



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

Inquest:	Inquest into the disappearance and suspected death of Benjamin Arthur Lippiatt
Hearing dates:	4 November 2020
Date of findings:	18 November 2020
Place of findings:	NSW State Coroner's Court, Lidcombe
Findings of:	Magistrate Harriet Grahame, Deputy State Coroner
Catchwords:	CORONIAL LAW – missing person, fall from cruise ship, sleepwalking
File numbers:	2019/110492
Representation:	Ms Tina Xanthos (Sergeant), advocate assisting the court

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Introduction

1. On 27 March 2019 Benjamin and his partner, Michala Trezise boarded the cruise ship, Carnival Spirit for a 12 day voyage around the Pacific Islands and Coral Sea. They spent their first days exploring the ship and taking part in the holiday activities on board. They enjoyed the restaurants and bars and played bingo, foosball and shuffle ball. It was a well-earned break for the couple and they anticipated a lovely holiday.
2. On the evening of 29 March 2019, Benjamin and Michala returned to their cabin about 8 or 8:30pm. They were in good spirits and decided to have an early night. In the early hours of the following morning Michala realised that Benjamin was unexpectedly absent from their cabin. When she could not find him she reported him missing to ship security. Benjamin's disappearance resulted in an immediate search.
3. Tragically Benjamin was never found and his death was subsequently reported to the NSW Coroner on 9 April 2019.
4. At the time of his death Benjamin was looking forward to the future. He was described by his mother as a loving and "happy go lucky" son. He was apparently saving for a house with his partner and planning on getting a dog. His death is a terrible tragedy and he is greatly missed by all who loved him.

The role of the coroner and the scope of the inquest

5. The role of the coroner in a case such as this is to make findings firstly as to whether the nominated person is actually dead and only if that can be established, to make further findings as to the date and place of death and to the manner and cause of death.¹
6. The decision about whether a person is dead is considered a "threshold question" in a missing person case.² Given the seriousness of the finding, it is well established that the court should apply the *Briginshaw* standard³. The proof of death must be clear, cogent and exact. At common law, there is a presumption in favour of the continuance of life⁴ however, it is not a rigid presumption and the circumstances of any given case must be carefully examined before a finding of death can be made.
7. In addition to deciding these questions, at the conclusion of proceedings, the coroner may, if appropriate, make recommendations in relation to matters arising directly from the evidence if they have the capacity to improve public health and safety in the future.⁵

¹ Section 81 *Coroners Act* 2009 (NSW).

² Dillon H and Hadley M "The Australasian Coroners' Manual" Federation Press 205 at page 15.

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁴ *Axon v Axon* (1937) 59 CLR 395.

⁵ Section 82 *Coroners Act* 2009 (NSW).

The evidence

8. The inquest took place on 4 November 2020. A two volume brief of evidence was tendered, including statements, expert reports, photographs, CCTV and maps. Detective Senior Constable Stephen McNamara was called to give brief evidence. It is impossible to refer, in the scope of these findings, to all the evidence collected during the investigation, however all of the available material has been carefully considered and reviewed.

Benjamin's background

9. Benjamin Lippiatt was born on 28 August 1993 and was 26 years of age when he went missing.
10. Benjamin lived with his maternal grandparents and aunts at different times during his childhood and teenage years. From the age of four to 14 years, Benjamin lived mostly with his grandparents. They have reported that he was known to sleepwalk from time to time. His family first became aware of this behaviour when he was a young boy.
11. After finishing school, Benjamin started an apprenticeship as a metal worker and was also studying to be a boilermaker at TAFE. He was working full time at the time of his death. He met his partner, Michala in September 2016 and they became more serious about their relationship in March 2017. They moved in together a year later and were saving to buy their own house.

The Cruise

12. On Wednesday 27 March 2019, the Carnival Spirit was due to leave Sydney, Australia for a 12-day voyage around the Pacific Islands in the Coral Sea. The cruise was set to return to Sydney on 7 April 2019. Benjamin and Michala were booked into State Room 4181, located on Deck 4, Starboard side. They were both looking forward to their planned holiday.
13. On 26 March 2019, Benjamin and Michala travelled to Sydney by train and stayed overnight at the 'Travel Lodge' at Wynyard. On the morning of the 27 March 2019, they got up late and caught a train from Wynyard to Circular Quay to board the ship from the Overseas Passenger Departure Terminal. They boarded about lunchtime, and spent the afternoon walking around and exploring the ship. The following day, they spent the day relaxing, eating and drinking cocktails from the casino.

What happened on 29 March 2019 and the circumstances leading up to Benjamin's disappearance?

14. On the morning of 29 March 2019, Benjamin and Michala had breakfast and coffee. At about 11:00am, they went to the Red Frog Bar and played foosball and shuffleboard. Later they went to the Serenity Bar where they played bingo and continued to drink throughout the day. About 4:18pm they got a final round of drinks before returning to their cabin to get dressed for dinner. These activities were captured on the ship's CCTV.

15. The restaurant was due to open at 5:30pm and they waited in a line with other patrons who had arrived early. During this time, Benjamin went downstairs and purchased four espresso martini cocktails that they enjoyed over dinner. After dinner, they both attended the Alchemy Bar located downstairs. Michala recalls Benjamin talking to two young girls that were seated behind them with their mother. She recalls this moment as it was the first time she had seen Benjamin interacting with children. She reports that they later spoke about having children of their own.
16. Throughout the evening, Michala remembers Benjamin joking with a bartender and that he seemed to be in a happy mood. They continued drinking throughout the evening and Michala estimates that they had about eight drinks over an eight hour period. She described Benjamin's level of intoxication as "pretty drunk" by the time they returned to their room. However she noted that he was not falling over or blacking out. The lock link system obtained from the cruise ship's log confirmed that the couple entered their cabin at 8:26pm. Michala stated that they both fell asleep soon after their return.
17. At about 3:00am on 30 March 2019, Michala woke up and noticed that Benjamin was not lying next to her. She got out of bed and looked for him on the balcony and in the bathroom. When she could not see him, she got dressed and started walking around the ship to look for him. The lock link system indicates Michala left the room to begin her search at 3:24am.
18. Michala went to the night club and to various other places on the ship that she thought Benjamin might have attended. At 3:40am, while searching, she ran into a female security officer on Deck 9 and requested her assistance to find Benjamin. After further searching, they attended the security office to get assistance and to review the ship's CCTV footage in an effort to see if they could locate Benjamin. In the office, the security officer printed off the photograph of Benjamin that was on his security pass and an announcement was made over the ship's speaker system calling for Benjamin to present himself to the security office.
19. Another passenger, Mr Khoby West-Kennett, heard the announcement calling for the passenger, Benjamin Lippiatt. He got dressed and attended guest services to report an encounter he had experienced with a naked male earlier in the evening. He reported that at about 22:45 to 22:50, he was walking along Deck 3 looking for a location to smoke. Mr West-Kennett said that he was walking towards the rear of the ship when a naked male walked by him. He said to the naked male, "*Hey bro, you better put some clothes on, otherwise they will kick you off the ship*". Mr West-Kennett stated that the male replied in a quiet voice words similar to, "*It doesn't matter*". The male's words were described as '*clear and concise, soft but enough that he could hear what he said.*' Mr West-Kennett then proceeded inside to the Blackjack tournament being held on board until midnight. He later reported this encounter to security officers Veni and Sajj on Deck 9 at 23:57pm. These officers subsequently performed a patrol to locate the naked male. Security showed Mr West-Kennett Benjamin's photograph and he positively identified Benjamin as the naked male.
20. When Benjamin did not respond to the security announcements, the Captain was notified that they had a missing passenger. The missing person's procedures were activated and a full search by the crew began. It appears that the emergency procedures in place were followed.

The search for Benjamin

21. At 4:32am on 30 March 2019, upon being informed that there was a missing passenger on the ship, the ship's position was marked in accordance with Missing Person Checklist EMR – 1505 – F1. Captain Bovo instructed the Staff Captain, to make an announcement to all passengers and crew on board to immediately report any sightings of Benjamin. These were to occur at five-minute intervals. Captain Bovo also spoke to Michala to determine whether Benjamin had a history of any mental health issues or if he was taking medication. This was appropriate as if a missing passenger with special needs such as prior suicidal ideation is identified it will call for early review of available CCTV. Unfortunately Benjamin's risk factor was rare and not specifically identified.
22. When nobody responded to the ship's further announcements, a full ship search was initiated including a review of the CCTV. The CCTV system is run from the office of the Chief Security Officer, Rajesh Katakdhond located on Deck 2. There are eight monitors showing footage on the ship from approximately 200 cameras. The cameras cover the lifts, lift lobbies, open decks, lounges, some of the bars and gangways. The MOB (Man Overboard) system is operated from the bridge of the ship. There are no personnel tasked to monitor the cameras in real time. Each evening, the Chief Security Officer is tasked to ensure the system is working. Officer Katakdhond stated that the camera time stamps were out by a few minutes but otherwise the cameras were functioning properly.
23. Using information provided by Mr West-Kennett, the ship's CCTV was reviewed, and security staff were able to locate Benjamin on the footage and establish his movements at the relevant time. Benjamin was first captured at 22:47:22 at the rear lifts on Deck 4, walking from the portside (left-hand side) of the ship to the starboard side (right-hand side). He is completely naked as he walks away from the camera out of view. Analysing the footage, security staff were able to follow Benjamin over the following 14 minutes as he walked around Deck 3. The footage shows Benjamin walking with a slightly unsteady gait. He looks through windows as he passes them and continues to move his head from side to side as if he is looking for something or someone.
24. At 22:54:24 Benjamin can be seen on the forward starboard side on Deck 3. Thirty seconds into the footage, Benjamin can be seen approaching a glass sliding door but stopping just before it. He stands with his back to the wall. He looks from side to side as a crew member can be seen walking directly past the glass sliding door on the other side. Benjamin moves in front of the glass and stops, resting his hand on the sliding door frame. He looks backwards and continues standing in that position for approximately 25 seconds before walking back in the direction that he came. A wet patch is left behind where he was standing. It may be that Benjamin was urinating.
25. At 22:57:32, the interaction between Benjamin and Mr West-Kennett is captured. Benjamin comes from behind Mr West-Kennett, passing him and continues walking forward. He looks back once at Mr West-Kennett before he leaves the view of the camera at 22:57:46. At 23:02:50, he approaches a glass sliding door and stands in front of it for approximately three seconds before he turns and continues walking forward.

26. At 4:58am, the Man Overboard (MOB) cameras were reviewed. The ship used the Forward-Looking Infrared (FLIR) system. These cameras are heat signatred and provide vision down the port and starboard side of the ship. There are 13 FLIR cameras located around the entirety of the ship. Recordings are held on the bridge. Whilst the MOB cameras were being reviewed, the ship had reached French waters. The New Caledonia Maritime Rescue Coordination Centre (MRCC) was contacted and on their advice, the ship turned around and headed back to the estimated location where Benjamin went missing.
27. At 07:12am, staff managed to locate Benjamin's final moments on the FLIR camera fixed on the forward portside on Deck 3. Benjamin is seen to briefly look over the railing before straddling it with his left leg on the outside. He remains in that position for about 26 seconds before lifting his right leg over the railing. He lowers himself down and is vertical to the side of the ship. He hangs there for one second before his hands appear to slip and he falls. It is believed that this occurred at about 23:06.
28. At the time that Benjamin fell into the water, the vessel was in the Coral Sea. It was travelling at a speed of 19 knots and its position was 110nm west of New Caledonia, 23°35.1 South 164° east, heading towards its next port of Noumea. The Maritime Rescue Coordination Centre (MRCC) New Caledonia was updated, and a search was conducted and coordinated by them. A fixed wing French Navy aircraft was deployed, and freight ship the "MV La Guimorais" joined them. The search continued until approximately 18:15.
29. After the search was concluded the Carnival Spirit continued on its way to Noumea.

Police investigation

30. On Sunday 7 April 2019, Detectives attached to the NSW Marine Area Command boarded the Carnival Spirit to investigate the circumstances of Benjamin's disappearance. An examination of the railing on the third deck where Benjamin went overboard was conducted. They also conducted a search of State Room 4181 using a drug dog. No items of interest were detected. All of Benjamin's property was still in the room, including his wallet and watch. The only thing out of the ordinary that was discovered was a towel with a brown stain on the shower rail. A confirmatory test for blood was performed that returned a negative result.
31. The drinks receipt for the passenger account belonging to Benjamin and Michala was obtained. Over the course of 29 March 2019, the couple had purchased a total of 26 alcoholic drinks, the first at 11:51am and the last at 19:46. The most commonly purchased drink was Strongbow Cider. A Strongbow Cider is advertised as having 4.5% ABV (alcohol by volume), which is average for beer. The quantity of alcohol purchased makes it very likely that Benjamin was significantly affected by alcohol by the end of the evening.
32. Investigators did a walk through with ship staff of the route Benjamin had taken on the night he went overboard. They discovered that the glass sliding door that Benjamin stood in front of at 23:02:50 was not operating, failing to automatically open when it should.
33. Measurements were taken of the location where Benjamin went overboard. The height from the top of the railing to the water level was approximately 9.12 metres. The horizontal rails on

the deck provide a natural ladder, however the railing itself was not faulty or at an unusually low height that would increase the risk of accidental falls.

Was Benjamin sleepwalking?

34. Benjamin's family formed the opinion that Benjamin may have been sleepwalking at the time he went into the water.
35. Benjamin's mother recalled that Benjamin first started sleepwalking at about five years of age. She also indicated that she too was a sleepwalker when she was younger and that she now suffers from restless leg syndrome. She stated that Benjamin also suffered from this condition. She confirmed that to her knowledge Benjamin had never seen a doctor about his sleep walking. Benjamin's grandmother also recalled times that Benjamin would sleepwalk in his youth and confirmed that there the family history of restless leg syndrome and sleep walking on her side of the family. She last spoke to Benjamin a couple of weeks before the cruise and he complained that his restless leg had been playing up.
36. Other family members who lived with Benjamin when he was young confirm seeing Benjamin sleep walking throughout his younger and teenage years. His partner, Michala, only recalled one occasion, during their relationship, when she believed Benjamin may have been sleepwalking. They had been drinking and Benjamin got up to go to the toilet. He was 'fumbling' around and when Michala checked on him he just 'mumbled' and went back to bed. The following morning, he had no recollection of the incident.
37. Police obtained the expert opinion of Professor Brendon John Yee, a senior sleep and respiratory consultant physician at Royal Prince Alfred Hospital (RPAH). He was provided with the CCTV footage of Benjamin's final moments as well as the statements of Mr West-Kennett and Benjamin's family. After reviewing the material, Professor Yee stated that he was "reasonably convinced (Benjamin) suffered a sleep walking episode which led to him lowering himself over the side of the ship."⁶ He stated that the evidence supporting this opinion was Benjamin's longstanding history of documented sleep walking episodes, strong family history of events, the time of the alleged incident (just after going to bed) and potential precipitating factors. He watched the available CCTV and found that Benjamin's actions were consistent with sleepwalking.
38. Professor Yee was not certain whether alcohol should be considered a classic predisposing factor for sleep walking based on the research currently available. He said complex behaviours such as turning door handles and conversations may occur during sleep walking, noting that family had also reported that Benjamin had displayed these behaviours in the past. Professor Yee stated that restless leg syndrome does not seem to cause sleep walking although the presence of period limb movements (seen on polysomnography) may be a predisposing factor.
39. I accept his expert evidence that it is most likely that Benjamin was sleepwalking at the time he left the ship.

⁶ Report of Associate Professor Brendon John Yee. Page 544

The possibility of survival after leaving the ship

40. The court was assisted by the evidence of Dr Paul G. Luckin regarding the likelihood of Benjamin surviving the fall from the cruise ship. Dr Luckin is a specialist anaesthetist and has been involved in rescue operations since 1974 as a paramedic and from 1982 as a doctor. Dr Luckin teaches Medical Aspects of Search and Rescue to the Police SAR team at the state level and has been on the directing staff of the National Police Search and Rescue Managers' course since 1991. He is a serving member of the Royal Australian Navy Reserve at the rank of Captain and is currently appointed as a specialist anaesthetist for the Navy Health Services, Joint Health Command of the ADF and a member of the Submarine Escape, Rescue and Abandonment Service (SERAS).
41. Dr Luckin used available information about the size of the ship, time and place of Benjamin's fall, weather and water conditions and the Benjamin's physical features to analyse his likely survival time. He factored in Benjamin's specific characteristics and likely state of intoxication.
42. The Carnival Spirit is 293.52 metres in length, 32.31 metres wide and weighs 88,500 tonnes. It has the capacity to hold 2,124 passengers and 961 crew. There are 12 decks altogether. The height from the top rail of Deck 3 to the waterline was 12.70 metres. Benjamin's height was approximately 6 foot, with his arms upstretched, he would have been approximately 10.3 metres above the water when he fell. Dr Luckin likened this to the height of a four storey building. Dr Luckin calculated that when Benjamin's feet hit the water, he would have been moving downwards at approximately 51 km/h and forwards at 32km/h considering the speed of the ship at the moment he fell.
43. Dr Luckin expressed the opinion that if Benjamin had been sleepwalking when he fell, he would not have been aware that he was about to enter the water and would have thus made an "uncontrolled entry" into the water. In those circumstances it is unlikely that he would have taken a breath immediately before hitting the water. There is also a high probability of severe injury upon hitting the water's surface including spasm of the muscles of the larynx, causing the vocal chords to close completely, allowing no passage of air in or out of the lungs, rapid loss of consciousness, and drowning. The water beside the hull of the ship moving at 16.3 knots would have been very turbulent, tumbling Benjamin about in the water, well below the surface.
44. Dr Luckin also considered the potential effects of the alcohol that Benjamin had consumed during the day. Alcohol apparently increases the likelihood and severity of slowing the heart with a rush of water up the nose. As a central nervous system depressant, it also decreases the ability to perform any survival behaviours in the water. If Benjamin had consumed half of the alcohol purchased as indicated by the bar receipts, he would have had a high blood alcohol content when he entered the water. Therefore, it is probable that Benjamin did not regain the surface and died immediately following immersion. In the unlikely event he did regain the surface, any prospects of survival would also have been affected by the strong sea conditions, the water temperature as well as by any injury he may have suffered on impact.

45. The combination of these factors, led Dr Luckin to conclude that in all likelihood Benjamin did not survive the immediate effects of his fall into the sea. In the unlikely event that he survived the fall, Dr Luckin thought it “most probable” that he would have died a very short time afterwards. He stated that in all the prevailing circumstances “once Mr Lippiatt left the ship his death was inevitable.”⁷
46. I accept the expert evidence that on the balance of probabilities Benjamin died immediately or very soon after he hit the water.

Is it possible to say when, where or in what circumstances Benjamin died?

47. I am able to make a finding, based on all the available evidence, that Benjamin is dead. While his body was not recovered there is no other plausible explanation. I accept Dr Luckin’s expert opinion that Benjamin would have died instantaneously or very soon after hitting the water. I accept Dr Yee’s expert evidence that it is most likely that Benjamin was sleepwalking at the time he left the ship. In my view, even if Benjamin’s fall had been witnessed, it is most unlikely that he could have survived in turbulent waters at night long enough to be rescued.
48. I note for completeness that there is no evidence to support a finding that Benjamin took his own life. In fact at the time of his death he was enjoying his holiday and making forward plans. The contemporaneous telephone texts have been examined and show no problems or issues of concern. Equally there is no evidence to suggest that he was a victim of foul play. Tragically, his death appears to have been a tragic and very rare accident.

Is there a need for recommendations

49. During the investigation of this matter policies provided by the Carnival Corporation were examined to determine whether there were gaps which could have contributed to Benjamin’s tragic death. The court was supplied with the Missing Person policy and checklist and the Man Overboard policy and checklist and information about staff training in relation to these issues. The court was also informed that Carnival’s policies were regarded as standard throughout the cruise line industry. It appears that these procedures were followed once staff were advised of Benjamin’s disappearance.
50. According to the relevant logs, the Captain made an order to manually review the FLIR cameras at 04:58. That process took some time and Benjamin was not identified going overboard on the relevant camera until 07:12. By this time the ship had already been ordered to turn around and head back to the “presumed MOB position.” There was some investigation of the potential for improvements to the Man Overboard systems, such as for the FLIR system to have sensors attached that could pick up movement, alerting staff in real time to the need to check CCTV. Such systems, which may alert staff to a tragedy at an

⁷ Report of Dr Luckin, Tab 2

earlier time may exist in yacht racing but are not currently mandated in relation to the cruising industry.

51. While information was sought from the company about the utility of a real time system, tragically it is clear that even had one been operating, it is most unlikely that it would have actually prevented Benjamin's death. Given that I accept his death occurred on entry or very soon after entry into the water in the middle of the night, it appears unlikely that even a real time system could have saved Benjamin.
52. Having considered all the material, I came to the view that recommendations are not called for in this matter. Some risk of a passenger accidentally falling overboard, while extremely rare, is inherent in passenger cruising. The circumstances of Benjamin's death are particularly unusual, involving an extended episode of sleepwalking and intoxication at night. Having reviewed the evidence, in my view Benjamin's death is unlikely to have been avoided even if a sensor system meant that the CCTV was accessed at an earlier time. I accept Dr Luckin's view that Benjamin's death is likely to have been almost immediate.

53. Findings pursuant to sections 81 Coroners Act 2009 (NSW)

Identity

The person who died was Benjamin Arthur Lippiatt

Date of death

He died on 29 March 2019

Place of death

He died in the Coral Sea, around 110 nm west of the coast of New Caledonia

Cause of death

He died as a consequence of drowning

Manner of death

His death was the result of a tragic accident. He fell into the sea while sleepwalking on a cruise ship

Conclusion

54. Finally, I express my sincere sorrow to Benjamin's partner and family. His tragic death whilst on holidays was unexpected and extremely distressing. I acknowledge their ongoing pain and grief. I thank Benjamin's partner and family for attending the inquest in these sad circumstances.
55. I thank the officer in charge, Detective Senior Constable McNamara for his thorough investigation and Sergeant Xanthos for the preparation of this inquest.
56. I close this inquest.

Magistrate Harriet Grahame
Deputy State Coroner
18 November 2020
NSW State Coroner's Court, Lidcombe