

CITATION: *Inquest into the death of Danmirriwuy Yunupingu* [2010] NTMC 034

TITLE OF COURT: Coroner's Court

JURISDICTION: Nhulunbuy

FILE NO(s): D0149/2008

DELIVERED ON: 7 July 2010

DELIVERED AT: Nhulunbuy

HEARING DATE(s): 12 – 14 May 2010

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS:

Unexpected Death, Suicide,
Drunkenness, Police Involvement,
Liquor Restrictions

REPRESENTATION:

Counsel:

Assisting: Mr Tony Young
Family of the Deceased: Mr Michael Maurice Q.C

Judgment category classification: B
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IN THE CORONERS COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. D0149/2008

In the matter of an Inquest into the death of

DANMIRRIWUY YUNUPINGU
ON 23 or 24 JULY 2008
AT SKI BEACH NHULUNBUY

FINDINGS

(Delivered)

Mr Greg Cavanagh SM:

INTRODUCTION

1. The deceased was a young man aged 25 years at the time of his death. I find that he committed suicide on 23 July 2008 (or in the early hours of 24 July 2008) at Ski Beach shortly after repeatedly stabbing his partner, Sharon Gurruwiwi.
2. The death of the deceased by apparent suicide was unexpected and was thus reportable to me pursuant to section 12 of the *Coroner's Act*. The holding of a public inquest is not mandatory but was held as a matter of my discretion pursuant to section 15 of that Act.
3. The inquest was held on 12 and 13 May 2010 at Nhulunbuy. Mr Tony Young appeared as counsel assisting and Mr Michael Maurice Q.C. appeared for the parents of the deceased. I heard evidence from Constable Mathew Cram, Sharon Gurruwiwi, Shannon Small, Glynn Baynham, Constables Gordon and Machasek, Greg Lye, Kym Davis and Dr Eric Donaldson, a pathologist. I also have a brief of evidence before me consisting of, among other things, statements of witnesses not called to give oral evidence.

4. Pursuant to section 34 of the *Coroners Act*, I am required to make the following findings:

“(1) A coroner investigating –

(a) a death shall, if possible, find –

(i) the identity of the deceased person;

(ii) the time and place of death;

(iii) the cause of death;

(iv) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act;

5. Section 34(2) of the Act operates to extend my function as follows:

“A Coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated.”

6. Additionally, I may make recommendations pursuant to section 35(1), (2) & (3):

“(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.

(3) A coroner shall report to the Commissioner of Police and Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”

Formal Findings

7. Pursuant to section 34 of the *Coroner's Act* ("the Act"), I find, as a result of evidence adduced at the public inquest, as follows:
- (i) The identity of the deceased was Danmirriwuy Yunupingu born on 8 August 1982.
 - (ii) The deceased died at Ski Beach late on 23 July 2008 or in the early hours of 24 July 2008.
 - (iii) The cause of death was hanging.
 - (iv) The particulars needed to register the death under the *Births, Deaths and Marriages Registration Act* are
 - 1. the deceased was male;
 - 2. the deceased was an Aboriginal Australian;
 - 3. a post-mortem examination was carried out and the cause of death was as detailed above;
 - 4. the pathologist viewed the body after death;
 - 5. the pathologist was Dr Eric Donaldson;
 - 6. the deceased's mother is Beth Guyakminy Yunupingu (nee Marika) and his father is Charles Mayitja Nawunggurr Yunupingu;
 - 7. the deceased lived at house 17 Ski Beach, Nhulunbuy;
 - 8. the deceased was employed as a labourer.

Background

8. On the morning of 23 July 2008 the deceased and others performed traditional dancing at the Yirrkala School for the Prime Minister who was visiting Nhulunbuy. After the performance some of the dancers and their families went to the Gove Yacht Club.

9. The gathering at the Yacht Club was a family event with children present. It was orderly and no one was drunk. According to the evidence of Ms Kym Davis, a bar attendant, the people present were happy and well-behaved. The food and drink, including sweets and soft drinks for the children, was paid for by Mr Galarrwuy Yunupingu. This was Mr Yunupingu's only significant involvement in the matter. The payment was overseen by Mr Sean Bowden, a lawyer who was working with Mr Yunupingu at the time. The amount spent is unclear. Ms Davis thought it was about \$190. Mr Bowden, who gave a statement, is not precise about how much was spent. He mentions that about \$200 was paid for food. Both Mr Yunupingu and Mr Bowden provided statements for the coronial inquiry but I did not consider it necessary to call them to give oral evidence. I am satisfied there is no basis for criticism of Mr Galarrwuy Yunupingu or Mr Bowden and I am satisfied that the subsequent suicide of the deceased was not connected to his attendance at this function at the Yacht Club.

10. Nevertheless, there is one aspect of the attendance of the deceased at the function that should be noted. The deceased was subject to a trespass notice at the Yacht Club. The notice was due to expire three days later on 26 July 2008. In view of this and the importance of the day, the manager of the Yacht Club, Glynn Baynham, allowed the deceased into the Yacht Club. According to the bar attendant, Kim Davis, the deceased was told he could have two beers. According to Ms Davis the deceased had his two drinks and left after about an hour. According to her, he was not intoxicated. He probably left the Yacht Club at about 5.00 pm.

11. The deceased and Sharon Gurruwiwi returned to house 17 Ski Beach, where they lived with the parents of the deceased, Charles and Beth Yunupingu. At about 7 pm the deceased and Ms Gurruwiwi returned to the Yacht Club in

a car driven by Shannon Small, another resident of Ski Beach. There the deceased procured a 30 can carton of VB beer. This is of some significance because under the liquor permit system operating under the Liquor Act in the East Arnhem General Restricted area the deceased, as holder of a liquor permit, was entitled to purchase no more than 12 stubbies of midstrength beer a day.

12. The identity of the person from whom the deceased procured the carton of beer is unknown. Ms Gurruwiwi gave evidence that the deceased went to the front door of the Yacht Club and spoke to a white man who he appeared to know. The white man took some money from the deceased, went into the club and came out again with a carton of beer. Ms Gurruwiwi gave some information pointing to the identity of the man who bought the beer for the deceased but there is not enough for me to make a finding on the matter. Neither of the staff members from the Yacht Club who gave evidence were able to assist.

13. The deceased and Ms Gurruwiwi returned to Ski Beach and began drinking on the beach. The deceased drank about 14 cans of beer and Ms Gurruwiwi about four cans. There appears to have been some disagreement between the deceased and Ms Gurruwiwi. She returned to House 17 and was followed by the deceased. After some little time the deceased stabbed Ms Gurruwiwi more than 30 times. The evidence of the police was that Ms Gurruwiwi was covered in blood when they arrived and the room where the attack took place was bloody. The ambulance officers noted about 200ml of blood at the scene. Ms Gurruwiwi suffered some deep lacerations but fortunately subsequently recovered from her injuries.

14. The parents of the deceased were woken by noise and disturbed the deceased in his attack. He left the room and went outside. Ms Gurruwiwi gave evidence that she heard the deceased crying and saying words to the effect of “What have I done to my wife!” Charles Yunupingu, the father of the deceased then telephoned for help. On his return he castigated his son. The deceased then left.
15. At 10.42 pm police officers Cram and Morris attended at 17 Ski Beach. Cram drove the ambulance to the hospital while the ambulance officers tended to the victim. Morris remained at the crime scene. Later, officers Gordon and Machacek attended and began a search for the deceased. At about 2.35 am on 24 July 2008 they found the deceased’s body hanging from a beam at the Child Care Centre. The body was identified by Charles Yunupingu. In the early hours of the morning a short smoking ceremony was performed at the body, which was then removed in a police vehicle.
16. The body was subsequently the subject of an autopsy carried out by Dr Eric Donaldson on 28 July 2008 at Royal Darwin Hospital. The significant findings were a linear mark over the upper neck and a blood alcohol level of 0.262%. The ligature or rope found with the body was later sent to Dr Donaldson and he reported that the width of the rope and the marks on the neck of the deceased were very similar.
17. Dr Donaldson concluded that there were no features to suggest the involvement of another party in the death and that the cause of death was consistent with hanging.
18. I became aware of rumours circulating in the community that the police were in some way responsible for the death of the deceased through foul

play. Counsel appearing for the parents confirmed that he was aware of such rumours and described it as suspicion. The basis of the suspicion is unclear but it was apparently said that the body of the deceased had abnormal marks on it after its return to the family after autopsy. The family arranged for a second autopsy by Dr Byron Collins. Dr Collins' report concluded that the abnormal areas identified (he does not specify them in his report) were the result of procedures carried out during the initial autopsy and did not represent ante-mortem trauma. He supported the conclusions of Dr Donaldson that there was no evidence of involvement of another person and that the cause of death was consistent with hanging.

19. Officers Gordon and Machasek, who found the body, gave evidence before me and were cross-examined by Mr Maurice Q.C. It was not put to them that they were in any way responsible for the death of the deceased and, in the absence of any evidence to support such an allegation, it was proper that it was not. Mr Maurice Q.C. very properly submitted that the evidence supported the findings of Dr Donaldson and Dr Collins.

20. I am satisfied that the evidence allows the clearest inference that the deceased, while heavily intoxicated, took his own life, probably as an expression of guilt, shame and remorse following his attack on Ms Gurruwiwi.

Recommendation

21. Mr Maurice Q.C. for the parents submitted that I ought to make a recommendation that the authorities consider an amendment to the *Liquor Act* to close the apparent loophole that allowed the deceased to obtain a 30 can carton of VB beer from another person who was not subject to the same liquor restrictions as him. While the deceased committed an offence under the *Liquor Act* in possessing liquor not authorized by the terms of his permit

the person who gave him the liquor would not commit an offence unless he was to “sell” the liquor. Under the *Liquor Act* to “sell” liquor is, among other things, to do so for a reward or benefit paid or provided. Buying liquor for someone without any reward or benefit, without some profit for example, is not an offence.

22. Although I heard no other evidence about the matter, Mr Maurice Q.C. asserted it was a common problem in the region, that is, persons with restricted permits hanging about take-away liquor outlets and persuading other persons with unrestricted permits to buy them quantities or types of liquor they were not entitled to purchase for themselves. He said, speaking on behalf of the parents of the deceased, that the Aboriginal community in North East Arnhem Land supported the liquor restrictions operating there. He said the intention of the permit system, to discourage anti-social behaviour, ought not be so easily circumvented as was apparently the case here. Mr Lye from the Licensing section of the Department of Justice, appeared to confirm that there was something of a problem. He said that any person found providing others with liquor they were not entitled to possess, would have their permit revoked. He did not say whether he believed this was widespread. Mr Young, counsel assisting, also submitted that it would be appropriate for the authorities to consider whether the creation of an offence might be a means of dealing with the problem revealed in this case. I agree with Mr Young’s submission.
23. Although I am unable to say whether this is a widespread problem it certainly had very serious consequences in this case. I recommend to the Attorney-General that consideration be given to whether it ought to be an offence for a person to purchase liquor on behalf of another person where that other person is not entitled to purchase that liquor for themselves and the first person knew or ought to have known of that fact.

Dated this 7th day of July 2010.

GREG CAVANAGH
TERRITORY CORONER