



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Matthew Leveson
Hearing dates:	22 August 2017
Date of decision:	25 August 2017
Place of decision:	State Coroners Court, Glebe
Decision of:	Magistrate E Truscott
Catchwords:	CORONIAL LAW – section 61 certificate, discharge of subpoena for witness to give evidence
File number:	2008/464554
Representation:	Counsel Assisting the Coroner Tim Game SC and A Mitchelmore instructed by Ian Linwood and Emma Sullivan from the Crown Solicitors Office Mark Leveson for the family Mr Spartalis instructed by S Robinson for the police Ms C Wasley instructed by S Ramsden for Mr Atkins
Non publication order:	No non-publication order in respect to this decision
Decision:	The subpoena issued to Mr Atkins is discharged

1. On 17 December 2015, Mr Atkins was served with a subpoena to attend this inquest to give evidence.
2. On 20 May 2016, I ruled that Mr Atkins would be required to give evidence and that I would cause a certificate to be granted to him under s 61 of the Coroners Act 2009 (“the Act”) in respect of his evidence (“Section 61 Decision”). The Supreme Court dismissed Mr Atkins’ challenge to the Section 61 Decision and to the resumption of the inquest more generally.
3. Mr Atkins commenced giving evidence on 31 October 2016, pursuant to the s 61 Certificate. His evidence continued through 1, 2, 3 and 4 November 2016. After the luncheon adjournment on 4 November 2016, then Counsel Assisting sought an adjournment of the inquest until 10 November 2016, for the taking of further evidence from Mr Atkins. The inquest was adjourned and has remained adjourned since that date.
4. A number of events have occurred in the intervening period. Most significantly, on 31 May 2017, Matthew Leveson’s remains were located in the Royal National Park as a result of Mr Atkins providing information and an induced statement to Detective Chief Inspector Gary Jubelin (“DCI Jubelin”).
5. The subpoena I caused to be issued to Mr Atkins has not been discharged. Mr Atkins is required to attend and give evidence if I decide that he should be called. Mr Atkins objects to continuing to give evidence.
6. Counsel Assisting, Mr Tim Game SC, has made lengthy submissions as to why I would not require Mr Atkins to give further evidence. No contrary or additional submissions have been made by any parties to this Inquest.

Mr Atkins called to give evidence at the inquest

7. In the Section 61 Decision, I canvassed the background matters, which I considered relevant to my decision to compel Mr Atkins to give evidence in the inquest.
8. I heard evidence from 26 witnesses. Mr Atkins was the 27th witness. Under the provision of the s61 Certificate Mr Atkins was compelled by me to answer questions and he did so.
9. Mr Atkins was examined by then Counsel Assisting over four and a half days. During the course of his evidence, Mr Atkins gave evidence that he had told the truth to the police in a voluntary record of interview on 27 September 2007. He also admitted to having lied to police in that interview. He also accepted that in giving evidence to the inquest that he told police the truth in that interview, he had lied under oath.¹
10. By the time of his evidence in the inquest, Mr Atkins had given a number of different accounts of when it was he became aware that Matthew had “disappeared” from their unit at Tonkin Street, Cronulla: late on Sunday morning,² late on Sunday afternoon,³ at around 1 or 2am Monday,⁴ and Monday morning when he had woken up to go to work.⁵
11. Mr Atkins has told a number of lies. In the voluntary interview with police, Mr Atkins told police that he took Matthew home from the nightclub because Matthew was falling asleep due to the effects of drugs. CCTV footage and telephone text evidence disproves that Matthew was falling asleep or that Mr Atkins even knew where he was in the nightclub. It shows that Mr Atkins was leaving the nightclub with Matthew to collect more drugs from their car to sell to person/s at the club. Mr Atkins lied that he had stayed home all day with

¹ TS 4/11/16 p 2 L 38-40.

² Statement of Faye Leveson, 10 June 2008 at [4] (Ex 42 Tab 1).

³ Statement of Faye Leveson, 10 June 2008 at [5] (Ex 42 Tab 1).

⁴ Ex 4 Q 634-653. He maintained this account in his evidence to the inquest.

⁵ TS 16/12/16 p 66 L 3-14.

Matthew apart from going out for a walk through the mall at 5 pm on Sunday 23 September 2007, when he had earlier been to Bunnings to purchase a mattock and gaffer tape.

12. Mr Atkins has consistently lied in maintaining that Matthew had disappeared and for all he knew, may still be alive. His evidence in the inquest was that he always thought that Matthew had gone to Thailand to start a new life but that he still hoped that he would return.⁶

Events following the adjournment

13. DCI Jubelin has given evidence as to the events which occurred following the adjournment on 4 November 2016.

Attorney-General's indemnity

14. On 7 November 2016, DCI Jubelin made an application to the then Attorney General, on behalf of NSW Police, recommending that Mr Atkins be granted an indemnity pursuant to s 32(1)(a) of the *Criminal Procedure Act 1986* (NSW), protecting him from prosecution for perjury and, possibly, contempt of court with respect to the evidence he gave at the Inquest.⁷
15. In his submission in support of that application, DCI Jubelin stated that on 4 November 2016, Mr Atkins' barrister had approached him and indicated that Mr Atkins may be in a position to provide additional relevant evidence. She also indicated that he would be prepared to provide police with an induced statement on 9 November 2016 if an indemnity from prosecution for perjury at the inquest was provided by that date.
16. On 7 November 2016, the then Attorney General granted Mr Atkins an indemnity in the following terms:⁸

⁶ TS 31/10/16 p 5 L 25-29; p 11 L 21-32.

⁷ Statement of DCI Jubelin, 7 August 2017 ("Jubelin Statement"), Annexures Tab 1.

⁸ See letter from DCI Jubelin to Ms S Ramsden, Mr Atkins' solicitor, dated 8 November 2016: Jubelin Statement, Annexures Tab 2.

That conditionally on Michael Peter Atkins providing information to police that results in the recovery of Matthew Leveson's remains, he is indemnified from any prosecution for the Perjury and Contempt of Court offences he committed at the inquest between 31 October 2016 and 4 November 2016.

17. It is implicit in the terms of the indemnity that in order for it to operate, Mr Atkins would have to provide information to the police rather than the Court. It is also implicit that the information would be directly contrary to the position which Mr Atkins had maintained, in his ERISP, in his instructions during the trial, and in his evidence at this inquest, that the last time he saw Matthew he was alive, and that Matthew had left their Cronulla unit of his own volition and had not returned.
18. DCI Jubelin also obtained authority from the then Commander of the Homicide Squad, Michael Willing, to provide to Mr Atkins the protection of an induced statement so that whatever was contained in the statement could not be used as evidence against Mr Atkins.
19. On 9 November 2016, DCI Jubelin and Detective Senior Constable Scott Craddock ("DSC Craddock") attended the Sydney offices of Marsden Law Group and met with Mr Atkins, his solicitor and his barrister.
20. Later that evening, then Counsel Assisting signed a document titled "Inquest into the Death of Matthew Leveson" ("CA Document").⁹
21. In the CA Document, Counsel Assisting advised Mr Atkins and his representatives, NSW Police and the Leveson family in relation to the disposition of Mr Atkins' evidence at the inquest. In the CA Document, Counsel Assisting stated that Mr Atkins' induced statement, which was to be

⁹ Jubelin Statement, Annexures Tab 3.

taken that evening (at [1]), “must provide complete details about the location of the body, and the manner and cause of Matt’s death” (at [2]). If he was “satisfied that the contents of the induced statement [were] full and complete”, he would make a submission to the Coroner that “there is no purpose to be served by Mr Atkins giving further evidence at the inquest”, that he was not required to give further evidence, and that the subpoena be discharged (at [3]). If Counsel Assisting was not satisfied as to the fullness and completeness of the induced statement, he could ask for aspects of the statement to be further clarified (at [4]).

22. Counsel Assisting further stated that if the Coroner accepted his submission, “it would be open to her Honour to find that Atkins deliberately killed Matt because: Atkins would not have given further evidence; because Atkins has lied in Court; and because of Mr Atkins’ lack of credibility” (at [5]). I believe that the word “still” should be read between “would” and “be”, such that the paragraph reads, “it would still be open to her Honour” to make those findings even if Mr Atkins was excused from giving further evidence. The significance of the paragraph is that, from Mr Atkins’ perspective, it foreshadowed the possibility of adverse findings being made against him, including on the basis that he had not continued to give evidence, even if he provided complete details of the matters to which paragraph 3 referred (in the sense that clarification was not required: see paragraph 4).
23. The Leveson family were to see the statement and Counsel Assisting was to take their views into account in determining what submission to make to the Coroner ([6] and [7]).

Mr Atkins’ induced immunised and “compelled” statement

24. On 10 November 2016, Mr Atkins signed an induced statement.¹⁰ The statement is tendered in evidence as an annexure to DCI Jubelin’s statement

¹⁰ Jubelin Statement, Annexures Tab 4.

dated 7 August 2017 (Ex 100) for the purpose of identifying the course of investigations, including the representations which were made to Mr Atkins, and indicating what Mr Atkins has now said occurred on 23 and 24 September 2007, so as to assist me in determining whether Mr Atkins should be required to give further evidence.

25. In paragraph 3 of the induced statement Mr Atkins states he was making the statement *“over objection after being compelled to do so by Deputy State Coroner Truscott with the protection of a certificate pursuant to s 61 Coroners Act NSW 2009 being my evidence into the inquest into the death of Matthew Leveson”*. In paragraph 12 he commences the paragraph *“I am being compelled to provide complete details about location of the body, and the manner and cause of Matthew’s death”*; and at Question 109 DCI Jubelin asks Mr Atkins a question about having accompanied police to the location where he disposed of Matthew’s body and says *“Before you answer this I confirm that your assistance will form part of your evidence in this inquest and is protected by the certificate and the inducement”*.

26. As DCI Jubelin acknowledged in his evidence on this application, I did not authorise him to make any representation to Mr Atkins in those terms. His evidence was that the representation in paragraph 3 (which flows through to the subsequent passages that I have identified) was made at the request of Mr Atkins’ representatives; and that they made that request genuinely, on the understanding, which on his evidence he shared at that time, that the induced statement would be protected by the Section 61 Certificate. In fact, a s 61 certificate relates solely to evidence in court proceedings and not information or material provided to police - s61(10). Mr Atkins had the protection of the inducement provided by Commander Willing, and he had the incentive or compulsion to provide information to locate Matthew’s body when the Attorney General granted the indemnity against being prosecuted for perjuring himself in his evidence at the inquest.

27. In the induced statement, Mr Atkins states that after falling asleep on the couch after returning home from the nightclub, he woke at about 9.00 am on Sunday morning and discovered Matthew deceased on the floor of the bedroom. Within about an hour, he had determined to dispose of Matthew's body secretly to safeguard his own reputation, claiming that he assumed Matthew had died from a drug overdose of GHB.

28. The induced statement marked the first occasion on which Mr Atkins accepted that he knew that Matthew was dead as at 23 September 2007, and that he was responsible for disposing of his remains. The giving of the statement marked a fundamental change in Mr Atkins' evidence and is directly contrary to the evidence he had given at the inquest on 4 November 2016, saying that he did not know where Matthew was and that he was unable to tell the Levesons where Matt's body was.¹¹

29. Aside from the location of Matthew's burial there are matters in the induced statement which would, if Mr Atkins was required to give evidence, be subject to much challenge and further litigation.

Discovery of Matthew's remains

30. Attached to Mr Atkins' induced statement was a hand-drawn map, which he prepared and signed (annexure A to his statement), depicting where he said he had buried Matthew's body.

31. In the course of giving the induced statement, Mr Atkins and his legal representatives accompanied DCI Jubelin and DSC Craddock to locations near Waterfall Railway Station, for the purpose of identifying the location where he had disposed of Matthew's body.¹² The site was excavated in

¹¹ TS 4/11/16 p 6 L 21 – p 16.

¹² Induced Statement, Q and A 109.

November 2016 without locating Matthew's remains but in May 2017 when a further excavation was undertaken Matthew's remains were located. According to DCI Jubelin, the site where Matthew's remains were located was approximately 30 m from the sites that Mr Atkins initially nominated, but within the parameters of what he had described in the induced statement.

32. DNA testing, carried out at the Forensic & Analytical Science Service, confirmed that the remains were those of Matthew.

Evidence regarding Matthew's remains

Forensic Anthropology

33. Following the recovery of Matthew's remains, a number of forensic examinations have been reported on. It is apparent that the recovery of Matthew's remains has not led to the discovery of independent evidence as to the manner and cause of his death. Nor has it given rise to any new investigative leads which might be pursued.

Consideration

34. As I stated in the Section 61 Decision (at [21]), my duty under the Act is to make findings as to the manner and cause of Matthew's death: s 3(c) and s 81(1)(c). At the time of that decision, I was of the view that I could not meet that statutory duty without hearing evidence from Mr Atkins. In light of Mr Atkins' evidence to the inquest, and what has occurred since the inquest has been adjourned, I must now revisit that question.
35. In so doing it is instructive to reconsider the matters to which I had regard in concluding, in the Section 61 Decision, that I was satisfied that the interests of justice required that Mr Atkins give the evidence (see s 61(4)(b)). I do so with the benefit of the evidence that is now before me. I also do so with the benefit of the submissions of Mr Game SC, which I accept, which addressed the course of events, how those events were likely to have been understood by

Mr Atkins and the complexities associated with that issue, and the utility of Mr Atkins giving further evidence.

No independent evidence as to manner and cause

36. As at May 2016, there was no evidence in the inquest as to the manner and cause of Matthew's death (at [24]). That remains the case.
37. Although by reason of the information that Mr Atkins provided in the induced statement, Matthew's remains were located, and recovered, the account he provided in the statement as to how Matthew died is uncorroborated and untested.
38. The absence of any objective external evidence as to manner and cause has implications for other factors to which I had regard, in the Section 61 Decision, in deciding to compel Mr Atkins to give evidence.

The reliability of Mr Atkins' evidence

39. In the Section 61 Decision, I recognised that Mr Atkins had admitted, in a recorded conversation with Mark and Faye Leveson, that he had lied to the police in the voluntary interview on 27 September 2007; and that he had given varying accounts to associates about when it was that he realised that Matthew had left the apartment. However, I considered that those accounts were given in circumstances that were quite different to giving evidence on oath or affirmation before a judicial officer in a courtroom. I further considered that the protection of the certificate and the sanction contained in s 61 in the event of untruthful evidence would tend to ensure that Mr Atkins' evidence was reliable (at [73]; see also [74]).
40. Mr Atkins' evidence in the inquest did not accord with my expectations in this regard. By his own admission, he gave evidence which was not truthful.
41. The account in Mr Atkins' statement represents a further account from Mr Atkins of the events of 23 and 24 September 2007. It can only be admitted

as evidence of facts asserted in it if Mr Atkins was required to continue his evidence and his version be subject to further examination and cross-examination.

42. An examination of that nature will not relevantly assist me in discharging my statutory function to determine the manner and cause of Matthew's death. Mr Atkins has no credibility as a witness and the circumstances in which he made the induced statement are such that there is neither purpose nor permit to require him to give further evidence.
43. His induced statement at paragraph 12 effectively says that despite having the incentive of the Attorney General's immunity, and despite Commander Willing's protection of an induced statement, he is being compelled to do so. Although it was not in fact the case, that is what he understood the case to be as explained by his lawyers and confirmed by DCI Jubelin. Further, the undertakings by then Counsel Assisting (as sought by Mr Atkins' lawyers) are such that Mr Atkins had the understanding when making the statement that he would not be examined under oath about the contents of that induced statement.
44. Mr Atkins' induced statement and assistance in locating Matthew's remains was not altruistic; and it was entirely self-serving. Mark Leveson, when giving his evidence in support of the s 61 certificate application, described the family's main goal from the inquest as being to find Matthew and bring him home.¹³ Mark, Faye and Peter Leveson each described, in their evidence on that application, the immense pain, frustration and anger that not knowing where Matthew was caused them.¹⁴ The achievement of that goal is a true credit to the determination and extraordinary perseverance of the Leveson family.

¹³ TS 18/2/16, p 8 L42-47 (Mark).

¹⁴ TS 18/12/16, p 9 L17-25 (Mark), p 12 L16-31 (Faye), p 13 L27-47 (Peter).

45. In the Section 61 Decision, I considered that, absent the discovery of Matthew's body and/or unprotected admissions by Mr Atkins, he was not at risk of any further prosecution under the *Crimes (Appeal and Review) Act 2001* (NSW). At that time, I considered the likelihood of either event occurring as "extremely remote" (at [81]).
46. The second event has in fact come to pass. However, as I stated above, the discovery of Matthew's remains has not given rise to any fresh or compelling evidence such as might give rise to consideration of any further prosecution.
47. In respect of the Section 61 Certificate that I have granted Mr Atkins, criminal proceedings with respect to the falsity of evidence are expressly excluded by the section (see s 61(7)). Accordingly, if Mr Atkins were shown, by any further evidence, to have given a deliberately false account in the induced statement he may be liable to prosecution for perjury. I think that prospect is more likely than not. Calling Mr Atkins for the purpose of exposing him to potential perjury charges, however, falls well outside my statutory functions; it would, at least on that account, constitute an improper purpose.

Conclusion

48. Ultimately, in light of the evidence which is now before me as to the events which occurred after the inquest was adjourned on 4 November 2016, and having regard to the considerations I have outlined above, I do not consider that it is in the interests of justice to continue to compel Mr Atkins to give evidence in the inquest.
49. Accordingly, I discharge the subpoena.

Magistrate E Truscott
25 August 2017