



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

**Inquest:** Inquest into the death of Mark Johnston (third inquest)

**Hearing dates:** 8 March 2023

**Date of findings:** 8 March 2023

**Place of findings:** NSW State Coroner's Court, Lidcombe NSW

**Findings of:** Magistrate Teresa O'Sullivan, State Coroner

**Catchwords:** CORONIAL LAW – search for missing person, subsequent discovery of remains, homicide by person known.

**File numbers:** **2020/53082**  
(First Inquest 1163/94 and findings delivered 4 May 1999)  
**2007/416571; 2207/417001; 2007/416660;**  
**2007/416645; 2007/416672**  
(First inquest and findings delivered 1 November 2013)

**Representation:** Ms. Tina Xanthos, Advocate Assisting

**Findings:**

The findings I make under section 81(1) of the *Coroners Act 2009* (NSW) are:

***Identity***

The person who died was Mark Johnston

***Date of death***

He died on 1 September 1986

***Place of death***

He died at 43 Portland Street, Dover Heights

***Cause of death***

I am unable to determine the exact cause of his death

***Manner of death***

Homicide by a known person

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## **Introduction**

1. Between October and December 2007, the remains of Mr. Johnston were located at the Kurnell Desalination Plant on Sir Joseph Banks Drive, Kurnell, Sydney.
2. Mr. Johnston met with friends at the Bellevue Hotel, Paddington in the late afternoon of 1 September 1986. He left telling friends he was going to retrieve money but not before securing plans to travel to Palm Beach later that night with friends. Mr. Johnston left the hotel and was not seen again. He was subsequently reported missing by family members.

## **The history of these proceedings**

3. Under the Coroner's Act 2009 (the Act) a Coroner has the responsibility to investigate all reportable deaths. The investigation is conducted primarily so that a Coroner can answer questions that are required to be answered pursuant to the Act, namely: the identity of the person who died, when and where they died, and what was the cause and the manner of that person's death.

### The earlier inquest into the disappearance and suspected death of Mr. Johnston

4. Mr. Johnston was reported missing by family on 7 September 1986. An inquest into his disappearance and suspected death commenced on 3 May 1999. The proceedings canvassed the circumstances of his disappearance and the extensive police investigation that subsequently took place. Deputy State Coroner John Abernathy formed the opinion that the evidence was capable of satisfying a jury beyond reasonable doubt that a known person, being Arthur Smith, had committed an indictable offence in relation to Mr. Johnston's death. In those circumstances, the inquest was terminated under section 19 of the *Coroners Act 1980* (NSW). On 4 May 1999, the Coroner delivered his findings that Mr. Johnston died on 1 September 1986 at Dover Heights. As Mr. Johnston's remains had not been found, the cause of his death was not known.
5. On 13 August 1999, the Coroner was informed that the Director of Public Prosecutions declined to take any proceedings against any person by way of ex-officio indictment in respect of the death of Mr. Johnston.

### The earlier inquest of unknown bones located at Kurnell

6. In October 2007, construction of a desalination plant commenced on Sir Joseph Banks Drive, Kurnell. On 2 October, an excavator operator located a human tibia bone at the site. Police attended and commenced a search for human remains resulting in 37 human bones being discovered. In 2009, mitochondrial DNA was recovered from the bones by Orchid Cellmark USA. The profiles were entered into the missing persons register DNA database. On 1 November 2013, an inquest was held. Deputy State Coroner P.A. MacMahon considered the evidence but was unable to make a finding as to the identity of the subject person, the date and place of their death nor as to the manner and cause of the death. It was not until December 2019 that samples from the bones were compared against familial DNA confirming the remains belonged to Mr. Johnston.

## **Mr. Johnston's identification confirmed**

7. Police investigating the death of Mr. Johnston obtained a DNA sample by way of buccal swab from Mr. Johnston's sister, Ms. Diana Devitt-Dawson for comparison. In December 2019, samples from the bones found in 2007 were compared against Ms. Devitt-Dawson's DNA. Mr. Jeremy Watherson, a forensic biologist, confirmed the sample was 3,500 times more likely to originate from a biological sibling of Mr. Johnston than an unrelated person in the Australian population. On receipt of this report, I concluded on the balance of probabilities that the bones, including a left tibia bone, piece of the pelvis, ankle bone, left femur, left fibula and ankle bone, right tibia, sacrum, right femur and jawbone (mandible with 4 teeth) belonged to Mr. Johnston.
8. Pursuant to section 83 (3) of the *Coroners Act* 2009 (NSW) it is now appropriate to hold a fresh inquest so that further information may be placed on the public record. I do not intend to restate the matters set out in earlier inquests.

## **The evidence**

9. The Court took brief oral evidence from the officer in charge of the investigation, Detective Sergeant Peter Davis. Further documentary evidence was also tendered including statements and reports outlining their contemporary enquiries.
10. Strike Force Brompton was formed to review the evidence leading to Mr. Johnston's death. The circumstances of how Mr. Johnston's remains were found would establish that he was killed, and his remains buried to conceal the crime. Investigators could not find an alternative suspect and maintained that Mr. Smith was the person responsible for Mr. Johnston's death. Mr. Smith was, at the time, serving a custodial sentence for other matters.
11. Police investigators attended the secure ward of Prince of Wales Hospital on 15 February 2021 and interviewed Mr. Smith. By this time, Mr. Smith's health had significantly deteriorated and he was unintelligible. It appeared to investigators that Mr. Smith understood the questions and was attempting to verbalise answers, but most words could not be understood.
12. Mr. Smith was asked about Mr. Johnston and was able to tell investigators that he remembered him but added, "I've got nothing to say." He was asked if he knew what happened to Mr. Johnston and replied, "No, do you?" He further denied having any involvement in the disposal of Mr. Johnston's body.
13. Mr. Smith passed away on 8 September 2021.

## **How does the information add to what was known at the earlier inquest?**

14. The 1999 inquest was thorough and detailed in its inquiry. The evidence presented by witnesses established a narrative that after Mr. Johnston left the Bellevue Hotel on 1 September 1986, he went to his solicitor's home in Dover Heights where he was killed. As several years have since lapsed it is inevitable that many of these witnesses have since passed away taking the opportunity away to re-examine their evidence. This includes Mr Johnston's solicitor, Val Bellamy and Arthur Johnston, Mr. Johnston's father, who was active in seeking justice for his son's death.

15. At the earlier inquest, despite the absence of a body, the Coroner made a finding that Mr. Johnston was deceased. He further formed the opinion that a known person had committed an indictable offence in relation to Mr. Johnston's death.
16. With the discovery of Mr. Johnston's remains, I am satisfied that his death was a result of a homicide. I agree with the chronology of events presented in the earlier inquest, that Mr. Johnston's remains were buried for the purpose of disposing of his body and concealing his homicide, that took place at Dover Heights. I am also satisfied that the evidence establishes that the person responsible for his death was Arthur Smith.

## **Findings**

17. The revised findings I make under section 81(1) of the *Coroners Act 2009* (NSW) are:

### ***Identity***

The person who died was Mark Johnston.

### ***Date of death***

He died on 1 September 1986.

### ***Place of death***

He died at Dover Heights, NSW.

### ***Cause of death***

I am unable to determine the cause of his death.

### ***Manner of death***

Homicide by a known person.

## **Conclusion**

18. On behalf of the Coroner's Court of New South Wales, I offer my sincere and respectful condolences to Mr. Johnston's family and loved ones for their loss.
19. I thank those involved in this investigation and preparation of the inquest.
20. I close this inquest.

Magistrate Teresa O'Sullivan  
State Coroner  
NSW State Coroner's Court  
8 March 2023