/03

IN THE MATTER OF an Inquest into the cause and circumstances
surrounding the death of **CHRISTINA MAY
WATSON**

SUBMISSIONS ON BEHALF OF DAVID GABRIEL (GABE) WATSON

GENERAL OBSERVATIONS

At the conclusion of the submissions of Counsel Assisting, it is said that it is the submission of the Police Investigators that Mr Watson stand trial for the crime of murder of his wife, Tina Watson. That is to say Your Honour is invited to find that, on the evidence, there is a prima facie case that Gabe Watson is guilty of the murder of his wife.

The evidence relied upon in that regard must be described as circumstantial. It is trite to say that a circumstantial case is one where a jury may draw an inference from the circumstances of the case that the accused person is guilty of the offence. In a criminal case, those circumstances must be such as to exclude any reasonable hypothesis consistent with innocence¹.

Perhaps the most important and fundamental principle of the criminal justice system in the State of Queensland is the recognition of the presumption of innocence. It is submitted that this principle in this case, in some quarters (most notably the media), has been put to one side.

One is left with an uneasy feeling in this case that the police have, at some point, determined that Gabe was guilty of murder and have endeavoured to

¹ See *Barca v The Queen* (1975) 133 CLR 82 at 104.

construct a case to that end rather than to simply gather the evidence, whichever side it may favour. It seems inescapable as a conclusion that various of the witnesses have formed a view as to Gabe's guilt and their evidence must be considered in that light. More will be said later, but it is submitted that the evidence of Mr Milsap, Mr Snyder, and Dr Stutz fall into that category. While their statements have changed dramatically it is suggested that that may be forgiven because there was pressures of time prevailing when they gave their initial statements. On the other side of the coin, it is suggested that when Mr Watson has said something in addition to what he has previously said, that his story is "evolving".

Allied to all of this, it seems, has been by the police, an uncritical acceptance of what people may say. Good examples of this lie in the statements and evidence of Mr and Mrs Graves. In the statement of John Graves it is alleged that Gabe was "participating in a card game with at least three other passengers" on the return of the "Spoilsport" to Townsville following the death of Tina. Cross-examined, he gave evidence that he did not recall if Gabe physically had cards in his hand or not and that it was a reasonable possibility that Gabe was not actually participating in the game as a player but was simply with others.²

Mr Graves' wife, Tina Graves, provided a statement wherein she said "I saw Watson and he was sitting in the saloon area playing cards with at least two other people". Cross-examined her evidence was that it was very possible that he was not participating in any such card game but rather, he was simply there when others were playing.³

The point made is that on its face, these were shocking allegations in that it put Gabe Watson in an extremely poor light by reason that it suggested that within a couple of hours of the death of his wife he was calmly and apparently

² See Transcript 1249 Day 12.

³ See Transcript 1262.

recreationally, participating in a game of cards on the boat on its return journey.

What is required in this case, it is submitted, is a calm and detached assessment of all of the evidence whether it be in the favour of Gabe Watson or not. If one were to approach this case with a presumption of guilt rather than innocence, there is the temptation to construe any fact even if it be of a neutral kind in a sinister way. Moreover, in approaching the case in that way it must necessarily require the pushing to one side of what I submit to be the most important evidence in the case.

The evidence to which I refer is the absence of any logical and identifiable motive.

In any circumstantial case where committal for trial is in issue, the inherent probability or not of the fact in issue must be a predominant consideration. Tina and Gabe were married on 11th October 2003. Their honeymoon plans were to travel to Australia, in particular to Sydney and to Townsville for the purposes of a diving cruise. Tina died while she was scuba diving on the 22nd October 2003, 11 days after her wedding.

The submission of the Police Investigators is that she was murdered by her husband in the course of diving by his turning off her air supply until such time as she was dead or near to dead, and then turning back on that air supply leaving her to sink to the bottom of the ocean. [There did not appear to be any issue in the case that when the air supply of an inexperienced diver is obstructed or removed, that diver will panic, spit out the mouth piece and inhale water. In those circumstances, it would be necessary on that scenario for Gabe to have not only turned back on Tina's air supply, but also somehow to have reinserted the regulator into her mouth, given that that was how she was found by Wade Singleton.]

There is no logical and identifiable motive that might be able to explain this case as one of murder.

To identify the circumstances of the death is to highlight the inherent improbability of such a thing occurring. Other than in extreme cases, it is not the way of the world that a husband would kill his bride of 11 days. If such a thing were to occur, it conceivably could only occur in one of three instances:

- (a) In circumstances where the killing occurred in the heat of passion;
- (b) Where the husband was so mentally deranged as to do the act for no apparent reason;
- (c) Where the husband had a motive.

As to (a), this was not a crime of passion. If this was a case of murder then it was one which involved a plan which was quite coldly premeditated and executed. As to the second instance, there is not the slightest suggestion that Mr Watson was suffering from any *derangement of the mind which might have* led him to kill his wife. As to the issue of motive, there has been referred to in the evidence an insurance policy held by Tina. The evidence is that Tina had a life insurance policy through her employment valued at about \$30,000.00 and naming her father as the beneficiary.

While there was some evidence given by her father, Mr William Thomas, that Tina had told him that Gabe had in turn told her (Tina) that she was to increase her life insurance benefit to the maximum and to change the existing beneficiary to Gabe, that evidence is clearly hearsay and is not available to be considered by Your Honour when considering whether or not a prima face case exists.

There was some evidence that both Tina and Gabe had taken out some travel

insurance and the sum of money that might have been payable under that policy in the event of death was \$10,000.00 by way of an accidental death benefit and, debatably, a \$25,000.00 common carrier accidental death benefit⁴. I use the term "debatably" by reason that it is not easy to reconcile a death while diving recreationally as being one that might fall under a common carrier's liability.

It is submitted that the most probative of all evidence concerning insurance as a motive is to be found in the evidence of Detective Campbell towards the end of the Inquest. His evidence was that he had received a document from an insurance broker by the name of Mark Hughes where, as late as the 8th September 2003, it was revealed that Gabe did not want to proceed to take out a substantial life policy on Tina but that he would review the position on their return from their honeymoon.⁵ The record of that matter was received as Exhibit 33.

The significance of that evidence lies not only in the negative, that is an absence of insurance monies, but in the positive, namely, there was an actual refusal on the part of Gabe to proceed to take out a policy which would have been payable to him in the event of Tina's death.

It is in light of these particular matters that the other evidence in the case ought be examined.

PARTICULAR ISSUES

There are a number of issues in the case, some obviously of greater importance and others of lesser importance. Of those issues, some in turn may raise what might be described as sub-issues. Given the extent of the evidence, be it in written and/or oral form, it is not possible to, in the course of these submissions,

⁴ See the evidence of Mr Langley, p832.

⁵ See the evidence of Detective Campbell, day 17, 30th January 2008, pp80-83.

cover every point. I do propose however to deal with those issues which are considered to be more important.

Cause of death

This is not a case where the medical evidence is such that there can be no question that Tina had been murdered. It is submitted that a review of all of the evidence would lead to the conclusion that the Court would be unable to say whether or not foul play had been involved.

The evidence of Dr Williams and Dr Griffith is that death was occasioned by drowning.

That Tina drowned is, of course, no evidence that her death was accidentally or deliberately caused. What must be examined is the evidence that concerns the issue as to how she came to drown. In general terms, it was the evidence of Wade Singleton that when he discovered Tina on the ocean floor she was apparently unconscious but with her regulator in place and the air supply in its on position. If this evidence is accepted – and there does not seem to be any reason that it ought not be – it is apparent that something had happened prior to that time to cause Tina to be in that position. What was it then that led to that result? It is in this regard that the evidence, it is submitted, becomes somewhat speculative. I propose to now examine the evidence concerning a number of the factors which may conceivably have been involved in the death.

An examination of the evidence of Dr Griffith, it is submitted, leaves open as explanations for accidental drowning:

1. an arrhythmia;
2. obstructions caused by vomiting; or
3. laryngospasm; and

4. anxiety and panic.

1. Arrhythmia

The evidence reveals that Tina had a pre-existing heart condition described as an arrhythmia or, more particularly, a supra-ventricular tachycardia (SVT). This was discovered by Dr Mendlesohn as referred to in his statement of 27th April 2007. It is noted that the condition was debilitating and, accordingly, she was referred to Dr Epstein for radio frequency ablation. Dr Epstein provided a statement dated 24th April 2007 and was also examined by audio link at the Inquest. His evidence was that the ablation was carried out in the mid part of 2001 and he stated that the procedure was "curative with virtual certainty". He stated further, that in experienced hands, it is successful 99% of the time.

There are two points that flow from Dr Epstein's evidence. It is my submission the ablation procedure can be regarded as being successful at the point in time that Dr Epstein performed it. Post-ablation tests undertaken by Tina failed to demonstrate the ongoing evidence for SVT. However, that fact does not acquit the second issue – the fact that SVT can recur after a successful ablation procedure. Dr Epstein conceded that recurrences can occur although he stated such recurrences usually occur within months after the procedure and the recent recurrence rate is 1% compared to 9% some years ago.⁶

It is my submission the evidence not only establishes that there was a 99% chance that Tina's heart condition had been cured but that there was also, by the treating surgeon, an admitted 1% chance of recurrence. It is my submission that the prospect of recurrence of SVT cannot be dismissed.

In *Rogers v Whittaker* (1992) 175 CLR 479, Mrs Whittaker was exposed to the risk of sympathetic ophthalmia in one eye when Dr Rogers operated on her other eye.

⁶ Transcript evidence day 1, pp43, 44 and 47.

The chance of that particular condition occurring was once in approximately 14,000 such procedures with the chance of occurrence being slightly greater than that where there was an earlier penetrating injury to the eye operated upon. The remote risk eventuated and Dr Rogers was found liable for failing to warn her of the risk.

So while the odds are against the chance of occurrence of the arrhythmia, it is my submission that you ought find that the recurrence of the arrhythmia was something that could not reasonably enough be discounted.

It was the evidence, of course, that arrhythmia is something that may lead to a loss of consciousness and, in turn, drowning and which is not discoverable on post mortem examination.

Beyond the question as to whether or not the ablation procedure was 100% successful, it is the evidence that there nonetheless can be an arrhythmia. Dr Griffith gave evidence that he sought an opinion from Dr Epstein in the following terms:

"Can you quantify the possibility of a serious life threatening dysrhythmia occurring in a diver who is in serious panic underwater with a normal heart?"

Dr Griffith gave evidence that Professor Epstein's reply was to firstly acknowledge that he was not a diving expert and then to say that it would be extremely low but when asked by Mr Tate:

"So as a result of all of that information would your clinical advice to the Court be that we should look elsewhere than to the heart and the cardiovascular system in attempting to ascribe a cause of death?"

⁷ See p502 of the Transcript.

It is my belief as a diving medical practitioner rather than a cardiologist that under great stress in someone who has been exercising severely, it is still possible that even if she had a normal heart, there may have been a dysrhythmia causing her to lose consciousness. But that is a small possibility, but it is a real possibility I believe nevertheless.

And would you be thinking there of ventricular fibrillation as the most likely arrhythmia?

Indeed because that would stop the circulation which is the important thing. If she had a rapid heart beat she would still have a continuing circulation and would be unlikely to lose consciousness under water. She might do so when she reached the surface but not under water.

Yes so if she had that sort of dysrhythmia it really doesn't help us understand why she failed to breath at some point from the point of separation to when she was seen by Mr Singleton?

Well if she had a dysrhythmia and if the circulation stopped then of course the respiratory centre would not receive oxygenated blood and it would stop her drive to breathe and she would stop breathing."

2. Obstruction caused by vomiting

Dr Griffith gave evidence as follows:

"There is evidence that Tina had perhaps vomited but this may have been a terminal event. We don't know whether such an event had occurred at the 15 metre mark at six minutes into the dive it is possible.

(underlining mine)

His evidence continued:

⁸ See Transcript day 5, p502.

"It is unlikely as a preliminary event because most people who are going to vomit underwater have had severe seasickness on the surface and on jumping into the water, if there is still a fair amount of slop might go on to actually vomit underwater and that certainly can be a precipitating cause of a serious event underwater but there is no evidence that I am aware of that Tina was suffering from significant seasickness and I am not aware of any report suggesting that she was unwell prior to going into the water."

Dr Griffith, unfortunately but perhaps understandably, strayed from time to time into assessing other evidence in the case. That assessment at times seemed to colour his evidence. In fact, there was evidence that Tina was conceivably suffering from seasickness by reason that she was on medication for it.

Naturally enough, issues of panic and anxiety may cause someone to vomit.

There is some evidence that, just prior to the dive, Tina was displaying signs of panic. She was described as being red in the face with wide glazed eyes, out of breath and not very comfortable.⁹

Dr Griffith recognised in his evidence that vomiting could have been the precipitating cause for the drowning. He gave evidence as follows:

"We note that she probably vomited at the end but I believe that was a terminal event and there is no real suggestion that she had vomited at the point of losing consciousness although that is possible. An if she had vomited and the vomit had obstructed her airway that might have caused her vocal chords to close and might have caused her to lose consciousness."¹⁰

The reference Dr Griffith made to there being no real suggestion that she had vomited at the point of losing consciousness appears to have come from his appreciation of what other witnesses might have said in terms of their

⁹ See evidence of Lou Johnstone-Forster, p1100 Transcript.

¹⁰ See p506.

observations. In fact no-one could say whether she did or not. In the course of cross-examination, Dr Griffith gave some further evidence on the question of the effects of vomiting under water as follows:

"There are many people who do vomit underwater and don't get into trouble but they are usually fairly experienced divers and are able to remove their mouthpiece, vomit, replace the mouthpiece and continue breathing. In someone who is relatively inexperienced and not thought this particular scenario through, if they vomit into the regulator it may cause the regulator the malfunction, then they try and breathe having vomited and it may make it difficult or impossible to obtain air from the regulator. If that were the case, the regulator when it was assessed later would be found still to have vomitus affecting its function."

Dr Griffith said that he believed the equipment was carefully assessed later and found to be not containing any foreign matter. However, there was an obvious opportunity for any foreign matter to have been washed away from the regulator whether it was when Tina was brought to the surface or later onboard the Jazz II. It should be noted that the witness, Glen Arthur Martin, saw Tina when she surfaced and noted, at that time, the regulator was not in her mouth. Further, the witness, Liarne England, also says that when she first saw Tina in the water on her resurfacing she had no breathing equipment in place.¹¹ Dr Griffith was asked:

"... Vomiting into the mouthpiece can cause the obstruction, cause a deprivation of oxygen and lead to essentially an (hypoxic) insult to the brain?"

*Such a scenario has occurred in the past and yes it has resulted in death."*¹²

On the issue of Tina having her airway obstructed by reason of vomiting, it is

¹¹ See p3 of her Statement.

¹² See p1210 of the Transcript.

important to appreciate that the toxicology results show that Tina had in her system medications which were diphenhydramine, paracetamol and ibuprofen. Diphenhydramine is a preparation most commonly taken for the prevention of seasickness.¹³ Dr Griffith's evidence was that the diphenhydramine may have been taken prophylactically but that he could not comment on that. In other words, it might have been taken therapeutically. That is to say, to combat seasickness which was already in place.¹⁴

There was a considerable body of evidence that Tina was an inexperienced diver and, in fact, one who was prone to panic. The evidence of Mr Cleckler was of significance in that he described an occasion when Tina had panicked and had assisted her to return to the surface safely. He described her as *"probably the most panicked diver that I have worked with before"*.¹⁵

It is submitted that there is simply no evidence which might safely exclude Tina vomiting whether by reason of being ill or by reason of panic and causing an obstruction to her airway.

3. Laryngospasm

Laryngospasm is something different to the difficulties created by vomiting and creating some obstruction to breathing. Nevertheless, it may be caused by some vomitus matter. It is described by Dr Griffith as follows:

*"Laryngospasm is the closure of the vocal chords when they are irritated by something, maybe fluids or sputum or vomitus ... The chords close to try and avoid the foreign material entering the lungs ..."*¹⁶

Dr Griffith acknowledged that if a laryngospasm occurs, unconsciousness can follow associated with a relaxation of the voluntary muscles in the body.

¹³ See p1212 of the Transcript.

¹⁴ See p1222 of the Transcript.

¹⁵ See evidence of D C Cleckler, day 15, p55.

¹⁶ Transcript, p1210.

He was asked in the course of cross-examination:¹⁷

"... There can be no way to exclude in this case for example, a laryngeal spasm of the kind described to you leading to unconsciousness, Tina sinking to the seabed. There the muscles of the mouth and jaw are relaxing and the inhalation then of seawater?

Yes. If you are postulating the situation whereby she had developed a laryngospasm at the start of the whole problem then you would have to find some reason why there was foreign material on her chords. As you said it could be as simple as she coughed up some sputum but I am not aware that she had any problems with a cough before she went diving. It could be that she had for whatever reason got salt water inside her regulator, but again we've been told the regulator has been checked and didn't have any leakiness about it so it's unlikely that any salt water was coming in through the regulator. It could be that she had regurgitated from her stomach some material which had got onto the vocal chords but I am not aware of any history regarding that she had a problem with significant refluxes from her oesophagus. So all those things are possible but there's no evidence as I understand it that makes them likely.

I am not suggesting it's likely as it were more probable than not.

It's possible."

The above quoted evidence is of great importance in my submission. Quite clearly there is, in the evidence, an acknowledgement that something as simple as a regurgitation of a small amount of stomach matter or sputum may have led to a laryngospasm with catastrophic consequences.

Again, it might be as simple as the regulator being partially dislodged and water being admitted and aspirated. So much was acknowledged by Mr

¹⁷ Transcript, p1212.

Griffith¹⁸ and such a scenario to obviously be more likely in someone liable to panic than in someone not so disposed to panic.

Added to the mix of all of this are the reported side effects of diphenhydramine which were listed as confusion, dizziness, drowsiness, fatigue, disturbed coordination, irritability and blurred vision.¹⁹

4. Anxiety and panic

Dr Griffith, in his evidence in chief, gave evidence that it is rare for an accident diving death as a result of a single factor being responsible. His evidence was that they were almost always multi-factorial.²⁰ According to figures quoted in the literature, panic in the one particular survey accounted for some 39% of contribution to drowning.²¹ Moreover, his evidence was that a very high proportion of divers who have drowned may be described as experienced.²²

Dr Griffith's evidence was that panic is not amenable to any autopsy evidence.²³ In cross-examination he said, with respect to panic and anxiety:

"The big factors with these two factors is that unless there is a witness to the event, can be very hard to the put the evidence together after the event has taken place."²⁴

The particular effects of anxiety and panic were described by Dr Griffith in the course of cross-examination as follows:

"... anxiety will increase catacolenes ...?"

The adrenal like substances yes catacolenes.

¹⁸ At p1214.

¹⁹ See p1214.

²⁰ See p517.

²¹ See p517.

²² See p1207.

²³ See p508.

²⁴ See p1206.

It will change the diver's respiratory pattern?

It may well.

And hence arterial carbon dioxide and buoyancy?

The arterial carbon dioxide may tend to fall.

Right?

Buoyancy may not be affected significantly if the individual is continuing to breathe.

It can cause perceptual narrowing and disorientation?

Anxiety or panic.

Anxiety?

Anxiety as it's reaching it's limits and becoming panicked can certainly do so.

And it can decrease cognitive function?

It can, yes, produce narrowing of the issues the individual can work with at the same time yes.

Furthermore, sympathetic stimulation may cause cardiac dysphemia or arrhythmia?

Yes.

Arrhythmia is something that really is incapable of being clinically seen at post-mortem?

Correct.

A fair definition of panic is that of behaving in an irrational manner fair to say?

Yes.

Or having a lack of logical response to a set of stimulus?

Yes.

Or as being unable to perform in a rational manner?

Yes.

Panic is associated with high levels of arousal and decreased level of cognitive performance?

Yes.

Which leads to an inability to function or otherwise cope with a potentially hazardous situation?

Which certainly is likely to result in that outcome.

Increased inappropriate activity leads to fatigue and exhaustion?

It may well.

Which will further increase the diver's ability to cope?

Yes.

If those features are not corrected or properly addressed whether it be by rescue or otherwise drowning may be expected?

Yes.²⁵ (underlining mine)

In reality, the situation was fairly summarised by Dr Griffith in his evidence in chief as follows:

"I am not asserting that panic is definitely one of the factors here, what

²⁵ See Transcript, p1206-1207.

*I'm saying is it could have been a factor and that it should not be discounted.*²⁶

SUMMARY OF THE ABOVE

There are therefore four possible and identifiable reasons why Tina may have lost consciousness causing a relaxation of the muscles of the jaw, allowing water to be aspirated and thereby causing death. None of these reasons can ever be capable of detection in a post mortem examination. None of those four possible explanations can be excluded as applying to this Inquiry.

It is quite wrong to reason, as the Police appear to, that an absence of the evidence of an accidental drowning is evidence that the drowning was not accidental. Such an approach is simply illogical.

ACCOUNTS OF THE INCIDENT AS GIVEN BY GABE WATSON

Evidence is before you that Gabe Watson provided his version of what had occurred to various people at the Yongala dive site and on the return of the "Spoilsport" to Townsville. Further, there is evidence of what he told investigators on the evening of the incident to the Operations Manager for Mike Ball Dive, Mr Stephen, on that same evening, again to investigators on the 27th October 2003, to investigators on the 24th April 2007, to Mr Thomas and to various other persons at various other times. Essentially, his account on those various occasions was consistent. That account essentially was that the current was strong and not long after leaving the descent line, the deceased had indicated that she wished to return to the descent line. His account was that she had difficulty swimming against the current, that he indicated to her that she should inflate her BC but for some reason, that seemed to be unsuccessful. His account was that he grabbed hold of a strap on her BC and started trying to swim back to the descent line. In the course of that, his mask and regulator

²⁶ See Transcript, p509.

were dislodged by the deceased. He let go of her to clear his mask and at that point also, used his safe second. He saw that the deceased was below and away from him and sinking. He swam after her but she was sinking faster than he swam. He then made the decision to return to the surface for help.

It is submitted that there is no significant discrepancy in any of the accounts that he gave between one and the next. At various times it has been said that Mr Watson has provided 16 different versions of the incident. That may be correct in terms of the occasions that he has provided the versions, but it is incorrect to say that the versions have been inconsistent in any significant respect.

Rather, what is suggested by the police is that a number of the things that Mr Watson has said are inconsistent with other evidence in the case. Some of those matters may be of more or less significance than the other, but it is proposed to examine what it is submitted to be the more important issues.

Before that exercise is undertaken, it is timely, however, to give due account to the emotional state that Mr Watson might have been expected to be in, in the immediate time and indeed days after the death of his wife. This may be achieved if one extends to him the presumption of innocence which I have addressed earlier. Assuming that he did not murder his wife and that she died by way of accident, naturally he would have been emotionally upset at the time and times following and it would be unrealistic to expect of him an accurate account of all of the relevant facts. He, too, would be emotionally burdened by the tragedy; what caused Tina's death and the shock of the death of his wife.

I turn then to particular matters.

1. Evidence of the Dive Computers

There is evidence before you that the first dive was aborted due to Gabe

reporting that his computer was malfunctioning. the evidence is that he and Tina then returned to the "Spoilsport" where the problem was rectified and he again then returned to the dive site.

It is suggested that the evidence would have proved this account to be false and that it was a false account seemingly for the reason that Gabe did not want others around him when he was proceeding to murder his wife. That it to say, he was trying to ensure that he and Tina were the last to go down the descent line so that he would not be observed.

Putting aside what I submit to be clear evidence that the computer was in fact malfunctioning as he claimed, there was clear evidence that he could not have expected to be alone in the course of his dive. The evidence is that when he and Tina returned for the second dive, there still were other persons, including Singleton, Petersen, Stempler and Asano in the same dinghy.

Furthermore, there is the very important evidence of Craig Haslet. Haslet was a crew member of the "Spoilsport" whose task was to carry passengers from the "Spoilsport" to the dive site. Haslet, in his addendum statement of 20 August 2004, swears that when he was transporting the above persons to the dive site for the second time, the "Adrenalin" was preparing to put divers in the water. This of course would have been at a time when the "Jazz II" was already at the site with divers from that boat either in or about to go into the water.

Detective Campbell, in his report at paragraph 243, referred to an issue of concern relating to the dive computer as follows:

"The testing of the computer included inserting the battery into the computer back-to-front. It was found when this occurred that the computer would not function what-so-ever. It would sound no alarm, nor record any data relating to the dive. This is in contradiction with the statement of Mr Watson that he 'flipped' the battery over and the computer started

working as it would not have recorded the first dive if the battery had been inserted incorrectly."

It is noted that the second last dive on Gabe's dive computer is recorded showing a date and time of 1156pm 9 Jan 1996 with a surface interval of 15 mins.²⁷ If the computer was last reset prior to the second last dive back to 1200am 1 Jan 1996 (as is the default setting):

- (a) this is 215 hours and 41 minutes before the second last dive commenced (after deduction of the surface interval time);
- (b) assuming the first dive on the relevant day commenced at about 955am 22 October 2003 Queensland time,²⁸ 215 hours and 41 minutes prior to that was 936am 13 October 2003 Queensland time;
- (c) that time and date was 636pm 12 October 2003 Alabama daylight saving time, the day after they were married and the night before they left for Australia;

Gabe and Tina travelled to Australia on 13 October 2003 (Alabama time) for their honeymoon.

Gabe has consistently said that when he entered the water on the first occasion on 22 October 2003 he found his dive computer was beeping when he went underwater. It follows from the analysis above that he had last accessed his dive computer battery 10 days before when he was in Alabama (remembering the time and date differential with Queensland time).

Gabe has stated that he thought the cause of the problem was that the battery had been installed incorrectly in the computer. He then returned to the "Spoilsport" to fix the perceived problem before the second dive.

²⁷ Ex. 43 Printout "Second last dive"

²⁸ Ex.25 Dive entry/exit profile sheet

Evidence has been given that:

- (a) there are **two separate components** which make up Gabe's *Oceanic Data Trans Plus* dive computer – a **receiver/computer display module** (the display module) and a **radio frequency transmitter** (the transmitter) also known as a transponder;²⁹
- (b) the display module can be set to operate without the transmitter;³⁰
- (c) in the circumstances here, however, the display module was set to operate in conjunction with the transmitter as the link code was not set to 999999 but to the transmitter code 016112;³¹
- (d) where the display module is set to operate with the transmitter **both** components require separate batteries and they must be inserted with correct polarity for the dive computer to operate as one correctly;³²
- (e) Dr Griffiths only carried out his testing on the display module.³³ His post-incident test of the computer did not involve setting up the transmitter on a SCUBA tank and submersing both units in water to determine what alarms would sound if the battery in the transmitter was incorrectly inserted for polarity but the battery in the data module was correctly inserted;
- (f) with the battery correctly inserted in the data module, but with no compressed air supply connected (ie., there was an absence of radio frequency signal from a transmitter connected to an air supply), Dr

²⁹ Data Trans Plus Dive Computer Manual (Ex. D3) page 2; Evidence of Adam White Transcript Day 5 page 559 line 30;

³⁰ Manual pages 2 and 42; Evidence of Adam White Transcript Day 5 page 559;

³¹ Manual page 42; Ex. 43 "Examination of Data Trans" notes of Adam White – "Set Mode Link # 016112"; Evidence of Adam White Transcript Day 5 page 560 lines 1 – 10, Page 586 lines 30 – 40 ;

³² Manual pages 99 – 101; Evidence of Adam White Transcript Day 5 page 585 lines 30 – 50; page 586 lines 50-60;

³³ Statement Dr Griffiths 18 February 2005; Evidence of Dr Griffiths Transcript Day 5 page 490

Griffiths found that:

- (i) after he turned on the computer he observed it to self test normally;
and
- (ii) after the computer was immersed in water and slowly pressurised to a depth of 3 feet or 1 metre, it did indeed beep [alarm sound] with a flashing "low air pressure" signal on the screen;³⁴
- (g) Dr Griffiths found that if the battery in the data module was incorrectly inserted then there would be no audible alarm and the screen would be blank;³⁵
- (h) if:
 - (i) the battery in the data module was correctly installed before the first (aborted) dive that day; and
 - (ii) the battery in the transmitter was not correctly installed for polarity (and thereby would not be transmitting the air pressure data to the data module); or
 - (iii) the battery in the transmitter was also correctly installed but there was a signal link interruption between the transmitter and the data module,

the beep alarm would sound on the data module in the water.³⁶

What Dr Griffiths observed when he tested the computer with the battery in the correct way is what Gabe observed on the first dive on 22 October 2003.

³⁴ Statement Dr Griffiths 18 February 2005; Evidence of Dr Griffiths Transcript Day 5 page 490

³⁵ Statement Dr Griffiths 18 February 2005; Evidence of Dr Griffiths Transcript Day 5 page 491

³⁶ Manual pages 19 and 47; Evidence of Adam White Transcript Day 5 pages 587 - 588;

There are two scenarios that may have been in place prior to the first dive on that day.

The first scenario is that, prior to the first dive that day, Gabe's transmitter battery was not correctly inserted for polarity but his data module battery was correctly inserted. As there was no signal link established after Gabe entered the water, the computer began to beep [alarm] indicating "low air pressure". Gabe returned to the boat, removed each battery from each component and reinstalled them (even though only one of them was incorrectly installed to start with). Gabe refers to "battery" in the singular and plural sense; without precision in his articulation.³⁷

Gabe refers to the transmitter unit being re-installed onto the tank/octopus before the second dive. He also notes that the battery goes in one way on the module but the other way on the transmitter.³⁸

A second scenario is that the data module and the transmitter each had the battery installed correctly but the signal link between the data module and the transmitter had not been established correctly or had been interrupted for a period greater than 15 seconds under water (for example if the transmitter is more than 3 feet away from the data module³⁹). In this scenario, the display module will flash the link icon and low air pressure and the audible alarm will sound once per second until the link is restored.⁴⁰ Gabe is a tall man with long arms. The link is lost or not established as the units are not within sufficient range of each other or perhaps for some other technical reason. He thought that the problem was that the battery was not in the right way. He went back to the boat and removed then reinserted the battery or batteries. The system then reset itself and Gabe established the signal link between the data module and

³⁷ Record of Interview Gabe Watson 22/10/03 tape 1 pages 6/7.

³⁸ Record of Interview Gabe Watson 27/10/03, tape 3 page 10

³⁹ Manual pages 27, 29 and 46

⁴⁰ Manual page 47.

the transmitter. He checked the signal link was working.

Gabe assumes during the police interviews it is the data module battery that was not in correctly but he is mistaken and it was either the transmitter battery that was the problem or the signal link had not been established or had been interrupted.

Each scenario is consistent with the first dive being recorded and then the data module time/date being reset when the battery or batteries were removed and put back in prior to the second dive.

Either scenario is a complete answer to the issue of concern regarding the malfunction of the computer.

Gabe's descent after Tina and ascent to the surface

There are two issues of concern raised by Detective Campbell in his report to Coroner that involve the data on Gabe's dive computer:

- (a) that Gabe did not chase down, even for a short distance, after Tina began sinking to the bottom; and
- (b) that Gabe did not ascend at an appropriately urgent rate after the emergency arose.

The evidence is that:

- (a) the log function in Gabe's computer is "very much one for the interest and satisfaction of the owner of the computer. It's not - the whole software program wasn't put together for this kind of forensic analysis."⁴¹
- (b) the raw data from Gabe's dive computer plotted as time vs depth is set out

⁴¹ Evidence of Insp Coxon Transcript Day 9 page 1007

at Exhibit 28 **before** any other assumptions (or extrapolations) are made about aspects of the dive itself.⁴² It was tendered on the basis that it purports to be nothing more than a reflection of the raw data, it doesn't take into account any variables.⁴³

- (c) the dive profile graph in the Report to Coroner and other dive profile graphs prepared by Detective Knowles, to the extent that other information is represented, only represent *assumptions* of Gabe's activities on the dive.⁴⁴
- (d) the dive computer log does not keep a downloadable historical record of every second of the dive, but a sample of time vs depth every change of depth of 10 feet (3 meters).⁴⁵
- (e) a change of depth of less than 10 feet (3 metres) up or down from the last sampled depth on a dive will not be logged.⁴⁶
- (f) the maximum depth recorded by Gabe's computer on the final dive is 54 feet⁴⁷, but it is not certain at what precise time during the dive this occurred since time vs depth would only be sampled at either 50 or 60 feet.
- (g) there were occasions sampled on Gabe's ascent where the rate of ascent was faster than 60 feet per minute.⁴⁸
- (h) the dive computer manual states that a "Too Fast" beeping alarm would have been sounding on Gabe's data module on the occasions the ascent

⁴² Evidence of DSS Knowles Transcript Day 9 pages 948 - 950

⁴³ Transcript Day 9 pages 971 - 972

⁴⁴ Evidence of DSS Knowles Transcript Day 9 page 950

⁴⁵ Evidence of Adam White Transcript Day 5 pages 565, 574, 592 and 600; Evidence of DSS Knowles Transcript Day 8 page 873

⁴⁶ Evidence of DSS Knowles Transcript Day 8 page 880; Evidence of Insp Coxon Transcript Day 9 page 1007

⁴⁷ Many references for example Statement of Adam White 9 September 2007; Exh.43 "Last Dive"

⁴⁸ Exh.43 "Last Dive"; Evidence of Adam White Transcript Day 5 pages 596 - 598

was at a greater rate than 60 feet per minute.⁴⁹

- (i) a concession was properly made by Detective Knowles that Gabe's ascent time could have been as little as 1 minute 10 seconds as opposed to 2 ½ minutes (in fact he also agreed with scenarios putting the ascent time at 1 minute 55 seconds and 1 minute 20 seconds).⁵⁰

On Gabe's behalf it is contended that:

- (a) the dive profile graphs of Gabe's dive computer data prepared by DSS Knowles in truth represents no more than argument about what **might** have occurred; not what **actually** occurred metre by metre, second by second.
- (b) the data fails to prove that Gabe did not attempt to dive down, when Tina was sinking to the bottom.
- (c) the data suggests that the ascent time to the surface may have fallen within a range as low as 1 minute 10 seconds to a maximum of 2 ½ minutes.
- (d) there were logged samples on the ascent where the rate was quite or very fast;
- (e) the different rates of ascent suggest the ascent was not constant or linear;
- (f) the data is consistent with Gabe slowing down on ascent:
 - (i) to try to attract attention of other divers; or
 - (ii) because of the "Too Fast" alarm sounding warning him to slow his ascent rate below 60 feet per minute.

⁴⁹ Manual pages 19 - 20; Evidence of Adam White Transcript Day 5 page 597 lines 1 - 10

⁵⁰ Evidence of DSS Knowles Transcript Day 9 pages 946 - 948

In summary, the evidence in respect of this issue is so uncertain as to make any adverse finding against Mr Watson impossible.

Gabe's previous dive experience

Before examining that experience, it ought be acknowledged that on any view of the evidence, what Gabe did in terms of returning to the surface when Tina was sinking to the bottom, was contrary to sound diving practice. It is acknowledged that in the buddy system one diver ought not leave the other except in circumstances which require it. Unfortunately, the observance of those rules or practices is subject to a diver's ability to cope with urgent situations. You will recall the evidence of Dr Griffith in general terms that a large proportion of experienced divers have panicked, ultimately leading to their drowning. It is hardly beyond a reasonable view of the facts that when Tina got into difficulty, Gabe panicked and ultimately chose the wrong option.

It is argued against Gabe that being an experienced diver and indeed an experienced rescue diver, that this could not have happened. A fair examination of his previous dive experience and of his qualifications as a rescue diver, it is submitted, cannot reasonably lead to that conclusion.

The information extracted from Gabe's dive computer shows the following computer log dives undertaken prior to 22 October 2003:

Date	Depth (feet)
1 January 1996 Note that this seems to marry up with a dive in the log book on 15 September 2003 at Bluewater Dive Park.	27'
1 January 1996 Note that this seems to marry up with a dive in the log book on 15 September 2003 at Bluewater Dive Park.	8'
27 May 2002	36'

12 May 2002	60'
12 May 2002	5'
7 April 2002	29'
28 July 2001	77' (Nitrox)
28 July 2001	107' (Nitrox)
28 July 2001	102' (Nitrox)
16 July 2001	10'
16 July 2001	49'
16 July 2001	72'
1 July 2001	32'
1 July 2001	33'
1 July 2001	6'
20 May 2001	44'
20 May 2001	5'
20 May 2001	35'
3 July 2000	8'
3 July 2000	13'
3 July 2000	13'
24 July 1999	38'
24 July 1999	134'
23 July 1999	64'
23 July 1999	138'
22 July 1999	63'
22 July 1999	118'
21 July 1999	30'
21 July 1999	106'
19 July 1999	45'
19 July 1999	114'
18 July 1999	22'
[There are a number of further dives going back in time from this point as well]	

In relation to the dive history:-

- The dives in July 1999 were at Cozumel, Mexico in salt water (except for the dive on 18 July 1999 which was in a tank according to the log book). Gabe has stated that there was current present during the Cozumel dives.
- The next lot of dives where Gabe goes deeper than 50 feet is in July 2001 including 3 Nitrox dives of which two exceed 100 feet.
- There appear to be no dives in salt water between July 2001 and October 2003, having regard to the log book.
- There appear to be only 1 or 2 dives at Bluewater (still fresh water) in the 12 month period prior to 22 October 2003.
- There were a further 4 dives within the 12 month period prior to 22 October 2002, none of which were in salt water.
- There were 12 dives in the 12 month period prior to 22 October 2001, of which 3 appear to be in salt water.
- The dives at Cozumel, Mexico in salt water with current present took place more than 4 years before 22 October 2003.

Combined, his dive log and his computer reveal that Gabe had had one or perhaps two dives at Bluewater in the 12 month period prior to 22 October 2003. Those dives, according to the log, took place on 15 September 2003. The last occasion on which he had dived in salt water, that is to say with a current present, had occurred more than 4 years prior to the relevant date.

In those circumstances, a combined total of 54 or so dives over a period of some 7 years and mainly in fresh water, hardly entitled Gabe to be described as an experienced diver. Beyond any question of experience gathered by the number of dives, it is argued that he was "an experienced and qualified rescue diver". That in turn requires an examination of the degree of instruction required to achieve such a qualification.

The evidence of Mr Jackson was that Gabe undertook a course to be certified as a rescue diver in July 1999.⁵¹ Mr Jackson's evidence was that it was a two day course normally running from 9:00am to 5:00pm, comprising theory and practical tuition. It is of importance to note that the practical side of things was conducted in fresh water at the quarry.⁵²

Mr Moore who undertook the course with Gabe, also gave evidence regarding the course. His evidence was that the course, in terms of the practical side of things, occupied one day in the water at Bluewater.⁵³ His evidence was that 80% of the course was devoted towards searching and 20% of the course devoted towards the actual rescue.⁵⁴

Mr Moore gave evidence that he would not say that he and Gabe were "experienced rescue divers".⁵⁵

The evidence of Mr Paul Crocombe is also important when one comes to consider the relevance of Gabe's certification as a rescue diver. As is obvious from his statement and evidence, Mr Crocombe was a highly experienced and qualified diver. He was, on the relevant day, engaged in commercial diving work at the Yongala site.⁵⁶ As to the worth of a rescue diver certification, Mr Crocombe gave his opinion as follows:

⁵¹ Transcript Day 14 page 21

⁵² See page 71.

⁵³ See page 52 Day 16.

⁵⁴ Page 53 Day 16.

⁵⁵ See page 56.

⁵⁶ See Transcript 618 Day 6.

"Whether or not somebody whose got a piece of paper says they are a rescue diver is competent to be able to control a situation when they've got a panicking diver under water or not is another thing. ... A rescue diver whose been through the requirements of the course and you can get two people go through the same course and at the end of that course one can be - they can meet all the skill requirements, they can meet all the academic requirements of the course and get the piece of paper says they are a rescue diver and you can have a very different level of competence at the end of that. And as an example we had a person working for us years ago who had done - who had a lot of qualifications as far as first aid and - and things like that. There was a person who had a heart attack and she panicked and came to - came running in to get me to go out and provide first aid for this person ... and at that time my level of certification was way below hers ... she had the piece of paper, she should have been able to handle the situation a lot better but she panicked ... and with rescue divers I feel exactly the same way, that you can have two people do the same course and at the end of that course even though they've done the same theory and the same practical skills, you can get a big difference in - who's going to be the better person to be able to perform a rescue or handle the situation under water."

Mr Crocombe's evidence was that there was no requirement for a recreational diver to re-certify or to re-practise with respect to any rescue diver course⁵⁷ and he agreed that as a matter of commonsense that skills would diminish as time marched on in the event of no refresher course or updating of those skills.⁵⁸

Mr Crocombe also gave evidence that it is not unknown for people to overstate their experience for the purposes of saving money on diving trips and otherwise simply to, as it were, inflate their own ego.⁵⁹

I repeat what I have said earlier; if the percentages according to Dr Griffith are so high in terms of fatalities involving experienced divers panicking, then it is

⁵⁷ Transcript page 647.

⁵⁸ See Transcript page 648.

⁵⁹ See also Transcript page 648.

difficult to understand the claim suggesting that a diver such as Gabe with an ageing rescue certifications and without significant recent salt water diving experience, in a situation where his wife was panicking, ought not himself have panicked.

The position of Tina relative to the Yongala when discovered by Wade Singleton

There was evidence by Mr Singleton and various of the police placing the resting position of Tina at about 15 or so metres to the side of the wreck. It is suggested that she could not have been in this position if the account given by Gabe as to their positions when she got into difficulty was correct.

One obvious matter which could bear on this issue is the strength and direction of the current.

Current

There was vigorous debate during the inquest about the strength and direction of the current on the day. The PADI report that was completed on the day by Wade Singleton states the current was "Strong .5 knt."

However, according to Exhibit 25 (the Spoilsport "Dive Entry/Exit Profile Sheet") the weather conditions were stated to be as follows:-

- (a) Current: **Strong**/KN.
- (b) Swell: **0.5**/M.
- (c) Wind: **5**/KN.
- (d) Flag: **Red**.

In evidence at the inquest, Wade Singleton said the current was "minimal." When the PADI report information was discussed with him, he stated:

WITNESS: It's taken directly from the dive roster of that day.⁶⁰

However, Mr Singleton is mistaken about this fact. The estimated current speed is not stipulated in the dive roster except as "Strong/KN." The point is that the estimated current speed of .5 knt stated in the PADI report may have been mistakenly picked up from the 0.5 for the size of the sea swell (refer to the actual exhibit 25 to see the layout of the form). A current of 0.5 knt seems inconsistent with a Red Flag-designated site.

The evidence of the Yongala-experienced dive operators at the inquest by and large was that the current was not a strong one (with some witnesses making that assertion for the first time in the witness box), yet many divers with varying degrees of experience perceived the strength quite differently. A matrix of the evidence about the current is as follows:

Name of witness	Description of current if any	Direction
Spoilsport employees (not divers)		
Docking (master of the Spoilsport)	Could not say what the strength or direction was on the day.	Generally the current is North – South to NW – SE; can vary 5 to 10 degrees depending on time of year; can change direction 180 degrees

⁶⁰ Transcript of Evidence Day 3 page 344

		according to the change of tides
Barnai (employee on Spoilsport), master SCUBA diver trainer	Did not dive on the day; didn't think there was a lot of current; current can be strong and can change	-
Lemsing (first mate on Spoilsport) dive master level of dive experience	Did not dive but current medium; currents can change quickly (2003 statement); says there was a decrease in current that morning in evidence at the inquest	In line with the wreck
Haslet (tender operator Spoilsport)	Slight current; can increase and decrease as you descend	North - South
Adrenaline		
Crocombe (master of the vessel Adrenaline) dive instructor since 1982, 100+ dives at Yongala	Dived at 630am not much current less than 1 knt but inexperienced diver would think it was a strong current; at 9am current a little stronger	Generally bow to stern; slightly across from NW to SE as well
Spoilsport Divers (in time order)		
Fotheringham (dive instructor on Spoilsport) master SCUBA diver trainer	Dived at 7am - current strong when setting up lines; at 1230pm less current (statement 2003); evidence at inquest at least .5 knt maybe more but then has current decreasing over 3 hours	Bow to stern; coming off the port side of the wreck 10 degrees
Forster (nee Johnstone) (dive instructor Spoilsport) 187	At 7am current was extremely strong, probably	-

prior dives	the strongest she has ever been in; had a CO2 headache afterwards from exertion; her first dive on the Yongala; her notes later produced to the inquest say the current was "savage"	
Robinson (diver from Spoilsport)	-	-
Mayer (diver from Spoilsport)	-	-
Ken Snyder (diver Spoilsport) 500 previous logged dives	Current was a challenge est. 1.5 knts; lessened when you got to the top of the wreck	Bow to stern
Paula Snyder (diver Spoilsport) 300 previous dives	Current strong but not unbearable	-
Doug Milsap (diver Spoilsport) 350 previous logged dives	Current prophesied as moderate to strong - found this to be accurate when he went down (evidence at inquest); briefly struggled with it at the beginning of the dive (first statement); very strong current at the end of the dive with poor visibility	Down the wreck (later statement)
Virginia Milsap (diver Spoilsport) 300 previous dives	Current difficult to deal with (first statement); swift and at least a knot in speed (second statement)	Along the wreck
Eathorne (diver Spoilsport) 890 previous logged dives	Slight current	Bow to stern
Andrew Sherman (diver	Current but no problems (same words used for each of	-

Spoilsport) 65 previous dives	the Shermans' statements)	
Adriana Sherman (diver Spoilsport) 85 previous dives	Current but no problems	-
Jacqueline Sherman (diver Spoilsport) 95 previous dives	Current but no problems	-
Jamie Sherman (diver Spoilsport) 95 previous dives	Current but no problems	-
Downie (diver Spoilsport) ? previous dives	-	-
Lawton (diver Spoilsport) ? previous dives	-	-
Sienkiewicz (diver Spoilsport) 21 previous dives	Almost negligible under the water; much stronger on the surface	-
Mickle (diver Spoilsport) 7 previous dives	Current was kinda strong. Didn't have any problems during the dive; told that the current got stronger the further away from the wreck you went	-
Tom Harris (diver Spoilsport) 21 previous dives	-	-
John Graves (diver Spoilsport) 50 previous dives	Current quite strong; current very strong unless you were close to the wreck or on the ocean floor	Bow to stern
Tina Graves (diver Spoilsport) 40 previous dives	Current very strong	Along the wreck
Smith (dive instructor Spoilsport) dive instructor	-	-
Singleton (dive co-ordinator Spoilsport) master SCUBA	Strong current (first statement in 2003 and in	Bow to stern; can swing from SE to

diver trainer	forms completed on the day); evidence at inquest "minimal if any" actually experienced by him	SW
Stempler (diver from Spoilsport) 80 dives past experience	Current strong above the wreck; shielded from the current once behind the wreck	Cannot say
Asano (diver from Spoilsport) 30 dives past experience	Current strong above the wreck; shielded from the current once behind the wreck	-
Petersen (diver from Spoilsport) 36 dives past experience	Current quite strong then calm at the bottom	-
Gabe Watson (diver from Spoilsport) 54+ dives past experience	Strong current (statement 22/10/03)	Coming over the wreck "pretty good" (22/10/03)
Karin Lador (diver from Spoilsport) 20 years 300+ dives past diving experience	Little bit of current - little bit of hard work swimming back; one side of wreck current, back side no current	-
Robert Lador (diver from Spoilsport) 20 years 300+ dives past diving experience	Current not all that difficult; protection once behind the wreck	-
Jazz II divers		
Webster (PADI instructor Jazz II) Dive instructor 1500 - 2000 dives with 150 previous at Yongala	Wasn't much current (statement 1/4/05); virtually no current	-
Broderson (diver from Jazz)	-	-

II) instructor level experience		
Shah (diver from Jazz II) previous dive experience not stated	Very strong current; if we had let go of the line, we would have been swept away	Current became strong again when got to the end of the deck
Stutz (diver from Jazz II) Open water license PADI since 1993	Some current – when leaving the line had to swim back	Bow to stern (diagram to his statement)
Diggins (diver from Jazz II)	-	-
Bennett (diver from Jazz II) wanting to obtain advance dive ticket	Calm with slight current	-
Joslin (diver from Jazz II) past diving experience not stated – PADI open water certificate	No problem with current	-
Stutz (diver from Jazz II) Open water license PADI since 1993	Some current – when leaving the line had to swim back	Bow to stern (diagram to his statement)
Jeon (diver from Jazz II)	-	-
Kim (diver from Jazz II)	-	-

Detective Campbell in his evidence about the Yongala site stated:

It is a well known popular scuba diving site and it is classed as an advance dive site. The site is known for its strong currents which are known to change direction as well.⁶¹

Hopefully the above table will be of some assistance to you in relation to other matters where current becomes an issue. However, in relation to where Tina

⁶¹ Transcript of Evidence Day 1 page 17.

was found, of significance is the evidence concerning not just the strength of the current, but the direction of it. Particularly experienced divers at that wreck, namely Docking, Crocombe, Fotheringham, and Singleton do not describe the current as running completely bow to stern. A current in the direction as described by Mr Docking and Mr Crocombe would of course have pushed someone away from the wreck in the direction where Tina was found.

Even if it were the case that Gabe was accurate in his statements to the police where he said they were above the wreck when she got into difficulties, it is quite conceivable that nonetheless, she might have ended up in the position that she was found. It is important to note that at the time she got into difficulty, she was in a depth of about 15 or so metres. The depth of the ocean floor where she was found was approximately 30 metres. At that point when she commenced to sink out of sight from where Gabe was positioned, it may well have been the case that she still had the strength "to swim" a number of strokes using both her arms and fins "to swim" to some extent. It may be that disoriented, she "swam" whilst sinking in the direction of her ultimate resting position.

A great deal of interest in the case was centred on the re-enactment. It is obvious, in my submission that the value of the re-enactment is subject to any number of variables but in particular, two factors:

- (i) The replication of the conditions; and
- (ii) the replication of the events.

As to paragraph (i) The replication of the conditions, the evidence is that the re-enactment occurred in the month of September 2006, almost 3 years after the event. In general terms, Dr Brinkman gave evidence that by reference to tidal predictions and the East Australian current, he would have expected the

conditions on the given date and time in September 2006 to be very similar to the conditions on 22 October 2003. He did, however, acknowledge that the weather conditions will affect the conditions and he was not in a position to determine what effect those conditions would have been. In the course of his cross-examination, he gave evidence as follows:

*"Okay. A current, let's say on the 22nd of October, '03, which was flowing precisely north/south, okay. With no degree of variation, directly north/south. On say the 20th of September, I think, 2006, there's one - that's the date when certain observations were made in accordance with your advices, will there be variation in that direction of current? Is there a margin there? A - a variation or not? In other words, is it going to be again on the 20th, let's say, of September, '06, precisely due north/south without any deviation at all?-- I'm - we cannot say that the currents at the particular time envelopes that I specified would be identical."*⁶²

*... Well, now, in terms of the speed there must be some variability between say the speed of the current on the 22nd of October, '03, and say the speed of the current on the 20th of September, '06?-- Potentially there is and the only way to really get a handle on that would actually be to observe it because there's a lot of interaction between these processes and it's interaction that we don't fully understand and we can't fully predict."*⁶³

*... And as you've explained there is some limitation on it, I just want to know what sort of current speed variable there may be between the two dates that we're looking at?-- I - I can't put a specific error bar on that estimate in terms of current strength."*⁶⁴

⁶² Transcript page 1058.

⁶³ Transcript page 1059.

⁶⁴ Transcript page 1060.

Beyond those issues, there seemed to be a complication by reason that the relevant place was above and beside the wreck of Yongala. This appears to have been recognised in Dr Brinkman's evidence in chief where he was asked:

"... We've heard a lot of evidence about the - the Yongala Reef and the currents going from the bow to the stern which I think is from North to South. Now, I don't know whether you've looked at this question, and if you haven't just say so, but I'm interested. Is - is that a sort of predicted current at that area of the Barrier Reef or can it be something that's really quite complex because of underwater structures and rocks and these sorts of things?-- On a - on a large scale that can be - the currents can be predicted. As you increase your scale and you start to introduce obstacles I think it becomes more challenging to predict and so I wouldn't make a comment on that."⁶⁵

Wade Singleton, you will recall, was also present for the re-enactment. Dr Brinkman agreed in the course of re-examination that his confidence in his predictions would be increased in the event that Mr Singleton reported identical conditions of 22 October 2003 and September 2006.⁶⁶

That of course is dependant on the accuracy of Mr Singleton's evidence. Wade Singleton gave evidence that on 22 October 2003 there was minimal current.⁶⁷ In a statement of Mr Singleton of 30 August 2007, Mr Singleton described the conditions of 20 September 2006 as being "similar" to 22 October 2003. Is this evidence accurate and can it be safely acted upon?

The difficulty with it is that in the Incident Report Form completed on 22 October 2003, Mr Singleton described the current as "strong .5 knt". It is submitted that Mr Singleton's explanation for this discrepancy, (which is a most important one), is unconvincing. As submitted earlier, his evidence was that he had taken it from the dive roster. However, as referred to earlier in these

⁶⁵ Transcript page 1055.

⁶⁶ Re-examination Dr Brinkman Transcript page 1063.

⁶⁷ Transcript Day 3 page 275

submissions, the current speed does not appear on the dive roster. In the course of cross-examination, Mr Singleton agreed that one of the more important questions to be asked on the form concerned the environmental conditions and accepted that it would be totally unreliable to go by some other form completed by someone else at some other time.⁶⁸

As to paragraph (ii) above, namely the replication of the events, it is submitted that it is impossible for the events of 22 October 2003 as described by Gabe to have been re-enacted by the police with such a level of accuracy as to be of probative force. As discussed above, there is simply no evidence as to what occurred between the time Tina sank out of sight until such time as she came to her resting position on the ocean floor. Moreover, it is simply guesswork as to placing Gabe and Tina in a particular position when she commenced to sink, other than to say it would have been in the general area of the wreck.

Beyond all of this, any probative force can only come from an assessment that what Gabe had to say was in fact a lie as against an imperfect recollection, given the traumatic events of that day.

The Evidence of Dr Stutz

Simply put, it is suggested that the evidence of Dr Stutz is inconsistent with the accounts given by Gabe and is consistent with Gabe murdering his wife by means of his interfering with her air supply.

It is submitted that the account of Dr Stutz is unable to bear any reasonable scrutiny. His recollection of events as detailed in his statement of 22 October 2003 is alarmingly different to that account contained in his statement of 18 April 2007. Further, his accounts are so completely irreconcilable with other reliable testimony as to make his statements unacceptable.

⁶⁸ See Transcript pages 347-348.

In all of the circumstances, Dr Stutz did not and could not have seen any interaction between Gabe and Tina. The timing just does not fit. What Dr Stutz says he saw is in some ways consistent with his observing snippets of the actual rescue of Tina from the sea floor by Wade Singleton, not any interaction between Gabe and Tina.

The evidence was that Gabe and Tina were in the second last of the groups from "Spoilsport" to enter the water. In the dinghy with Gabe and Tina were the persons Singleton, Petersen, Stempler and Asano. Gabe and Tina of that group entered the water first, followed by the others. After those persons had entered the water, the dinghy next brought across to the descent line Mr and Mrs Lador. They were the last persons from the "Spoilsport" to enter the water.⁶⁹

At some point shortly after, divers from the "Jazz II" entered the water.

Mr Webster, the diving instructor of the "Jazz II", was the first of that group to enter the water.⁷⁰ According to the statement of 22 October 2003, Dr Stutz was one of the last persons from the "Jazz II" to commence the dive.⁷¹

Dr Stutz, in that statement, says that his buddy diver was Neal. He said that Neal was in front of him.⁷² "Neal" can only be Neil Joslin. Joslin, one might reasonably infer, would have been in as good a position as Dr Stutz to observe what was happening under water.

Neil Joslin provided a statement also on 22 October 2003. He described, at about the 10 metre mark, observing another diver assisting another diver to the surface. The assisting diver appeared to be holding the regulator in the mouth of the other diver and the other diver appeared to be lifeless. Quite obviously,

⁶⁹ See Transcript page 316.

⁷⁰ Transcript page 757.

⁷¹ Paragraph 10 page 2 of the Statement.

⁷² See paragraph 10 Statement 22 October 2003.

this was an observation made by Mr Joslin of Wade Singleton and Tina.

It is beyond comprehension that Stutz could have possibly seen Tina and Gabe, yet somehow this was missed by Mr Joslin.

Dr Stutz, in his initial statement and confirmed in later statements and evidence, said that he, having seen the divers separate and one sink, saw another diver come from above him go straight to the bottom and then ascend with Tina.⁷³ Dr Stutz described the rescue diver as coming from above him and zooming past him.

This scenario is impossible. Wade Singleton, on all accounts, was at a greater depth and could not have gone past Dr Stutz to effect the rescue. Dr Stutz's evidence was that at the time he had made these observations, he would have been at about the 5 metre mark.⁷⁴ Singleton's evidence was that at the time he saw Tina on the bottom of the sea bed, he was about 25 metres down.⁷⁵

Mr Webster gave evidence that he did not see any divers at all when he was descending (apart from his group). His evidence was that his students, including Stutz, were above him on the line, the furthestest diver from him being perhaps about 7 metres.⁷⁶ Given that Dr Stutz was one of the last divers, that would have meant that Dr Stutz was about that distance from Mr Webster. On this scenario, Mr Webster would have been even closer to that position where Tina got into difficulty. He, however, did not see any such thing. What Mr Webster does say is that he was at about the 16 metre mark when he saw the persons ascending - that is, Singleton and Tina.⁷⁷

In fact, there were nine divers, including Dr Stutz and the "Jazz II" group.

⁷³ See Transcript Day 17 pages 43 & 44.

⁷⁴ See Statement dated 18 April 2007 page 4.

⁷⁵ See Statement of Singleton dated 22 October 2003.

⁷⁶ Transcript page 766.

⁷⁷ Transcript page 766.

Apart from Dr Stutz, no-one in that group observed Gabe and Tina until the rescue of Tina by Singleton.

In the statement of Wade Singleton of 22 October 2003, it was stated that on his ascent, he saw a person who would have been Webster and signalled to him that things were not okay.⁷⁸ Dr Stutz, in his second statement (but not his first), stated that on seeing Tina sinking, he accelerated his descent past the other divers and caught up with Webster and asked Webster "Did you see that?".

However, Mr Webster's evidence was that when he saw Singleton and Tina coming up, he left the "Jazz II" group and went up towards the surface without breaking the surface, before he returned to the group. It was after Webster returned to the group that Stutz attempted to communicate with him.⁷⁹ This is yet another instance where the time fit for Dr Stutz's observations of Gabe and Tina simply cannot be correct.

Other divers from "Jazz II", namely Mr Joslin, Diggins, Bennett, Jeon and Kim all say that they saw Tina and the rescue diver coming up as they were descending at about the 10 metre mark. Notably of course, as I have already said, not one other person than Dr Stutz saw any interaction between what might have been Gabe and Tina.

Lastly, it is important to take into account that of the persons Dr Stutz describes as possibly being Gabe and Tina, he has said that they were in a "bunch of divers coming up towards the surface."⁸⁰ On no-one's account was there "a bunch of divers coming up". Indeed, if Dr Stutz's observations were accurate, then of the police view of things, Gabe had murdered Tina within a short distance of other divers - 10 feet away on the version of Dr Stutz.⁸¹

⁷⁸ See paragraph 33 page 10 of Statement dated 22 October 2003.

⁷⁹ See Transcript Day 7 page 764.

⁸⁰ See Statement dated 22 October 2003 paragraph 12.

⁸¹ See Statement dated 18 April 2007 page 2.

Did Gabe attract the attention of any person in the course of the ascent?

The police seemingly argue that he did not. Is there evidence he did not?

While the rules of evidence do not apply to a Coronial Inquiry, they do so apply in the event that your Honour considers the issue of committal for trial. Many of the persons who were diving at or about the relevant time have not addressed this issue in the course of any sworn statement. Some have been asked questions by investigating police in communications by email. Any response to questions in email form is not admissible evidence. In short, while there may be some evidence on this issue "admissible" in the Coronial Inquiry, that evidence is not admissible when one comes to consider the question of committal proceedings.

The evidence reveals that Sun Min Jeon and Han Gyu Kim were diving at or about the relevant times. Those two persons were Korean and were on the "Jazz II". Neither in their written statements of 22 October 2003 refer to being approached by a diver on his ascent (Gabe), whether or not they were tapped on the shoulder or otherwise, as Gabe has maintained. Of equal importance is they do not in those statements claim that that did not happen.

It is of great concern that neither of those persons has been called to give evidence in these proceedings (apparently through no fault of any person) because the simple fact is that Gabe had informed investigating police from an early time that he had attracted the attention of a person on his ascent and that person was of Asian descent. The only persons of Asian descent who were on the dive were Jeon and Kim.

These persons were readily identifiable, Gabe having mentioned them, (he/her) at a very early time in the investigation. It would have been, if you were untruthful, a foolish, if not ridiculous, lie to have told.

Other Discrete Issues

Earlier in these submissions I have briefly referred to the evidence of Mr Snyder and Mr Milsap. It is submitted that their evidence is relatively unimportant insofar as it may assist you to determine exactly what happened in the course of the dive.

The basis of this submission is that it is simply further evidence which is critical of the decision Gabe made to leave Tina and return to the surface. It has been acknowledged in the course of these submissions that what he did was probably generated by panic and was not good diving practice. The fact that Mr Snyder and Mr Milsap may have been very vocal in their criticisms of him is fair to that extent but it does not at all and in any way, demonstrate that foul play took place in the course of the dive.

The most recent statements of Mr Milsap and Mr Snyder vary quite drastically in their content from their original statements.

There has been a great deal of publicity generated in this case in any number of places and it may very well be that rumours and scuttlebutt have been a factor in the belated recollections of both Mr Snyder and Mr Milsap.

Nevertheless, as I have said earlier, even if they were accepted entirely insofar as their most recent statements, those statements prove little more than to demonstrate that what Gabe did on the given day was contrary to sound diving practices.

I wish to mention the issue of barotrauma reported to have been experienced by Mr Watson. This issue has been, in my submission, much overplayed in the course of hearing. The short fact is that he complained of troubles with his ears on the evening of 22 October 2003. The fact that he may not have made such claim at some point earlier in the day than that is perhaps explicable by reason

that he was overcome by matters that he considered to be much more important - namely the accidental death of his wife. It is of significance that Mr Watson mentioned the troubles with his ears in a telephone call to his mother in a break during the interview with Gehringer. There is no evidence as to how that came about. For all we know, it may be that his mother was making enquiry of his welfare and for the first time he, in those circumstances, chose to mention it.

What does appear is that he did consult Dr Gillespie and a diagnosis of mild barotrauma was in fact made.

The claim was made by Detective Campbell that in the course of the civil deposition, Gabe had stated that he had in turn been informed by the treating doctor that the barotrauma that he had suffered was the worst his doctor had ever seen. Detective Campbell was unable to confirm this despite an invitation to him to isolate that statement.

Under this heading there is one last issue to be discussed and that concerns the ongoing disputes between the Watson and Thomas families. There has been placed in evidence a video recording where Mr Watson is apparently seen to be removing flowers from the gravesite. There can be little doubt that this evidence prejudices Mr Watson in the public eye. However, what does it establish in the case? It is without disagreement in the case that by the relevant time, the Watson and Thomas families were in serious conflict.⁸²

The video discloses that "flowers" were removed but other items were left at the gravesite. The "flowers" were in fact artificial flowers.⁸³

Furthermore, the video discloses that other items of a kind commonly associated with gravesites were left in place. Was it the case that flowers which were artificial was considered by Mr Watson to be offensive and that they were

⁸² See Transcript pages 16 and 17 Evidence of Mr Thomas Day 16.

⁸³ See Evidence Mr Thomas Day 16 page 16.

removed? It is unfair in the extreme that this incident should be focused upon within an invitation to find something without any reasoned basis adverse to Mr Watson. Counsel assisting ⁸⁴ made the submission that the relevance of the flower removal relates to the denial of that act on oath in the civil depositions. In fact, that submission is ill-conceived. The relevant passages read as follows:

"Q. Now, I understand there's been some issue with flowers being removed from her grave. Do you know anything about that?"

A. Flowers being removed from her grave?

Q. Yeah. I had heard somewhere --

*A. I have not had anything that we put out there removed."*⁸⁵

Contrary to the assertion that there was a denial on oath of the removal of flowers, the evidence is that the denial related to anything that "we had put out there."

CONCLUSION

It is submitted that in all of the circumstances, your Honour would not conclude that a jury properly instructed could conclude that the only rational inference from all of the evidence was that Mr Watson had murdered his wife, Tina.

S W ZILLMAN

Chambers

12 June 2008

⁸⁴ Submissions by Counsel assisting paragraph 92.

⁸⁵ Civil Deposition pages 190-191.