

CITATION: *Inquest into the death of Benjamin Glen Watts* [2021] NTLC 013

TITLE OF COURT:	Coroners Court
JURISDICTION:	Darwin
FILE NO(s):	D0072/2020
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HEARING DATE(s):	13, 14 April 2021
FINDING OF:	Judge Greg Cavanagh
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 REPRESENTATION:	
Counsel Assisting:	Kelvin Currie
Counsel for Corrections:	Arthur Moses SC with Trevor Moses
Judgment category classification:	A
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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D0072/2020

In the matter of an Inquest into the death of

BENJAMIN GLEN WATTS

ON: 8 MAY 2020

**AT: DARWIN CORRECTIONAL
CENTRE, HOLTZE**

FINDINGS

Judge Greg Cavanagh

Introduction

1. The deceased, 'Benny' to family and friends, was born on 28 September 1988 in Darwin to Dianne and Glen Watts. He was the youngest of four children. He was just 31 years of age when he died, while in prison.
2. His family remember him as a fun loving adventurer who liked to push the limits. He was said to be fearless. His bravery was demonstrated when at the age of 19 years he was in the vicinity of a man threatening to blow up a petrol station. He tackled him and held him until police arrived.
3. By that stage he had come to the attention of police on a number of occasions. The first time was when at the age of 16 years he with other youth stole a golf buggy and quad. It was in the same year his parents separated and he was diverted to among other things counselling to help him deal with the domestic situation.

4. In July 2007 when 18 years of age, he and a co-offender stole a marmoset monkey and saltwater crocodile from Crocodylus Park. After his heroics at the petrol station the front page headline of the *NT News* was: “*From villain to hero: Plot to blow up servo foiled by monkey thief*”.¹
5. He worked in the mines and earth moving and gained experience in driving heavy machinery including a skid steer loader, roller, front end loader and excavator. But at some stage he became involved with drugs.
6. On 16 June 2015 he was sentenced to 8 months in prison with a 4 month minimum term for drugs and firearms offences. He was released but did not change his ways and on 9 February 2016 he was charged with more serious drugs and firearms offences including the possession of a commercial quantity of Methamphetamine. On 16 June 2016 he plead guilty and was sentenced to 8 years imprisonment with a non-parole period of four years.
7. From 30 March 2016 Benny was employed in various roles in the prison. He started as a cleaner and then went to the food preparation area and eventually to the production assembly industries where he became a foreman and on 13 March 2019 to Horticulture, operated in an area of about 350 hectares at the back of the prison. The farms are accessed by dirt tracks through the scrub.
8. The prison documents indicate that on reception he weighed just 60 kilograms (and was about 192 centimetres). However while in prison, he became healthy. He showed an aptitude for the work and quickly progressed to the position of foreman. He was reliable and highly valued by both the staff and other prisoners. He was known to be particularly adept at driving the skid steer loader (bobcat) and taught others how to use it.

¹ 6 March 2008

9. On 5 March 2020 he obtained an open security rating. That entitled him to live outside the fence in Sector 11. It also allowed him to work in the community. On 10 March 2020 he joined the community support work party. However on 21 April 2020 his work in the community was stopped due to the Covid-19 pandemic and he returned to the horticulture section.
10. He had been eligible for parole on 8 February 2020. However he was not released at that time due to not having employment in the community. That became more difficult for him shortly thereafter due to the pandemic the prison went into lockdown and he was unable to meet with prospective employers. The Parole Board was to meet again on 27 May 2020 and it was believed that he was likely to receive parole on that date.
11. There were two all-terrain vehicles (ATV's) in use at the horticulture section. One was a diesel Kawasaki Mule and the other, a petrol Polaris Ranger 800. The Mule was the slower of the vehicles, it seated four persons and had a top speed of about 45 kilometres per hour. The Polaris was smaller, it weighed 561 kilograms, seated two persons and had a top speed estimated between 60 and 70 kilometres per hour.
12. The Polaris was a 2012 model acquired by the prison from NT Fleet on 25 January 2016. The Owner's Manual for the vehicle had a significant number of warnings in relation to the possibility of injury and death if not operated in the correct manner. There was a warning on the second page in these terms:

WARNING

Improper vehicle use can result in SEVERE INJURY or DEATH

NEVER Operate:

- At speeds too fast for your skills or the conditions.
- After or while using Alcohol or Drugs.
- On hills steeper than 15 degrees.
- On public roads, a collision can occur with another vehicle.
- With more than two passengers (five for CREW), or passengers under age twelve or who cannot comfortably reach the floor and hand holds.
- On paved surfaces - pavement may seriously affect handling and control.
- With non-Polaris approved accessories - they may seriously affect stability.

ALWAYS:

- Wear your seat belt. Vehicle rollover can cause severe injury or death.
- Secure cab nets and keep hands and feet inside vehicle at all times.
- Wear a helmet and eye protection.
- Reduce speed and use extra caution when carrying passengers.
- Avoid sharp turns or turns while applying heavy throttle.
- Operate slowly in reverse - avoid sharp turns or sudden braking.
- Make sure passengers read and understand all safety labels.

READ OWNER'S MANUAL.

FOLLOW ALL INSTRUCTIONS AND WARNINGS.



For your nearest Polaris dealer,
call 1-800-POLARIS
or visit www.polarisindustries.com
Polaris Sales Inc.
2100 Hwy. 55
Medina, MN 55340
Phone 1-888-704-5290
Part No. 9923497 Rev 01
Printed in USA



13. There followed similar warnings about the requirements to use seatbelts, helmets, eye protection and cab nets on pages 7, 10, 13 and 21. On each occasion it was reiterated that failure to do so increased the risk of injury or death. On page 32 there was a Driving Procedure:

OPERATION

Driving Procedure

1. Wear a helmet and eye protection.

2. Perform the pre-ride inspection.

See page 30.

3. Sit in the driver's seat and fasten the seat belt.

4. Always use the cab nets while riding in this vehicle.

5. Start the engine and allow it to warm up.

6. Apply the service brakes and shift the transmission into gear.

7. Check your surroundings and determine your path of travel.

8. Release the park brake.

9. Keeping both hands on the steering wheel, slowly release the brakes and depress the throttle with your right foot to begin driving.

10. Drive slowly. Practice manoeuvring and using the throttle and brakes on level surfaces.

11. Do not carry a passenger until you have at least two hours of driving experience with this vehicle.

14. However, that procedure was not followed by the prison. When the Polaris was acquired in 2016 there were no cab nets fitted and none were acquired thereafter. There were no helmets available to those operating the Polaris.
15. The horticulture section had their own Safe Operating Procedures (SOPs) that the workers were required to sign. There was no mention of seatbelts, helmets, eye protection or cab nets. Below is the one signed by Benny:



SAFE OPERATING PROCEDURES
OPERATE BUGGY

Location: DCC Horticulture

NAME: Watts.B IJIS: 281770 DATE: 21-05-2019

Name: Gobbert *[Signature]*

Signature: *[Signature]*

Date: 21-07-2019

Name: Watts.B

Signature: *[Signature]*

Date: 21-05-2019

Safety Rules for Operating Buggy

- Keep legs and arms inside the vehicle at all times.
- Drive slowly and turn smoothly to avoid an overturn.
- When hauling cargo the vehicle's center of gravity is raised, increasing the chance of overturning.
- Drive completely up or down a slope or hill before making a turn. Do not turn the vehicle in mid-slope or hill as this increases the probability of overturning.
- Use the appropriate speed on rough terrain.
- Operators and passengers have been thrown from vehicles.
- Stay clear of ditches and embankments.
- Passengers must be tall enough to reach handhold while their backs are against the seat and their feet are flat on the floorboards.
- Each passenger must ride in his/her own seat, not anywhere else on the UTV.
- Operators must back up carefully. Look especially for children before backing.
- Operators should be free from the influence of drugs or alcohol.
- Due to the hauling purpose of a UTV, special attention should be paid to making sure cargo or material is properly secured during transport.

Obey all road rules.

16. There was also a partly pictorial Safe Work Method Statement (SWMS) in relation to the operation of the ATVs. It mentioned eyewear but not seatbelts, helmets or cab nets. There was sufficient evidence to be confident that the prisoners were told to wear seatbelts. However, the evidence was that they were getting in and out of the vehicles so often, they did not wear them.
17. On 8 May 2020 Benny was working as a foreman in the horticultural area of the prison precinct. He signed out the Polaris vehicle at 8.45am. Another prisoner Thomas Roddick who had worked in that section for about six months, signed out the Kawasaki Mule at 9.00am. That day he was working

with Damien Barbi (who had worked there for only about three weeks) and they were tasked to check the irrigation systems.

18. The workday was from 9.00am until 2.00pm. But as it was a Friday the expectation was that they would stop a little earlier and head back to the horticulture sheds to clean the vehicles. At about 1.30pm they were on their way back. Benny was driving the Polaris. The Mule was leading and Mr Roddick commented that Benny should lead. He said in evidence that was because Benny knew the area so much better. The Polaris was the faster vehicle and Benny sought to get in front of them by taking a side track that ran parallel to the main track. At the other end of the side track there was an abrupt turn to the right where it re-joined the larger track. However there was a grassed area directly ahead that merged with the main track.
19. The other prisoners estimated they were travelling at about 30 kilometres an hour and thought he was travelling significantly faster (on one estimation, at twice their speed). He drove the ATV on the grassed area with a view to re-joining the main track. Unseen and disguised by grass was a 1.03 metre high dirt mound. His ATV hit the mound, the right hand side dug in and he and the ATV were launched into the air. Those in the Mule said that the ATV went so high it would have flown over them if they had been on that part of the track.
20. He was not wearing a seatbelt and was separated from the ATV either at the point where the ATV dug in or when it landed nose first. The evidence is that it landed front wheels first and then rotated and ended up on its wheels pointed back down the main track toward the oncoming Mule.



Photo showing mound on the left, now visible, with Polaris on its wheels in the background.

21. When Benny hit the ground it is likely that he suffered an atlanto-occipital dislocation fracture (separation of the spinal cord from the base of the skull) and moments later the Polaris landed on him, crushing his skull.



Polaris ATV near where it landed on its wheels (after it was lifted off the deceased).

22. The other two prisoners in the Mule skidded to a stop and lifted the Polaris off Benny. Thomas Roddick drove the Mule back to the horticulture centre to raise the alarm while Damien Barbi cared for Benny. One of the hurdles faced was describing where help was needed. It was behind the water tanks on the hill. But very few staff knew where that was and a staff member from the dog squad became a guide for staff and services to attend the scene.
23. Benny was bleeding from the nose and mouth and was unconscious. He had a pulse but was not breathing. Chunks of what appeared to be (and may well have been) brain matter were mixed with the blood coming from his mouth. Mr Barbi provided him mouth-to-mouth resuscitation for about 5 minutes until his pulse weakened. He then commenced compressions in addition to mouth-to-mouth resuscitation. His efforts were nothing short of heroic.
24. About a minute later the first corrections officer arrived and took over the compressions, another officer arrived shortly after along with many others including medical staff and about 25 minutes later, the police and paramedics.
25. Benny was declared deceased at the scene at 2.18pm.
26. An autopsy conducted by the Director of Forensic Pathology in the NT, Dr Marianne Tiemensma, found that Benny had extensive and non-survivable skull fractures as well as dislocation of his spinal cord. She said in evidence that the helmet may well have reduced the crush injuries to his skull but would not have prevented the dislocation of his spinal cord which itself would have resulted in his death.
27. On 21 May 2020 NT WorkSafe served improvement notices requiring the SOP's and SWMS to be updated in accordance with the manufacturer's instructions and recommendations and in particular the use of seatbelts, helmets and cab nets.

28. Prison authorities held a debriefing on 27 May 2020 along with all other relevant services such as Police, Emergency Services and the Ambulance Service. There were a number of suggestions on how to improve the bush tracks and the response to critical incidents outside of the secure fence.
29. Many changes were made, the SOPs and SWMS were updated to reflect the manufacturers' warnings and recommendations, helmets were purchased and were required to be worn, the Mule was speed governed to 30 kilometres an hour and the Polaris decommissioned. The seat belts were coloured orange so as to be seen from a distance and the vehicles will not start until the seatbelt is engaged.
30. The Department of Corrections employed a Safety and Security Manager who undertook a comprehensive review of the circumstances of Benjamin's death. The review was completed in February 2021. It made an additional 12 recommendations to improve the safety processes and procedures of the prison.

Formal Findings

31. Pursuant to section 34 of the *Coroner's Act*, I find as follows:
 - (i) The identity of the deceased was Benjamin Glen Watts born 28 September 1988 in Darwin, Northern Territory.
 - (ii) The time of death was 2.18pm on 8 May 2020. The place of death was the Darwin Correctional Precinct, Holtze in the Northern Territory.
 - (iii) The cause of death was blunt force head and neck injury caused by the all-terrain vehicle he was driving landing on him.

- (iv) The particulars required to register the death:
1. The deceased was Benjamin Glen Watts.
 2. The deceased was not of Aboriginal descent.
 3. The deceased was in prison at the time of his death.
 4. The death was reported to the Coroner by Corrections Staff.
 5. The cause of death was confirmed by Forensic Pathologist, Dr Marianne Tiemensma.
 6. The deceased's mother was Dianne Ruby Watts and his father was Glen George Watts.

Comment

32. The Coroner's Act requires that I investigate and report upon the care, supervision and treatment of Benny. In this case the relevant aspects relate to his workplace.
33. If Benny had been wearing a seatbelt and a helmet he may not have died. But the fundamental issue is that the Polaris was a fast and potentially dangerous vehicle, as was pointed out by the manufacturer. It was a hazard that the prison authorities had introduced to the workplace without addressing the risks.
34. The law requires that any person providing work must protect against all risks of serious injury or death. Even risks caused by careless or inattentive workers.² To do so there is a generally understood process for elimination or minimisation of those risks. It has been set out in the *Work Health and Safety (National Uniform Legislation) Act, Regulations and Codes*.

² *Dunlop Rubber Australia Ltd v Buckley* [1952] HCA 72; (1952) 87 CLR 313 at 320 per Dixon CJ

35. In essence, there are a ‘hierarchy of control measures’ to guide the elimination or minimisation of hazards. For instance, where the hazard is that posed by a fast ATV there might be substitution of that vehicle for another or engineering controls. If risk remains, the control measures suggest administrative controls and personal protective equipment.
36. The Code of Practice for ‘Managing risks of plant in the workplace’³ states in part that “information about hazards, risks and control measures relating to plant in your workplace can be obtained from manufacturers ...”⁴
37. In these circumstances an appropriate risk assessment of the Polaris was not undertaken by the prison and the hierarchy of controls were not utilised as the law requires. The Polaris remained a hazard in the workplace. That should not have happened. It was a workplace that should have been safer as was conceded by Senior Counsel for Corrections. In my view, the treatment and supervision of Benjamin Watts while in custody should not be criticised but given the dangers allowed to remain in the prison workplace, the level of care provided was insufficient.
38. The comprehensive and objective review of the circumstances of Benny’s death by the recently employed Safety and Security Manager, Mr William Newell, provides significant encouragement as to there being a change in the safety culture.
39. There are still many of Mr Newell’s recommendations to be implemented. It was said that implementation was subject to approval of the necessary resources, that Corrections was still awaiting a decision on whether those resources would be funded. In my opinion the implementation of those recommendations should be a priority.

³ That can be found on the NT WorkSafe website

⁴ Paragraph 2.1

40. The police investigation was of a high standard and I thank Detective Senior Constable Brett Wilson for his extensive efforts.

Recommendation

41. The recommendations made by the Safety and Security Manager be implemented as a priority and with due expedition.

Dated this 29 day of April 2021.

GREG CAVANAGH
TERRITORY CORONER