CITATION: *Inquest into the death of George Miller* [2001] NTMC 69

TITLE OF COURT: Coroner's Court

JURISDICTION: Katherine

FILE NO(s): D0198/2000

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FINDING OF: Mr Greg Cavanagh SM

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Section 128 – Police Administration Act

REPRESENTATION:

Counsel:
Assisting: Mr Stewart Brown

Solicitors:
Miller Family: Ms S Rowe
Northern Territory Police: Mr Colin McDonald QC

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IN THE CORONERS COURT
AT KATHERINE IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D0198/2000

In the matter of an Inquest into the death of

GEORGE MILLER
ON 5 DECEMBER 2000
AT KATHERINE DISTRICT HOSPITAL,
KATHERINE IN THE NORTHERN
TERRITORY

FINDINGS

(Delivered 12 October 2001)

Mr GREG CAVANAGH:

THE NATURE AND SCOPE OF THE INQUEST

1. George Miller ("the deceased") died just after midnight on the 5th of December 2000 at the Katherine District Hospital. The cause of his death was from multiple injuries that he received when he was struck by a motor vehicle whilst he was walking along the Stuart Highway in Katherine.

2. The accident itself occurred at about 10.38 pm on the 4th of December 2000 at a location on the Stuart Highway approximately 1.7 kilometres west of the Katherine Police Station and 700 metres east of the intersection of the Stuart Highway with Lindsay Street, Katherine.

3. The death occurred after the deceased had been released from protective custody at the Katherine Police Station. The deceased was released from protective custody at 10.03 pm on the 4th of December 2000.

4. Accordingly the death is one which is reportable to the Coroner pursuant to section 12(1) of the *Coroner's Act* ("the Act") on two bases. Firstly the death was unexpected and resulted directly from an accident. Secondly

immediately before his death the deceased was in the custody of a member of the Northern Territory Police Force.

5. As a result of the operation of section 15(1)(a) of the Act it is mandatory that a public inquest be held into the death of the deceased. This is to say that this death is properly categorised as one that is a "Death in Custody".

6. This inquest took place at Katherine on the 7th and 8th of August 2001. Mr Brown, the deputy coroner appeared as counsel assisting the Coroner. Ms Rowe appeared on behalf of the senior next of kin and family of the deceased. Mr McDonald QC appeared on behalf of the Commissioner of Police.

7. Five witnesses were called to give evidence during the Inquest. These witnesses comprised Detective Sergeant Chapman, the police officer in charge of the investigation of the circumstances surrounding the death of the deceased; Mr Bowkett, the manager of the Katherine Sobering Up Shelter; Constable Sean Kelly and Police Auxiliary Gavin Ascoli, who were involved in the apprehension and release of the deceased from protective custody on the 4th of December 2000 and finally Professor David Wells, a medical practitioner who is an expert on the physiological consequences of alcohol intoxication.

8. In addition to their evidence, some seventeen statements from other witnesses were admitted into evidence.

9. I also had the benefit of observing a video tape taken by a security camera of the admission of the deceased into the watch house at the Katherine Police Station at around 3.00 pm on the 4th of December 2000 and his subsequent release from there at 10.03 pm that evening. The relevant videotape was also admitted into evidence.

10. There was also tendered into evidence a number of records relating to the health and antecedents of the deceased. These records included his medical

files at the Katherine District Hospital and the Borroloola Health Clinic. Records in respect of the deceased's previous apprehension for protective custody at the Katherine and Darwin Police Station and records of the deceased's admissions to the Katherine Sobering Up Shelter in the months prior to his death.

11. The senior next of kin of the deceased is his wife Elaine Jungawanga. She was aware of the inquest proceedings but chose not to attend the formal hearings. I respect her decision in this regard.

CORONER'S FORMAL FINDINGS

12. Pursuant to section 34 of the Act, I find, as a result of the evidence adduced at the Public Inquest the following:

(a) The identity of the deceased was George Miller a male Aborigine who was born at Brunette Downs in the Northern Territory on the 3rd of August 1960. The deceased was also known as George Miller Nowagan and bore the skin name of Jungari.

(b) The time and place of death was the Katherine District Hospital, Katherine in the Northern Territory at midnight on the 5th of December 2000.

(c) The cause of death was from multiple injuries sustained by the deceased in a motor vehicle accident in which the deceased was a pedestrian who was struck by a motor car.

(d) Particulars required to register the death are:

1. The deceased was a male;

2. The deceased was George Miller;

3. The deceased was an Australian resident of Aboriginal origin;

4. The cause of death was reported to the Coroner;

5. The cause of death was from multiple injuries sustained in a motor vehicle accident in which the deceased was a pedestrian. The cause of death was confirmed by post-mortem examination.

6. The pathologist was Dr Michael Zillman of the Royal Darwin Hospital and he viewed the body after death.

7. The deceased's mother was Jemima Weamalu Ningarima.

8. The deceased's father was Don Gamaranji Baligagu.

9. The deceased had no fixed place of address.

10. The deceased had no usual occupation.

11. The deceased was married to Elaine Jungawanga.

12. The deceased was aged 40 years of age, having been born on the 4th of December 1960.

RELEVANT CIRCUMSTANCES SURROUNDING THE DEATH

Background of the Deceased

13. The deceased was born on Brunette Downs, a large and famous cattle station in the Barkly Region of the Northern Territory. Both his father and mother were from Borroloola and it seems that the deceased had strong connections with that community. However the majority of the latter part of his life was spent in Katherine.

14. Sadly in the last years of his life the deceased had great problems with alcohol. It seems clear that he became a heavy and habitual drinker and as a result usually slept in the "long grass" in and around Katherine. He was often severely intoxicated. As a result he became well known both to the police in Katherine and to the manager and workers at the Katherine Sobering Up Shelter.

15. Another of the consequences of his choice of life was that in his last years the state of his health deteriorated. He suffered from epilepsy and alcohol related seizures. On occasions he was assaulted whilst he was drinking and was taken to the Katherine District Hospital in order for his various wounds and injuries to be treated.

16. I had tendered before me the medical records of the deceased. These records show that the deceased was either admitted to the Katherine District Hospital or treated at Accident and Emergency on eight occasions during the last year of his life. Each attendance at the Hospital was precipitated by alcohol in one form or other.

17. Section 128 of the *Police Administration Act* empowers members of the Northern Territory Police to apprehend persons who are intoxicated in public places and take then into custody. This is the procedure commonly known as protective custody. The law only allows detention for protective

custody if the person concerned is seriously intoxicated either by alcohol or some other drug.

18. The protective custody history of the deceased was also tendered before me. It reveals that the deceased was detained pursuant to the provisions of section 128 of the *Police Administration Act* on five occasions in September of 2000, on one occasion in October of 2000 and on three occasions in November of 2000 as well as on numerous prior occasions. In all the deceased had been detained for protective custody on 72 occasions since 1994.

19. The police are also able, for sensible and humane reasons, to divert persons who would otherwise be detained by them for protective custody to the care of others who are equipped to deal with intoxicated persons. In the case of the Katherine Police these others are the manager and staff at the Katherine Sobering Up Shelter in Giles Street, Katherine.

20. The deceased was well known to the Katherine Sobering Up Shelter. I had also tendered before me the deceased's record of attendance there. These records indicate that he was admitted to the Sobering Up Shelter on ten occasions in September of 2000; on four occasions in October of 2000 and five times in November of 2000.

21. The reality of the deceased's life in his last months seems to have been that he went from one period of serious intoxication to another. On any view of the evidence he was a chronic alcoholic.

The Deceased's Apprehension for Protective Custody on 4 December 2000

22. The evidence before me reveals that during the morning and afternoon of the 4th of December 2000 the deceased was drinking cask wine with a number of friends namely Kenny Wark, Wilfred Harris and Mitchell Diamond. The four men were drinking in an area of public land to the east of the Central

Business District of Katherine in the vicinity of a yellow pedestrian bridge that links the Central Business District to Katherine East. The evidence of these three men was that they and the deceased had consumed between them between two and four casks of wine and had become drunk.

23. When the wine was finished the deceased walked towards Lindsay Street where at about 2.45 pm he came to the notice of members of the Kalano Community Patrol. Max Allyson was in charge of the patrol. His evidence was that the deceased was *"staggering, walking. He was going to go to sleep at Lindsay Street."*

24. As a result Mr Allyson decided that he would take the deceased to the Sobering Up Shelter. However the Shelter was closed at the time so the deceased was brought in the Kalano Community Patrol vehicle to the watch house at the Katherine Police Station.

25. Records indicate that the deceased arrived at the watch house at 3.00 pm. This was the time at which the day shift changed over to the evening shift. The officer in charge of the watch house during the day shift was Constable Sean Kelly. The officer in charge of the watch house during the evening shift was Police Auxiliary Gavin Ascoli. Both men were present when the deceased arrived at the watch house on the 4th of December 2000.

26. Mr Ascoli had accumulated some twelve months experience in duties in the Katherine watch house at the time. The majority of that experience was in dealing with people who were being lodged in the cells at the watch house as a result of the protective custody legislation. Prior to the 4th of December 2000 he had come into contact with the deceased on four or five occasions in relation to protective custody.

27. Mr Ascoli's evidence was that the deceased was seriously intoxicated at the time he arrived at the watch house. He was unsteady on his feet and smelt of alcohol. He was also uncooperative with Mr Ascoli when his property

was removed from him. He fell on one occasion to the floor of the watch house due to his level of intoxication.

28. The processing of the deceased prior to his lodgement in the protective custody cells was recorded on a video surveillance camera positioned above the watch house counter. I saw the deceased's behaviour at the time of his arrival at the watch house on the videotape from the camera. He was clearly unsteady on his feet and used the watch house counter to support himself. He fell on one occasion. He had to be assisted by Constable Kelly to the protective custody cell. The tape provides, in my view, incontrovertible proof that the deceased was "seriously intoxicated" at the time and accordingly I find that his detention pursuant to section of 128 of the *Police Administration Act* was lawful.

29. Mr Ascoli's assessment of the deceased was supported by the evidence of Constable Kelly and the statement of another officer who was present at the time, Constable Carl O'Donnell.

30. Mr Ascoli recorded details of the deceased and his (Ascoli's) assessment of the deceased's condition into the computerised protective custody register. Mr Ascoli's assessment, as was clearly apparent, was that the deceased was under the influence of alcohol. He also recorded details of the deceased's property in the property register, which is both a computerised and written record.

31. A written document known as "control sheet" also came into existence at this time in respect of the detention of the deceased. This recorded the name of the deceased; the date and time of his apprehension; the identity of the detaining police officers and some other details pertaining to the sex and racial origins of the deceased.

32. Another officer, most likely Constable Kelly recorded details of the deceased on a whiteboard, which was kept in the watch house. The use of

the white board is not mandated by any police regulation but provided a handy and highly visible record of those who are in custody at any one time and more importantly the time when they are due to be released.

33. The time that the deceased was due to be released was noted on the whiteboard as 22.30. In this, for reasons, which will be provided in the next section of these findings, there was an error. I find however that it was an inadvertent error and should not be the subject of any criticism by me.

The Protective Custody Provision of the Police Administration Act

34. Division 4 of Part VII of the *Police Administration Act* deals with the circumstances in which a person can be initially detained for protective custody and the period for which that apprehension may extend. Detention is justified only if the person concerned is and continues to remain intoxicated.

35. The nature of this intoxication is circumscribed by section 127A of the Act as meaning "seriously affected apparently by alcohol or a drug".

36. Accordingly continued detention is justified only if the person detained remains seriously intoxicated.

37. If a person is still seriously intoxicated after a period of six hours has passed after his or her initial apprehension it is required by section 132 of the Act that the person be brought before a justice for it to be ascertained whether grounds still exist for the continuing detention of the person concerned.

38. At this juncture it is convenient and appropriate that I should provide the protective custody provisions of the *Police Administration Act* in full:

“Division 4 – Apprehension without Arrest

127A. Definition

In this Division “intoxicated” means seriously affected apparently by alcohol or a drug.

128. Circumstances in which a person may be apprehended

(1) Where a member has reasonable grounds for believing that a person is intoxicated with alcohol or a drug and that that person is in a public place or trespassing on private property the member may, without warrant, apprehend and take that person into custody.

(2) For the purposes of carrying out his duties under subsection (1), a member may, without warrant, enter upon private property.

(3) A member of the Police Force who takes a person into custody under subsection (1) may –

(a) search or cause to be searched that person; and

(b) remove or cause to be removed from that person for safe keeping, until the person is released from custody, any money or valuables that are found on or about that person and any item on or about that person that is likely to cause harm to that person or any other person or that could be used by that person or any other person to cause harm to himself or another.

(4) For the purpose of subsection (3), the person of a woman shall not be searched except by a woman.

(5) All money or valuables taken from a person under subsection (3) shall be recorded in a register kept for that purpose and shall be returned to that person on receipt of a signature or other mark made by that person in the register.

129. Period of apprehension

(1) Subject to this Division, a person who has been apprehended and taken into custody under section 128 shall be held in the custody of a member of the Police Force, but

only for so long as it reasonably appears to the member of the Police Force in whose custody he is held that the person remains intoxicated.

(2) Subject to this Division, where it reasonably appears to a member of the Police Force in whose custody a person is held at the time under this section that the person is no longer intoxicated, the member shall, without any further or other authority than this subsection, release that person or cause him to be released from custody without his entering into any recognizance or bail.

(3) A person who has been taken into custody under this section and who is in custody after midnight and before half past 7 o'clock in the morning on that day, may be held in custody until half past 7 o'clock in the morning that day, nothwithstanding that the person is no longer intoxicated.

130. Protection of apprehended person.

(1) A person in custody after apprehension under section 128 –

(a) shall not be charged with an offence;

(b) shall not be questioned by a member in relation to an offence; and

(c) shall not be photographed or have his fingerprints taken.

(2) Where a person is questioned in contravention of subsection (1)(b) any answers which he may give to any such question shall be inadmissible in evidence against him in any proceedings.

131. Release

(1) The member of the Police Force in whose custody a person is held under this Division may, at any time, without any further or other authority than this subsection, release that person or cause him to be released without his entering into a recognizance or bail, into the care of a person who the member reasonably believes is a person capable of taking adequate care of that person.

(2) A person in custody shall not be released under subsection (1) into the care of another person if the person in custody objects to being released into the care of that person.

132. Continued detention

(1) If, after a period of 6 hours after a person has been taken into custody under section 128, it reasonably appears to the member in whose custody he is held that that person is still intoxicated with alcohol or a drug, the member shall bring the person, as soon as practicable, unless sooner released under this Division, before a justice.

(2) Where a person is brought before a justice under subsection (1), the justice shall, if it appears to him that the grounds for continuing the person's detention under subsection (1) –

(a) no longer exist – order the release of the person from custody; or

(b) continue to exist – give such directions as he thinks fit to a member for the safety and welfare of the person including, if he thinks fit, keeping him in the custody of a member (but only for so long as it reasonably appears to the member in whose custody he is held at the time that those grounds continue) or releasing him from custody.

133. Application to a member for release

(1) A person apprehended under section 128 may, at any time after such apprehension, request a member to take him before a justice in order that the person may make an application to the justice for his release.

(2) Where a request is made of a member under subsection (1) he shall, if it is reasonably practicable for the person to be brought before a justice forthwith, bring the person, or cause the person to be brought, before the justice forthwith unless sooner released."

39. Accordingly it was incorrect for the release time of the deceased to be noted as 22.30 hours (10.30 pm). This would have amounted to detention for a

period of seven and a half-hours. The provisions of section 132 of the Police Administration Act required either the release of the deceased at 21.00 hours (9.00 pm) or his being brought before a justice at that time to ascertain whether his continued detention was justified.

The Period of the Deceased's Detention and His Release from Protective Custody

40. The period of the deceased's apprehension for protective custody on the afternoon and evening of the 4th of December 2000 passed uneventfully. For the vast majority of that time the deceased was asleep. Again a video surveillance camera was trained on the deceased whilst he was in the protective custody cell and it is clear from that that nothing untoward happened to the deceased.

41. In addition Mr Ascoli conducted regular visual inspection of the deceased whilst he was in the protective custody cell and recorded details of his observations in the protective custody register. This record indicates that the deceased was checked every fifteen minutes by Mr Ascoli.

42. During the course of the evening shift Mr Ascoli realised that the white board was in error in respect of the time of the release of the deceased. This error came to his attention round about 10.00 pm when he released another person from protective custody who had been brought in around about the same time as the deceased but slightly afterwards.

43. When the error came to his attention Mr Ascoli entered the protective custody cell and roused the deceased who was still asleep at the time. Once again I had the benefit of being able to observe the behaviour of the deceased on video tape from the surveillance cameras that were trained on the cell itself and also over the watch house counter.

44. I also heard evidence from Mr Ascoli himself as to his observations of the deceased when he was released from custody.

45. After being roused in the cell the deceased rose from a lying position on a bench in the protective custody cell and followed Mr Ascoli out to the watch house counter. He walked unaided and appeared to be steady on his feet. Mr Ascoli gave evidence that the deceased was co-operative in his demeanour. Mr Ascoli said that he was able to have a conversation with the deceased concerning his thongs and the weather outside. Something that was not possible when the deceased was initially detained some seven hours earlier.

46. Mr Ascoli formed the view that the deceased was no longer seriously affected by alcohol as defined by section 127A of the *Police Administration Act*. He determined that it was appropriate that the deceased should be released. He recorded his observation in the Protective Custody Register. His note reads "appears sober." In this belief, as subsequent events unfolded he was sadly mistaken. The Protective Custody Register also noted that the deceased was released from protective custody at 10.03 pm.

47. However having heard Mr Ascoli's evidence and more importantly having observed on the surveillance tape the deceased's behaviour on firstly being awakened in the protective custody cell and secondly at the watch house counter, I find that the deceased gave the appearance of being sober or certainly the appearance of being no longer seriously intoxicated when he left the watch house door at 10.03 pm. The difference in the demeanour of the deceased between the time of his initial apprehension at 3.00 pm and his release at around 10.00 pm can only be described as marked. He was able to rise to his feet unassisted in the cell and walk steadily and unassisted to the watch house counter.

48. In these circumstances I am not prepared to criticise Mr Ascoli in any way for his decision to release the deceased from protective custody at 10.03 pm on the 4th of December 2000. Nor was it appropriate in the circumstances as they appeared to Mr Ascoli at the time for him to seek an extension of the

deceased's detention pursuant to section 132 of the *Police Administration Act*.

The Motor Vehicle Accident

49. The exact movements of the deceased after he left the watch house are not known. What is known is that about thirty-five minutes later at 10.38 pm the deceased was struck by a motor vehicle being driven by Alan Richard Tregear. Mr Tregear is a manager at the Woolworths Supermarket in Katherine. He was driving home after work. He was driving east along the Stuart Highway away from the Central Business District of Katherine. It was raining lightly at the time and Mr Tregear had his windscreen wipers operating and his lights on low beam. He was driving at the speed limit of 60 kilometres per hour.

50. As his vehicle, a Toyota Hilux, passed the turn off to the Katherine Town Pool Mr Tregear told police that the deceased suddenly came out in front of his car. He did not have a chance to brake or avoid the deceased before a collision occurred between the deceased and his vehicle. He stopped to render assistance and an ambulance and the police were called to the scene.

51. Mr Tregear was breath tested by Constable Chambers who arrived at the scene of the accident at about 10.40 am. This test revealed that Mr Tregear had no alcohol in his system at the time the accident happened.

52. At a latter stage Mr Tregar's vehicle was mechanically examined and found to be in a roadworthy condition at the time of the accident.

53. Records indicate that the ambulance arrived at the scene at 10.43 pm. Thereafter an ambulance officer Mark Daniel Ferguson and a paramedic Robert Albert Fabian treated the deceased. He was found to have severe injuries and to be unconscious. The deceased was then taken to the Katherine District Hospital, where he arrived at 11.02 pm. Staff at the

Accident and Emergency Section at the Hospital then took over the treatment of the deceased. Unfortunately he could not be resuscitated and died as a result of the injuries he sustained in the accident at midnight on the 5th of December 2000. He was formally pronounced dead at that time by Dr Schultz.

54. Upon his arrival at the Hospital a blood sample was taken from the deceased by Dr Tamsin Cockayne. Subsequent analysis of this sample revealed that the blood alcohol concentration of the deceased at the time was 0.333%.

55. A sample of blood was also taken from the deceased during the autopsy examination performed by Dr Michael Zillman at the Royal Darwin Hospital on the 6th of December 2000. Subsequent analysis of this sample revealed that the blood alcohol concentration of that sample was 0.347%.

56. On the evidence before me it seems clear that the cause of the accident was the deceased stepping from the north dirt verge of the Stuart Highway into the path of Mr Tregear's vehicle. It was dark at the time and raining. The area was poorly lit. The deceased was wearing dark clothing and would have been hard to see.

57. The deceased had walked a distance of approximately 1.7 kilometres from the Katherine Police Station before the accident. He had walked in the direction of the Central Business District of Katherine. It is possible that in the 35 minutes between his release and the accident that he consumed some alcohol, however this seems unlikely in the absence of direct evidence. In any event in the light of expert medical evidence that was tendered before me and which will be discussed in the next section of these findings, whether or not the deceased had consumed any further alcohol is largely immaterial.

58. What is clear is that at the time of his death the deceased had a significantly high blood alcohol concentration. The exact reason why the deceased

walked into the path of Mr Tregear's vehicle will never be known. The most likely explanation is that he was attempting to cross the Stuart Highway at the time and misjudged the time and distance available to him to cross in front of the vehicle safely with fatal consequences. His blood alcohol level would have been the main reason for his misjudgment. It is also likely that his coordination was compromised by his level of intoxication and that as a result he was unsteady on his feet and was unable to avoid walking into the path of the vehicle. Certainly he would have found it difficult to move quickly. I have no doubt that the deceased's significant level of intoxication was the most material factor contributing to the accident.

59. It is also possible but less likely that the deceased had an epileptic fit at the time and during a seizure fell into the path of the vehicle.

60. The likely physiological effects of the deceased's level of blood alcohol at the time will be discussed in the next section of these findings.

61. However it is clear that nothing associated with Mr Tregear's driving caused the collision and that he should not be criticised in anyway for what occurred on the night of the 4th of December 2000. The collision was a tragic accident.

The Physiological Effects of Alcohol on the Deceased

62. The central issue in this Inquest concerns the blood alcohol level of the deceased at the time of his death. On any analysis it represented a significant level of intoxication. It is after all more than six times the legal level permissible to drive a motor car. For reasons which I have already provided the deceased after a period of detention of some seven hours on the 4th of December 2000 "appeared sober" to use the terminology of Mr Ascoli. Subsequent evidence has revealed that the deceased was not sober, far from it.

63. This state of affairs raises a number of questions. Was it reasonable for Mr Ascoli to act as he did? Should he have taken other steps to ascertain the level of intoxication of the deceased? And if so, what steps. What should other officers who find themselves in a similar position to Mr Ascoli do in future when releasing persons from protective custody?

64. To answer these questions it is necessary to consider the physiological effects of alcohol generally and on habitual drinkers, such as the deceased, in particular.

65. During the Inquest I had the benefit of receiving expert evidence from two sources. Firstly a report was tendered from Dr Byron Collins, a forensic pathologist. Secondly I received a report and oral evidence from Dr David Wells, the Head of the Division of Clinical Forensic Medicine at the Victorian Institute of Forensic Medicine, an expert on the physiological effects of alcohol on a variety of different subjects and who had vast clinical experience of intoxication.

66. Both Dr Collins and Dr Wells agreed that experienced drinkers develop a tolerance for alcohol through their experience of intoxication. One of the consequences of this tolerance is that experienced drinkers are able to perform a variety of simple skills or tasks whilst intoxicated thus giving the appearance of being relatively sober to the casual or even critical observer. As a result it is notoriously difficult to assess the level of intoxication of heavy drinkers by simple visual observation of such drinkers, even if the observer has experience in the field. This is the phenomenon commonly known as “masking”.

67. Highly intoxicated but experienced drinkers may be able to walk with steady gait; have normal speech; an unimpaired ability to do simple tasks such as undress and the appearance of an adequate verbal comprehension in casual conversation.

68. To use Dr Well's words:

> "Such findings are due to the individuals developing tolerance for alcohol. This is a process whereby subjects develop adaptation to a drug, requiring increasingly larger doses to achieve the same pharmacological effects. This process may take a period of weeks or months to develop. This results in an apparent absence or minimising of symptoms despite a marked elevation in blood alcohol concentration.
>
> In my own clinical experience I have been repeatedly struck by the poor correlation between blood alcohol concentrations and behavioural or psychomotor changes in chronic alcoholics. On many occasions I have examined individuals who display minimal gross psychomotor changes despite recording blood alcohol concentrations in the range 0.35 - 0.45.
>
> In short, observations of an individual by either a lay person or medically trained personnel are notoriously poor in diagnosing high blood alcohol concentrations in chronic alcoholics."

69. Accordingly it is understandable in all the circumstances that the deceased would appear relatively sober to Mr Ascoli at the time of his release. The deceased was a habitual drinker who over many years had developed a tolerance for alcohol to such an extent that his gross motor skills would have appeared unimpaired although he himself was still relatively intoxicated. By gross motor skills I refer to such things as walking, talking and the deceased raising himself from the bench in the cell.

70. However although the deceased's gross motor skills may have been relatively intact at the time of his release his finer cerebral functions such as visual acuity, his ability to concentrate and perform tasks requiring skill or fine co-ordination and his reaction time would still have been severely compromised.

71. By finer cerebral functions I refer to such things as the ability to react to an unexpected threat; the ability to gauge the speed of approaching objects and the ability to process complex information quickly. Essentially these are the

functions required to assess the speed of an approaching vehicle on a dark night and determine how far away it is and to process that information quickly enough to make a decision about whether it is safe or otherwise to cross a road.

72. Short of complicated and sophisticated testing there is no way to accurately assess the loss of these finer cerebral functions as a result of intoxication in any given individual. Although tolerance will develop in respect of the preservation of gross motor skills in experienced drinkers whilst they are intoxicated, there will be no such tolerance in respect of these finer cerebral functions.

73. The only means of eliminating alcohol from the body is by the metabolic processes of the body, the vast majority of which occur within the liver. Individuals eliminate alcohol at different rates. Peak blood level occur between 30 and 120 minutes after drinking, after which alcohol is eliminated at a rate of between 0.01 and 0.02 grams % per hour.

74. Accordingly it is not possible to say with exactitude the blood alcohol reading of the deceased at the time he was taken into protective custody. Dr Wells estimated it as being between 0.309 – 0.501%. Dr Collins as likely to be in the range of 0.407 – 0.479%.

75. Whatever the deceased's blood alcohol level at the time of his apprehension at 3.00 pm on the 4th of December 2000 it was such that it was readily apparent to all who observed him that his gross motor skills were seriously compromised. That was not the position at 10.00 pm. The deceased's gross motor functions had returned by that time. Again this was something that was readily observable by Mr Ascoli. Accordingly it cannot be said that Mr Ascoli acted unreasonably in the circumstances notwithstanding the blood alcohol level that was found in the deceased at the time of his death.

76. On the evidence before me I find it unlikely that the deceased had anything to drink between the time of his release and the time of the accident or certainly had anything to drink to such an extent to markedly change his blood alcohol level at the time of his death. In his evidence Dr Wells said that it would require the rapid ingestion of a strong liquor such as a spirit to markedly elevate the deceased's blood alcohol level in the short period of time of thirty-five minutes from the time of his release to the accident. This seems to me to be so unlikely given the hour of the night at which he was released and what I know of drinking patterns in Katherine that I can eliminate it as a likely possibility.

77. The effect of the evidence of Dr Wells is that the rate of loss of higher cerebral functions due to intoxication and the level of intoxication at which that functioning is lost varies from individual to individual. Visual observation of the individual concerned is an unreliable means of assessing the extent of the loss of such functioning. Assessments can only be made by the application of a range of comparatively complicated tests and the measurement of the results of those tests. For example reaction time could be measured by the application of some external stimulus and the measurement of reaction by a stopwatch. Needless to say the application of such tests is not practical in the environment of a police watch house and would in any event require a skilled clinician to apply.

78. A breathalyser will provide comparatively accurate data in respect of the actual blood alcohol reading of any one individual at any given time. However the difficulty with such data is that it will not provide objective and independent evidence of the way in which individuals will be effected by alcohol generally at any given level.

79. Dr Wells gave evidence of what he foresaw as the difficulties of using breathalysers in a watch house situation as a means to ascertain whether it was appropriate to release any given individual:

> "Certainly the use of breathalysers would provide objective data on the level of breath alcohol at the time… the problem with it is that there can be considerable variation between the breath alcohol reading and the behaviour of the individual. So that in individual one, we might see a breath alcohol reading of 0.1% and they may still be quite clearly affected. They're co-ordination impaired; their judgements impaired; vigilance; concentration; the whole lot is grossly impaired and yet they have a reading of 0.1%.
>
> Yet in individual two of which the deceased would be an example, at 0.1% they may be functioning extremely well. There is no good relationship between the level and the behaviour of chronic heavy users of alcohol.
>
> The other difficulty is if you retain people until they come down to a level that the system sets – say .08 or 0.1 or whatever – then clearly in people who are at very high levels, you may be keeping them for a long time."

80. Dr Collins also alluded to this problem in his report. With chronic alcoholics it may take many hours for them to eliminate alcohol from their systems to such an extent that they attain a blood alcohol level that a lay person may regard as being indicative of comparative sobriety, say 0.1% or less. However due to the physiological dependence that such habitual drinkers develop to alcohol to lower their blood alcohol to such levels places them in danger of developing symptoms of alcohol withdrawal.

81. In his report Dr Collins wrote as follows:

> "If… it is assumed that the deceased eliminated alcohol at a rate of 0.015% per hour, then it would take approximately a further 13 hours for his blood alcohol to be in the order of 0.150 %.
>
> Having regard to the fact that the deceased has a history of heavy intake of alcohol, he is at a markedly increased risk of suffering acute withdrawal symptoms, particularly if his blood alcohol level were to be reduced to zero, with the withdrawal phenomenon most likely to occur in the following 12 – 72 hours."

82. Dr Wells described alcohol withdrawal as "extraordinarily frightening" in his evidence and indicated that its symptoms included fitting and profound

depression. As a result the risk of self inflicted injury rose significantly in individual going though alcohol withdrawal. Consequently the process itself was categorised by "significant morbidity and mortality".

83. Certainly Dr Wells did not believe that a police station watch house provided either a suitable or safe environment for a person to go through alcohol withdrawal. They only suitable place for a person to go through this process was in a suitably equipped and manned hospital.

84. In his clinical experience Dr Wells indicated that it was relatively common for him to come across chronic alcohol users who as a result of their use of alcohol had become habituated to functioning with residual blood alcohol levels of 1.5% to 2.5% at all times, simply because they felt so awful when their blood alcohol levels dropped below these level.

85. Because of this Dr Wells believed that there were grave dangers incumbent in the introduction of breathalysers into watch houses. His view was that in such an environment the behaviour, the presentation and the performance of the individual concerned provided the best criteria for the assessment of whether any given individual should be released from protective custody. In Dr Wells' opinion such observations provided the best marker of how any given individual was likely to function subsequently.

86. I agree. Because of the wide disparity in the extent of tolerance of alcohol in any given group of individuals it would be extremely unsafe to mandate the use of a breathalyser or similar scientific instrument as a means of setting a fixed scale on the basis of which it could be assumed that it was appropriate and safe to release any given individual from protective custody.

RECOMMENDATIONS AND CONCLUDING COMMENTS

87. My own experience as Territory Coroner has alerted me to the extraordinary volume of people, the vast majority of whom are Aboriginal who pass through watch houses in police station in the Northern Territory because of the protective custody provisions in the *Police Administration Act*.

88. In this particular Inquest I had evidence from Sergeant Barry Smith of the Katherine Police Station. He indicated that in the financial year ending 30th June 2000 some 2,192 people were detained in the Katherine Police Cells for protective custody. Of these persons all but 98 were Aboriginal.

89. Constable Kelly, a general duties constable in Katherine told me it was extremely rare for him not to apprehend anyone for protective custody during a shift. The average number was between 3 and 10 persons per shift. His record was 15. He also told me that he had known up to 175 persons to be detained at the Katherine Watch House at one time. These are extraordinary figures.

90. Mr Ascoli told me that he estimated that some 75% of his duties were taken up with matters related to the protective custody provisions of the *Police Administration Act.*

91. In their administration of the *Police Administration Act* the Northern Territory Police have to walk a tight rope between properly detaining a person against his or her will because that person is "seriously intoxicated" and arbitrarily and unnecessarily prolonging that detention.

92. In accordance with section 127A of the *Police Administration Act* the police mandate is to detain for protective custody only those people who are "seriously intoxicated". Once people are no longer "seriously intoxicated" it is the duty of the police to release them.

93. The legislation provides police with no imprimatur to hold persons until they are sober or moderately drunk or indeed have sobered to any other level of intoxication.

94. Arresting a person without warrant is a serious matter as is the continuing detention of that person without recourse to bail. The purpose of protective custody is to allow police to take the extreme step of depriving a person of his or her liberty only when that person is the extreme circumstances of serious intoxication. Once the extremity of that situation has passed the justification for detention has also passed. This, in my view, is as it should be.

95. For reasons that have already been provided I am of the view that visual observation of detainees provides the best means by which police can ascertain whether or not any given individual continues to be "seriously intoxicated". Watch House Keepers, such as Mr Ascoli are the people best placed to make the necessarily subjective judgement as to whether any particular individual is or is not "seriously intoxicated". They after all deal with many hundreds of intoxicated persons each month and as a result have extensive experience on which to base such assessments.

96. In the case in question there was a marked difference in the demeanour and behaviour of the deceased between the time of his initial apprehension and the time of his release.

97. The experience of the police who provided evidence before me in the Inquest, including Sergeant Smith who had 21 years of service, was that it was practically unknown for there not be such marked changes in the demeanour and behaviour of individuals after six hours of protective custody.

98. There will always be cases where the behaviour of an individual both during the period of his protective custody and at the conclusion of six hours will

be a cause of concern for the police involved. This is inevitable given the high volume of persons being detained for protective custody and the number amongst those who are chronic abusers of alcohol. For reasons that I have already provided I am of the view that it is inappropriate that police watch houses be used as de facto alcohol detoxification units. The appropriate environment for detoxication is a medical one.

99. In an affidavit that was tendered before me, Sergeant Smith referred to some difficulties he anticipated in respect of the provisions of section 132 of the *Police Administration Act.* This provision deals with the bringing of an intoxicated person before a justice after the expiration of six hours if police believe, on reasonable grounds, that the person is still intoxicated and it is thought necessary to extend the period of detention:

> "In my years of service I have never had a reason to bring a person before a magistrate because of his intoxication, nor have I had a request from a person held for protective custody to contact a magistrate. There have been occasions when it has been brought to my attention that a detainee does not appear normal on release, ie. he may have the shakes or still appear unsteady. On these occasions, and it is general policy among shift supervisors, that the person is taken directly to the hospital for a check up. Although I personally have not had occasion to bring a person before a magistrate because of continuing intoxication, I believe the provisions of the Act would be a difficult task to achieve in reality. If a member believes that a person is still intoxicated, ie. seriously affected by alcohol or a drug, he may bring the person who then makes an assessment. I don't believe this can be done over the phone. If this is the case, on each occasion at 6.00 am a magistrate would to attend at the station to assess the prisoner. This contradicts somewhat instructions that duty magistrates should be contacted where ever possible."

100. I agree that there would appear to be grave difficulties in applying the provisions of section 132 particularly in the case of watch houses remote from Darwin or Alice Springs where it is hard to gain access to a justice, let alone bring a person before one. Indeed it is hard to see that a justice would be better placed than a senior police officer or indeed the watch housekeeper

to assess the situation of a person held under section 128 after the expiration of six hours of protective custody.

101. For that reason I recommend that section 132 of the *Police Administration Act* be amended to allow a member of the police force of the rank of superintendent or above to authorise continued detention of a person in appropriate circumstances after the expiration of six hours or in the alternative authorise the examination of such a person by a medical practitioner.

102. Such authorisation could be obtained by means of email, facsimile or telephone depending on the circumstances pertaining at the time.

Dated this 12th day of October 2001

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GREG CAVANAGH
TERRITORY CORONER