

CITATION: *Inquest into the death of Azaria Chantel Loren Chamberlain*
[2012] NTMC 020

TITLE OF COURT: Coroners Court

JURISDICTION: Darwin

FILE NO(s): D107/80

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JUDGMENT OF: Ms Elizabeth Morris SM

CATCHWORDS:

CORONIAL LAW -- INQUEST -- CAUSE OF DEATH

Reopening of Inquest – fresh evidence – primary duty – standard of proof –
cause of death - expansion of traditional verdicts – taken by animal – dingo

Coroners Act 1993 (NT), s34, s44A

REPRESENTATION:

Counsel:

Assisting: Rex Wild QC

Family: Stuart Tipple

Solicitors:

Family: Brennan Tipple Partners

Judgment category classification: A

Judgment ID number: [2012] NTMC 020

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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D107/80

**In the matter of an Inquest into the
death of Azaria Chantel Loren
Chamberlain**

FINDINGS

(Delivered 12 June 2012)

Ms ELIZABETH MORRIS SM:

- 1) This inquest has been reopened to receive information not available to previous inquests. My task is to consider and determine whether the whole of the evidence is sufficient to determine a cause of death of Azaria Chamberlain.
- 2) In the coronial jurisdiction, the test applied is a balance of probabilities test. Briginshaw v Briginshaw (1938) 60 CLR 336 supports the convention that reasonable satisfaction 'increases with the seriousness of the allegation'. A further factor referred to in Briginshaw as affecting the answer to the question whether the facts sought to be proved have been established to the reasonable satisfaction of the fact-finder is "... the inherent unlikelihood of an occurrence of a given description" having taken place.
- 3) Having considered all of the evidence, including evidence gathered of deaths and attacks by dingoes since the death of Azaria, I am satisfied, to beyond the required standard, of the following matters:
- 4) Mr and Mrs Chamberlain and their three children, Aidan, Reagan and Azaria, arrived at Uluru, generally known then as Ayers Rock on

Saturday 16 August 1980, setting up their tent in the top camping area on the east side of the rock.

- 5) They were not alone, with six families in the camping area on the night of 17 August; the West's, the Dawson's, the Haby's, the Lowe's and the Whittaker's.
- 6) A common barbecue area was about 20-25 metres from the Chamberlain's tent. Mr and Mrs Chamberlain were in this area shortly prior to 8.00pm, preparing their evening meal. Aidan and Azaria were with them, but Reagan was already in the tent asleep in his sleeping bag. Mrs Chamberlain was nursing Azaria, speaking to Mr and Mrs Lowe. Mrs Chamberlain then took Azaria and Aidan back to their tent area. She placed a sleeping Azaria in a bassinet in the rear of the tent and then went to get a tin of baked beans from their car for Aidan. Mrs Chamberlain then went back to the tent, and then returned to the barbecue area with Aidan.
- 7) Shortly after Mrs Chamberlain returned to the barbecue, Mrs Lowe heard a baby cry from the tent. Mrs Chamberlain went immediately to check on Azaria, and moments later cried out either "That dog's got my baby" or "My God, My God, a dingo has got my baby".
- 8) Both Mr and Mrs West heard the growl of a dingo or dog from the direction of the Chamberlain's tent fairly soon before they heard Mrs Chamberlain cry out.
- 9) Mrs Chamberlain initially ran in the direction she thought the dingo had gone, but then went back to check the tent. Others, including Mr Chamberlain and Mr Lowe then began an immediate search of the area and the surrounding sand dunes.
- 10) At around 8.25pm Mr Derek Roff, the ranger in charge of the area arrived. He, along with Constable Morris, who arrived shortly

thereafter, organised a search party consisting of some 250-300 people, who search the areas east, north and south of the tent until about 3.00am.

- 11) Mr Haby found tracks on the sand dunes east of the camp, along with a mark or imprint on the sand as though an object had been put down. Mr Roff also saw this imprint or drag mark, which he likened to a crepe bandage or resembling a knitted garment. Constable Morris also saw drag marks in that area, as well as tracks close to the rear of the tent.
- 12) Mr Roff and Mr Nui Minyintiri tracked a drag mark on the crest of a sand dune to the east of the tent. In Mr Minyintiri's expert opinion the tracks of a dingo that he saw showed that "it walked as though it had some load on it....when I was tracking the dingo I knew, or I thought that it was carrying the baby for sure."¹ Mrs Barbara Winmati also assisted in attempting the next day to follow the tracks leading south from the tent, but after a considerable distance, lost the animal's trail.
- 13) Blood was found inside the tent on various articles. This blood was Azaria's.

Forensic Evidence

- 14) A Royal Commission of Inquiry into the conviction of Mr and Mrs Chamberlain was held between 8 May 1986 and 19 March 1987. His Honour, Justice Morling, delivered his findings on 22 May 1987. His Honour heard and received evidence, including evidence that had been heard at the criminal trial, as well as new evidence, including expert evidence, independent of that which was presented at the criminal trial proceedings. Given the thorough nature of the investigation of forensic and scientific evidence, there is little point or weight in further analysis. Many aspects of the scientific evidence in this case have been either

¹ Royal Commission report p 244

misreported or misrepresented. Despite their thorough examination at the Commission myths still remain in the public domain in relation to clothing, blood, handprints, dingo hair and other aspects of the evidence. I have attached to these findings as an appendix, the report of the Commission, which formed part of the evidence before me, and which thoroughly and painstakingly addresses each of the forensic and scientific issues, and draws its conclusions from the best evidence available to it at the time.

- 15) In relation to that evidence, it is appropriate to adopt the findings of primary fact of the Commission. In doing so, I also adopt for my purposes the reasoning of His Honour Justice Nader, in *Re Conviction of Chamberlains*, when considering the Commission's findings in light of the Court of Appeal's role in a reference under section 433A of the Criminal Code.

“When would it be proper to adopt the findings of a commission of inquiry? The Criminal Code does not say. In the absence of externally imposed criteria, the court itself must answer the question judicially in the circumstances of the particular case.

In this case, there are several considerations that are relevant. The Commissioner is a Judge of a court. He has the experience and skills of a judge in evaluating evidence. The Commission conducted its inquiry in public over a long time, accompanied by much publicity. It heard many witnesses, including experts. One can be confident, bearing in mind all that had happened before the Commission was instituted, that no significant evidence was not given to and considered by the Commission. Everyone who had a legitimate interest in the outcome of the Commission was heard. The Commissioner was assisted by experienced counsel. He had the inestimable benefit of observing the witnesses. The court would be at a significant disadvantage in this respect: one, which it could not overcome without, in substance, conducting the inquiry again, even if that were possible. The findings of the Commission are reasoned conclusions drawn from findings of primary fact, which were open to the Commissioner on the evidence. The report itself is cogent and internally consistent. There is nothing about the report that would cause concern that adopting its main findings may lead to error. For

these reasons, I consider that the chief findings of the Chamberlain Commission should be adopted.”²

- 16) The Court of Appeal, like the Commission, had a focus on the criminal jurisdiction and the sufficiency of evidence or otherwise in relation to a criminal conviction. The coronial jurisdiction has a different focus, that is, the identity of the deceased, the time, place and cause of death and relevant circumstances concerning the death. In findings, a Coroner may comment on a matter, including public health or safety or the administration of justice connected with the death and may also make recommendations on these issues connected with a death.³

Evidence in relation to dingo related injuries and deaths

- 17) The evidence before the Commission in relation to dingoes, led the Commissioner to conclude:

“Before August 1980 dingoes in the Ayers Rock area frequented the camping area. At that time there were many dingoes in the area, some 18-25 of which were known to visit the camping area. A number of attacks were made by dingoes on children in the months preceding Azaria’s disappearance. In none of these did any child suffer serious injury.

About twenty minutes before Azaria disappeared Mr Haby saw and photographed a dingo which walked towards the Chamberlains’ tent. A few minutes before the alarm was raised the West’s heard a dog growl.

On the night of 17 August dog tracks were observed on the southern side of and very close to the Chamberlains’ tent. The same night Mr Roff and Mr Minyintiri, both experienced trackers and familiar with dingo behaviour, saw tracks of a dog carrying a load which they believed to be Azaria. It was within the bounds of reasonable possibility that a dingo might have attacked a baby and carried it away for consumption as food. A dingo would have been capable of carrying Azaria’s body to the place where the clothing was found. If a dingo had taken Azaria it is likely that, on occasions, it would have put the load down and dragged it.

² Re Conviction of Chamberlain (1988) 93 FLR 239 at 242

³ S34, Coroner’s Act NT (1993)

Hairs, which were either dog or dingo hairs, were found in the tent and on Azaria's jumpsuit. The Chamberlains had not owned a dog for some years prior to August 1980.

The quantity and distribution of the sand found on Azaria's clothing might have been the result of it being dragged through sand. The sand would have come from many places in the Ayers Rock region. The sand and plant fragments on the clothing are consistent with Azaria's body being carried and dragged by a dingo from the tent to the place where it was found. It is unlikely that, if the clothing had been taken from the Chamberlains' car, buried, disinterred, and later placed where it was found it would have collected the quantity and variety of plant material found upon it.

It would have been very difficult for a dingo to have removed Azaria from her clothing without causing more damage than was observed on it. However, it would have been possible for it to have done so. Mr Roff, the chief ranger at Ayers Rock and a man of great experience, thought that the arrangement of the clothing when discovered was consistent with dingo activity. Other dingo experts disagreed. I think it is likely that a dingo would have left the clothing more scattered, but it might not have done so.

The blood found in the tent was at least as consistent with dingo involvement in Azaria's disappearance as it was with her murder in the car. The pattern of blood staining on the clothing does not establish that the child's throat was cut with a blade.

The absence of saliva on Azaria's jumpsuit which was conclusively proved at the trial is made more explicable by the finding of the matinee jacket which would have partially covered it. The fact that no debris from the baby's body was found on the jumpsuit is also made more explicable by the finding of the jacket.

There is great conflict of expert opinion as to whether the damage to the clothing could have been caused by a dingo. It has not been shown beyond reasonable doubt that it could not have been. There were marks on plastic fragments of the nappy similar to marks made by a dingo on another nappy used for testing purposes. However, there was no blood on the nappy.

There was a dingo's den about thirty metres from the place where the clothing was found. There is no evidence that the existence of the

den was known to the Chamberlains, or for that matter, to anybody else and in fact it was unknown to the chief ranger and his deputy.”⁴

- 18) Available to this inquest was further evidence in relation to attacks on people by dingoes.
- 19) Coroner Lowndes in the third inquest indicated his approach in these terms:

“Applying once again the “belief” approach to the civil standard of proof to the evidence, I am unable to be reasonably satisfied that Azaria Chamberlain died accidentally as a result of being taken by a dingo from her tent at the camp site at Ayers Rock...At page 310 of his report, Commission Morling stated: “The defence asserted that Azaria had been taken by a dingo, an event for which there was no known precedent. It was therefore a novel case”. Of course, one does not expect that human beings, in particular young babies, will ordinarily be taken and killed by a dingo. First, that circumstance is a factor which may itself be relevant to the question of probabilities. Secondly, it is a factor, to use the words of the Honourable Mr Justice Hodgson (supra at 739-740), “relevant to what material concerning the particular circumstances is to be considered adequate so that the court can then reasonably act on the balance of probabilities.”

- 20) This approach raises directly, for the present re-opened inquest, the new facts or evidence⁵. A re-opening of an inquest is not an appeal against its findings. However, it appears that Coroner Lowndes (relying in 1995 on pre-1987 evidence and material) accepted the view stated by Commissioner Morling that the taking of Azaria was a novel case, for which there was no known precedent, and as such there was an inherent unlikelihood of an occurrence of such a nature.
- 21) Evidence tendered at this Inquest includes reports of attacks by dingoes and dogs assumed to be part dingo or cross breeds. Reports from 1986 through to June 2010 include cases of both children and adults being attacked. In Queensland a 9 year old boy died as a result

⁴ Royal Commission, p 336-338

⁵ S44 (2) Coroner’s Act NT (1993)

of an attack by dingoes on Fraser Island in April 2001. In New South Wales a 2 year old girl died in December 2005 from blood loss and shock from cranio-cervical injury from dog attack, being a part dingo crossbreed. In Victoria in February 2006 a 22 month old girl died of chronic respiratory failure with contributing factors of blood loss from dog bites (the dog being described as a dingo/Labrador cross). Apart from these deaths, there were reports of various attacks and injuries, including records obtained from the Department of Environment and Resource Management in Queensland, regarding reported dingo incidents on Fraser Island.

- 22) The further investigation of this Inquest has not found any disappearance exactly like that of Azaria. However it is clear that there is evidence that in particular circumstances a dingo is capable of attacking, taking and causing the death of young children. Some of these attacks occurred prior to the disappearance of Azaria in Central Australia and were considered by the Commission. Others have occurred since and form part of the evidence before me.
- 23) In considering now all of the evidence, I am satisfied that the evidence is sufficiently adequate, clear, cogent and exact, and that the evidence excludes all other reasonable possibilities, to find that what occurred on 17 August 1980 was that shortly after Mrs Chamberlain placed Azaria in the tent, a dingo or dingoes entered the tent, took Azaria and carried and dragged her from the immediate area. Mrs Chamberlain, upon being alerted to Azaria's cry, returned to the tent area to see a dingo near the tent. Raising a cry which alerted others, Mrs Chamberlain then ran for a short distance after the dingo and then back to the tent, confirming that Azaria was missing.

24) Azaria was not seen again, despite the large search by many at the campsite and the more organised search once Constable Morris and Mr Roff were involved.

Cause of Death

25) A coronial inquiry shall if possible find the 'cause of death'.⁶ As Azaria was never found, it is not possible to find the terminal cause or mode of her passing. However in *Ex parte Minister of Justice; Re Malcolm; Re Inglis*⁷ McClemens J said:

“I think that where the Coroners Act speaks of the cause of death it means the real cause of death namely the disease, injury or complication not the mode of dying as eg heart failure, asphyxia, asthenia etc.”

The following passage from *Jervis on Coroners* was also adopted:

“In order to distinguish between one sort of death and another it is necessary to consider not the terminal cause of death but the cause which was the real cause of death....It is suggested that insofar as the terminal cause of death directly and consequently follows from a definable event, the death should be regarded as caused by the definable event.”⁸

26) Traditionally, following English coronial law and practice, a finite range of verdicts or findings were available to a coroner when describing the manner of death. These include unlawful homicide, lawful homicide, suicide, misadventure, accident, natural causes and an open finding. However, in the Australian context this list is evolving, for reasons involving the different circumstances of death in this country as compared to England, as well as advances in medical and forensic science and the development of the National Coroners Information system, a database of coronial findings and recommendations.

⁶ S34 (1) (iii) Coroner's Act NT (1993)

- 27) Death by misadventure “has been described as applying to those circumstances when the death has occurred as the result of a lawful or unlawful intentional human act unforeseeable leading to death”⁹. Accident “has also been described as an unforeseen misfortune or mishap resulting in some physical injury or harm which has a causal connection with the death”¹⁰
- 28) Whilst other definitions have sometimes been applied, neither of these two findings truly reflects the circumstances where a person has been taken or attacked by an animal. Sadly, these circumstances, in the Australian context, are not uncommon, and include shark, crocodile and other reptiles, dog and dingo. The National Coroners Information System report on animal related deaths identifies 254 deaths between 1 July 2000 and November 2010.¹¹ The Northern Territory accounted for 24 of these deaths, clearly over represented on a per capita basis.
- 29) Whilst some of these deaths could be classified as misadventure or accident (a fall from a horse for example), others, such as bee, snake, shark, crocodile, dog and jellyfish are the result of the actions of the animal’s own intention and/or inherent dangerousness.
- 30) It is evident that the traditional forms of finding should be expanded to include being taken or attacked by an animal.

Findings

31) The findings are:

- i) The name of the deceased was Azaria Chantel Loren Chamberlain, born in Mount Isa, Queensland on 11 June 1980.

⁷ [1965] NSW 1598 at 1604

⁸ Jervis on Coroners, 9th ed at 83

⁹ “The Range of Findings Open to the Coroner” McCann, D, p15, The Aftermath of Death, ed Selby, H. Federation Press, 1992.

¹⁰ Ibid, p16

¹¹ “Animal-related deaths” NCIS Fact Sheet, March 2011

She was the daughter of Michael Leigh Chamberlain and Alice Lynne Chamberlain.

ii) Azaria Chamberlain died at Uluru, then known as Ayers Rock, on 17 August 1980.

iii) The cause of her death was as the result of being attacked and taken by a dingo.

Recommendations

32) It is obvious, not just from these findings, but from other injuries and deaths since, dingoes can and do cause harm to humans. The reason for this behaviour, either on the 17 August 1980 or since is beyond the scope of this Inquest.

33) Given the length of time since the death of Azaria, I do not intend to make any recommendations in relation to public safety and the control or management of dingoes in areas frequented by members of the public. It is also not appropriate to make any comment on animal management practices at the time in and around the Uluru area. Various wildlife and park management authorities around Australia are responsible for accommodating and balancing the needs of visitors and animals, including native wildlife. It is appropriate that they take measures to manage the now identified risks.

Dated this 12th day of June 2012

Elizabeth Morris

CORONER

Appendix A

Royal Commission of Inquiry into Chamberlain Convictions, Report,
Commonwealth Parliamentary Papers (1987), volume 15, paper 192