



## **CORONERS COURT OF NEW SOUTH WALES**

<b>Inquest:</b>	Inquest into the disappearance and death of Esmeraldo San Juan
<b>Hearing date:</b>	22 August 2017
<b>Date of findings:</b>	22 August 2017
<b>Place of findings:</b>	NSW Coroner Court - Glebe
<b>Findings of:</b>	Magistrate Elizabeth Ryan, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – Missing person – rock fishing death – recommendations made in 2015 inquest.
<b>File number:</b>	2016/129147, 2016/174691 & 2016/389547
<b>Representation:</b>	Advocate Assisting the Coroner: Sergeant Alex Creagh.
<b>Findings:</b>	<p>I find that Esmeraldo San Juan is dead. He died on or soon after the night of 19 March 2016, in or near the waters of Snapper Point, Munmorah State Conservation Area, NSW.</p> <p>The cause and manner of Esmeraldo San Juan's death remain unknown.</p>

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The *Coroners Act 2009* (NSW) in s81(1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death.

These are the findings of an inquest into the disappearance and death of Esmeraldo San Juan.

## **Introduction**

1. Esmeraldo San Juan was born on 1 December 1974. He was a Filipino national who came to Australia in May 2012. He became a permanent resident of Australia in 2015.
2. In December 2012 Esmeraldo met Jennifer Skelton. Jennifer had emigrated from the Philippines in 2002 and had become an Australian citizen. Jennifer and Esmeraldo became de facto partners and they had a daughter, Kristine. They settled in Morisset NSW and Esmeraldo worked as a welder with Power Projects International.
3. Jennifer described Esmeraldo as a quiet person and a good man. She said they were a happy couple without any financial difficulties.
4. Esmeraldo was a keen fisherman and would go fishing about once a week, often staying overnight and sleeping in his car. One of his favourite fishing spots was Snapper Point, a rock shelf located at the end of Frazer Beach in the Munmorah State Conservation Area. This area of NSW's Central Coast is a popular destination for camping, swimming and fishing. It is about half an hour's drive from Esmeraldo's home.
5. On the night of 19 March 2016 Esmeraldo went out fishing alone and has not been seen alive since then. For reasons which are explained below, I am able to find that he died that night or very soon afterwards.

## **The role of the Coroner**

6. The first task facing a coroner in a case such as this is to determine whether the missing person is actually dead. If that can be safely established the coroner must continue to make further findings as to the date and place of death, and the cause and manner of death: Section 81 *Coroners Act 2009* (NSW) [the Act].
7. In addition a coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future: Section 82 of the Act.

## **Events of 19 and 20 March 2016**

8. On Saturday 19 March 2016 Esmeraldo left the family home at about 6.30pm, telling Jennifer he intended to fish overnight at Snapper Point. Jennifer asked

him to call her when he got there, but by 9pm he had not done so. During the night of 19 March she tried calling him on his mobile phone several times but she got no answer.

9. Jennifer had expected Esmeraldo to return home as usual at about 10 o'clock the following morning, which was a Sunday. But by Sunday afternoon he had still not returned and she became very worried. She spoke to Edmond Climecosa and Elmondo Angcos who are neighbours of the family and who worked with Esmeraldo. They too called Esmeraldo on his phone but got no answer.
10. In fact Edmond Climacosa was the last person known to have seen Esmeraldo alive. Mr Climacosa was Esmeraldo's friend as well as his work colleague, and he is also a keen fisherman. At about 4pm on 19 March he too had gone to Snapper Point to go fishing, but he decided to pack up and head home around 6.30pm as the waves were very large and were breaking over the rock ledge.
11. In the Snapper Point car park at about 7pm Mr Climacosa saw Esmeraldo and had the following short conversation with him in their native Filipino language:  
  
Climacosa: *Very big waves! You going fishing alone?*  
  
Esmeraldo: *It's ok around 7.30, the waves don't come up.*
12. Mr Climacosa said goodbye and drove off. He noted that Esmeraldo was wearing a red life jacket which had a cord to inflate it. As Mr Climacosa left he saw Esmeraldo putting on an orange jacket with reflector stripes.
13. Toukley Police became involved at about 3pm on 20 March. This was because early that morning National Parks and Wildlife rangers had noticed Esmeraldo's car in the car park near Snapper Point. It was still there at 3pm. After visiting Jennifer that afternoon and hearing of Esmeraldo's failure to return, police immediately commenced a search operation.

## **The search operation**

14. The search operation was coordinated by Chief Inspector Rodney Peet of Tuggerah Lakes Local Area Command. Inspector Peet has extensive experience commanding operations and investigations. Significantly he has coordinated searches on over ten occasions for people swept into the water in the Lake Munmorah State Conservation Area.
15. It is convenient at this point to note some relevant information about Snapper Point and its rock shelf.
16. In his statement provided to the inquest, Inspector Peet noted the following:

- Since 2010 seventeen people have been swept into the water from the rocks around Snapper Point and have died. Around one in three of these bodies have not been recovered.
  - There is very limited mobile phone coverage on the rock shelf.
  - The rock shelf is surrounded by steep cliffs, allowing large volumes of water to submerge the entire platform when there are heavy seas.
  - The rock shelf also has a large crevice at its base which can cause it to be inundated from the rear, taking fishermen by surprise, especially when it is dark.
17. Jennifer Skelton showed Inspector Peet the location on the rock shelf where Esmeraldo usually liked to fish. In his opinion it was a most hazardous area, being directly exposed to the ocean surge and located close to the crevice at the rear of the shelf.
  18. The search for Esmeraldo continued over a number of days, and involved officers of NSW Police Rescue, rangers from NSW National Parks and Wildlife, members of the Central Coast Volunteers Rescue Association, State Emergency Service and Surf Life Saving Australia, officers of the NSW Police Marine Area Command, and the NSW Police Dog Squad. Inspector Peet also authorised Press Releases on 21 and 30 March requesting any information from the public which might assist in finding Esmeraldo.
  19. The searchers carried out ground searches of the area inland from Snapper Point, aerial searches in rescue helicopters fitted with heat-detecting technology, and shoreline patrols of surrounding beaches. There was also a systematic underwater search of the Snapper Point area by police divers. Marine search vessels could not be used until 22 March. This was because throughout 19, 20 and 21 March weather and surf conditions in the area were very hazardous, with large ocean swells at around five metres and strong winds.
  20. Esmeraldo was not found, but the searchers located some of his possessions. Late in the afternoon of 20 March a ranger found a red running shoe on the shoreline of nearby Bongon Beach, together with a broken tackle box lid and some fishing equipment. The next day a second red running shoe was found near the rocks at Snapper Point. Jennifer Skelton was present at Snapper Point throughout the search operation and she identified these items as belonging to Esmeraldo.
  21. The inquest had the assistance of a short video which shows aerial views of the ocean and shoreline surrounding Snapper Point. Inspector Peet reproduced the video from recordings obtained from a drone which he activated on 2 April 2016. With the aid of the video it can be seen that Bongon Beach is a cove lying adjacent to Snapper Point. Snapper Point and Bongon Beach form the northern end of the three kilometre stretch of coastline known

as Frazer Beach. Bongon Beach and Frazer Beach are thus in very close proximity to Snapper Point.

22. By the afternoon of 22 March Inspector Peet had formed the opinion that Esmeraldo had died. Extensive land, sea and air searches had not located him. The land around Snapper Point had little vegetation due to a recent bush fire, so if Esmeraldo had been in the area it was likely he would have been seen from the air or by foot patrollers. Inspector Peet considered that if Esmeraldo had been swept into the water on the night of 19 March his chances of survival would have been extremely low, even if he had been wearing a life preserver jacket. Inspector Peet had noted that for the past four days the ocean swell was large and turbulent, with waves breaking several hundred metres out to sea.
23. In reaching his conclusion that Esmeraldo was no longer alive Inspector Peet also took into account the following information:
- Phone activation requests confirmed Esmeraldo had not used his mobile phone for many days.
  - When statements for Esmeraldo's and Jennifer's joint bank account were obtained, Jennifer identified the only transactions after 19 March as having been made by herself.
  - On the weekend Esmeraldo went missing the camping grounds surrounding Snapper Point were at 100% capacity, yet no one reported seeing him.
24. Accordingly Inspector Peet told Jennifer there was no longer any hope of finding Esmeraldo alive. Police efforts would now focus on recovering Esmeraldo's body.
25. On 29 March Jennifer emailed Inspector Peet to say she had received information from a psychic person in the Philippines that Esmeraldo was still alive, and that he was lost in the bush and awaiting rescue. Inspector Peet visited Jennifer at her home on 30 March. He explained that the ground, sea and air search for Esmeraldo had been extremely thorough, and reiterated that there was no hope he was still alive.

## **Subsequent events**

26. Four weeks later two men were fishing on the rock shelf at Snapper Point when they noticed a bone wedged between some rocks. They retrieved it and police were notified. At Wyong Hospital the bone was identified as a human hemi-pelvis and right femur, without flesh. It was taken to the Forensic and Analytical Science Service [FASS] for DNA analysis.
27. On 21 June a DNA sample was obtained from Esmeraldo's young daughter Kristine by way of a buccal swab, and a comparison requested with the DNA extracted from the bone. The results were provided in a report of forensic scientist Jeremy Watherston, as follows:

*'The DNA profile recovered [from the bone] originates from a male individual (individual A). A could be the biological father of Kristine San Juan. It is approximately 130,000 times more likely to obtain this profile if it originates from a parent of Kristine San Juan rather than if it originates from an unknown individual, unrelated to Kristine San Juan, in the Australian Caucasian population'.*

28. On 7 September 2016 the Coroner's Court accepted the bone as belonging to Esmeraldo.

29. On 28 December 2016 a second bone was found, this time at the southern end of Frazer Beach about 10-15 metres from the water's edge.

30. This bone was identified as a human mandible bone with a molar tooth attached to its lower edge. It was examined by forensic dentist Dr Phillip Kendall, who concluded it could possibly be from an adult male thirty or more years old and of Asian heritage.

31. On 10 March 2017 Jeremy Watherston supplied a second report, identifying the mandible bone and tooth as having the same DNA profile as that of individual A referred to in his earlier report. This time the finding was:

*'It is approximately 370 million times more likely to obtain this profile if it originates from a parent of Kristine San Juan, rather than if it originates from an unknown individual unrelated to Kristine San Juan, in the Australian Caucasian population'*

32. On 22 March 2017 the Coroner's Court accepted this bone too as belonging to Esmeraldo.

## **Is Esmeraldo dead?**

33. The evidence that Esmeraldo is dead clearly reaches the threshold of the balance of probabilities.

34. The finding of two bones which have been identified as belonging to Esmeraldo establishes his death. It is self-evident that he could not have survived whatever tragic event caused the severance from his body of his mandible and femur/hemi-pelvis bones.

35. Even if the bones had not been found and identified, there is compelling evidence that he is dead. He has not been seen by his family, friends and workmates since the evening of 19 March 2016 and there is no evidence to suggest he had become estranged from any of these people. There is no record of him using a financial or phone service after that date. Checks with the Department of Immigration have established there has been no subsequent activity on his passport.

## **When did he die?**

36. Without any witness to Esmeraldo's death it is not possible to be certain exactly when he died, within the range of 19 March 2016 when he was last seen alive, and 22 April 2016 when his femur/hemi-pelvis bone was found.
37. However when considered on the balance of probabilities, the evidence permits a finding that Esmeraldo died during the night of 19 March 2016 or very soon afterwards. It can be assumed that Esmeraldo was physically unable to call his wife on the night of 19 March or to return to his home on 20 March as expected. This does not of itself establish that he had died by this time. However I have also taken into account the following:
- Extensive searches of the land and shoreline around Snapper Point commencing on 20 March failed to locate Esmeraldo. Nor was he seen that weekend by any of the many users of the Conservation Area.
  - Inspector Peet assessed that had Esmeraldo been swept into the sea from Snapper Point during the night of 19 March, the prevailing surf conditions were such that his chances of surviving for long in the water were extremely low. Inspector Peet's extensive experience coordinating search and rescue efforts in this particular area lend very significant weight to his opinion.
38. The above evidence in combination leads me to conclude that on the balance of probabilities Esmeraldo died on the night of 19 March 2016 or very soon thereafter.

## **Where did he die?**

39. Similarly the absence of a witness to Esmeraldo's death makes it difficult to be specific about where he died.
40. Having carefully reviewed the evidence however in my view it permits a finding on the balance of probabilities that he died in or near the waters of Snapper Point, Frazer Beach. I base this finding on the following evidence:
- Esmeraldo was last seen alive at 7pm on 19 March, when he told Edmond Climacosa he intended to fish at the Snapper Point rock shelf.
  - His shoe and some of his fishing items were found on 20 March on the shoreline of Bongon Beach, an area adjoining Snapper Point.
  - His other shoe was found on 21 March near the rocks at Snapper Point.
  - His femur/hemi-pelvis bone was found on 22 April in rocks on the Snapper Point rock shelf.
  - His mandible bone was found on 28 December at the water's edge on nearby Frazer Beach.



41. The evidence is therefore that in the days and weeks following Esmeraldo's disappearance, items belonging to him and parts of his body were washed up onto the shoreline of the waters around Snapper Point. It is reasonable to conclude his body had been immersed in those waters, and that his death occurred either in those waters or on land close by those waters.

### **What was the cause and manner of his death?**

42. There was no witness to Esmeraldo's death and his intact body was not found, meaning that it could not be examined to identify a cause of death. It is thus not possible to determine exactly what caused his death and the circumstances in which he died.
43. Esmeraldo's wife Jennifer was not aware of any physical or mental health problems which Esmeraldo suffered. She described their relationship as happy and their financial situation as stable. Neither she nor his friends could identify any person with whom Esmeraldo was in conflict, or who may have wished to harm him.
44. For these reasons I am able to find that Esmeraldo's death was not the result of suicide, or of the violent act of another person.
45. The evidence I have outlined above about:
- the physical layout of the Snapper Point rock shelf
  - the prevailing treacherous surf and weather conditions
  - Esmeraldo's body having been immersed in the waters around Snapper Point
- all strongly indicate that he died by drowning as a result of being swept into the sea from the Snapper Point rock shelf.
46. However since no one witnessed him going into the water, and his intact body has not been able to be examined, I cannot exclude the possibility that his immersion was preceded by a sudden and unexpected event on land which caused his death. This may have been a natural event such as a heart attack, or a fatal injury received as a result of waves sweeping him off his feet and onto rocks.
47. Unfortunately therefore the cause and manner of Esmeraldo's death remain unknown.

### **Question of recommendations**

48. I have not been able to identify any matters arising out of Esmeraldo's death which could usefully be the subject of recommendations aimed at preventing such deaths in the future.

49. The search operation coordinated by Inspector Peet was comprehensive and professional. Much of it was conducted in treacherous and difficult conditions. It was initiated most promptly, ensuring that resources were focused at an early stage and available evidence gathered. The many people who participated in the search, some on a voluntary basis, are to be strongly commended.
50. Importantly it also appears that Esmeraldo's immediate family was kept closely informed of developments each day, and was treated with respect and empathy throughout the traumatic days following Esmeraldo's disappearance.

#### **(i) The 2015 inquest into rock fishing deaths**

51. In considering whether any recommendations might usefully be made arising out of Esmeraldo's death, I have examined the findings made in a 2015 inquest into the deaths of nine persons who died between the years 2012 and 2015 while rock fishing<sup>1</sup>. Significantly, three of these nine deaths occurred in the Lake Munmorah Conservation Area, one at Snapper Point itself.
52. In her findings Coroner Forbes noted that between 2012 and 2015, 35 people had died whilst rock fishing in NSW. Accordingly the purpose of the 2015 inquest was to ascertain what might be done to make rock fishing safer and to prevent continuing fatalities in this sport.
53. The Court's findings presented a comprehensive overview of current safety measures relating to rock fishing. These include education and awareness programs and websites, safety reminder signs at known rock fishing locations, and the provision of safety equipment at rock fishing sites such as angel rings.
54. Angel rings are flotation devices installed at popular rock fishing spots around Australia. They are designed to keep people afloat until a rescue can be organised, or until they can get to a safer point from which to exit the water. In the present inquest the Court heard evidence there are fifteen angel rings along the coastal section of Munmorah Conservation Area. Two of these are in the immediate vicinity of where it is believed Esmeraldo was fishing on 19 March. A third one is nearby. Unfortunately, as it appears he was fishing alone there was no one present to throw an angel ring to him in the water.

#### **(ii) 2015 recommendation: lifejackets**

55. The primary recommendation of the 2015 inquest was that it should be mandatory for lifejackets to be worn by people engaged in rock fishing.
56. The NSW Government has responded by enacting the *Rock Fishing Act 2016* (NSW), which requires rock fishers in high-risk locations to wear lifejackets.

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<sup>1</sup> : *Inquest into the deaths of Myassar Ayoub, Donald White, Zheng Wang, Sung Su Cho, Greg Walter Reardon, Huiqing Hua, Ding Ding Zhang, Young Whan Kim and Jesse Jack Howes* [Deputy State Coroner C Forbes, 2 July 2015]

Randwick Local Government Area was chosen for a twelve-month trial of the new law. The trial will be reviewed after 30 November 2017, with a view to declaring other appropriate areas as high-risk rock fishing areas.

57. It is encouraging to see the adoption, or at least partial-adoption, of the 2015 recommendation. In the present case it is true that according to Mr Climacosa Esmeraldo was wearing a lifejacket that night. If so it was not sufficient to ensure his survival in the extreme conditions of 19 and 20 March. Nevertheless the new measure is likely to save the lives of other people.

**(iii) 2015 recommendation: signage**

58. A further recommendation of the 2015 inquest was that at certain locations there be a review of the adequacy of warning signage relating to rock fishing.
59. The Munmorah area was not included as one of the locations identified as likely to benefit from this review. This is likely due to Her Honour's observation that Munmorah *'is now one of the most heavily signed rock fishing areas in NSW'*.
60. This observation is borne out by evidence heard in the present inquest. At the time Esmeraldo disappeared there were two signs near the Snapper Point car park which warned, in a number of languages, of dangerous waves. One of the signs also advised rock fishers to wear lifejackets.
61. It is not known whether Esmeraldo was aware of these signs. However the dangerous conditions were drawn to his attention that evening by Mr Climacosa. Since it appears this did not deter Esmeraldo from deciding to go fishing, it seems unlikely the warning signage would have deterred him either. Of course this does not mean there is no lifesaving utility in such signs; merely that in the circumstances of this case further signage would not have prevented this death.
62. There is no basis for further recommendations regarding signage.

**(iv) Can any more be done?**

63. At the inquest Inspector Peet gave short oral evidence regarding whether any further safety measures might assist in reducing rock fishing deaths in this area.
64. Inspector Peet noted that in recent times most people rock fishing have been wearing lifejackets. He thought this should prove effective in saving some lives, particularly when weather and surf conditions were not extreme.
65. Inspector Peet noted further that a monument is in place at Snapper Point, holding plaques commemorating the many people who have died there while rock fishing. A plaque for Esmeraldo has recently been added. In addition to being a means of commemorating much loved relatives and friends, Inspector

Peet considered this monument was itself a sobering reminder to people of the risks involved in rock fishing at that place.

66. Inspector Peet noted that although mobile phone coverage at Snapper Point is very limited, most phones without coverage are nevertheless able to access the '000' emergency facility. He thought it possible many people were unaware of this information and that there was scope for greater public awareness of it, perhaps by adding it to the warning signage referred to above.
67. In the present inquest there is no evidence Esmeraldo attempted to summon help with his mobile phone, or that if he did it would have increased his chances of survival that night. There is however some merit in Inspector Peet's suggestion and its potential to make a difference in some cases. Despite this I did not think it appropriate to make it the subject of a recommendation in this inquest, as there was no opportunity to receive more detailed evidence about its feasibility.
68. For the above reasons I do not make any recommendations in this matter.
69. In closing I would like to thank the Advocate Assisting the Coroner in this matter, Sergeant Creagh, the officer in charge of the coronial investigation Constable Nicole Pitt, and Inspector Peet for his valuable assistance to the inquest.
70. Finally, on behalf of all at the Coroner's Court, I would like to offer my sincere and respectful sympathy to Esmeraldo's family and friends for their sudden loss of a much loved partner, father and friend.

## **Findings required by s81(1) of the Act**

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

### **The identity of the deceased**

The deceased person is Esmeraldo San Juan.

### **Date of death**

Esmeraldo San Juan died on 19 March 2016 or very soon afterwards.

### **Place of death**

Esmeraldo San Juan died in or near the waters of Snapper Point, Frazer Beach, Munmorah State Conservation Area, NSW.

### **Cause and manner of death**

The cause and manner of Esmeraldo San Juan's death remain unknown.

I close this inquest.

**Magistrate E Ryan**

Deputy State Coroner  
Glebe

**Date**