

CITATION: *Inquest into the death of Sonia Wongaway, Dan Wongaway and Dixon Mumu* [2022] NTLC 004

TITLE OF COURT: Coroners Court

JURISDICTION: Alice Springs

FILE NO(s): A065/2019, A066/2019, A067/2019

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REPRESENTATION:

Counsel Assisting: Kelvin Currie
Counsel for Police: Michael McCarthy
Counsel for Family: Sally Ozolins

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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A065/2019, A066/2019, A067/2019

In the matter of an Inquest into the death of

**SONIA WONGAWAY, DAN WONGAWAY
and DIXON MUMU**

ON: 25 DECEMBER 2019

AT: SPEARWOOD ROAD, ALICE SPRINGS

FINDINGS

Judge Greg Cavanagh

Introduction

1. The three deceased, the subject of this inquest, were related. They were a brother and sister and her husband. In accordance with the wishes of the family, during the inquest all three of the deceased were referred to by their initial and surname. I adopt that naming convention also in the body of these findings.
2. At the outset I wish to mention the assistance provided and attitude displayed by the family, primarily represented by Kathleen Luckey (the mother of S Wongaway and D Wongaway) who showed great fortitude, insight and compassion. Through her lawyers she set out the history of the deceased in these terms:
 - a. D. Wongaway, D. Mumu and S. Wongaway were part of large extended families that were very close and always looked after each other. They lived and worked in Imanpa and often came into Alice Springs where they would stay at Ilparpa camp.
 - b. S. Wongaway was the fourth and D. Wongaway the fifth child of Kathleen and her partner, David Wongaway (snr). The three older siblings were Gordon, Shane

and Rosalyn. Rosalyn is married to Terry Mumu. S. Wongaway attended school at Finke Primary and then in Adelaide at boarding school. When she returned from Adelaide she met D. Mumu. They married sometime after this and remained partners until their passing.

- c. S. Wongaway could not have children, and so her big sister Roslyn Wongaway and her partner, Terry Mumu, arranged for S. Wongaway and D. Mumu to grow up Roslyn's daughter, Rochelle. S. Wongaway and D. Mumu loved Rochelle very much.
- d. D. Mumu was the son of J. Mumu and Esther Mitinkiri Mick. J. Mumu was originally the next of kin for D. Mumu for this Inquest. Sadly, he passed away as the result of a car crash on the Lasseter Highway in June 2021. When D. Mumu was still young his parents separated and he remained with his father, J. Mumu, in Imanpa. D. Mumu went to school at Imanpa Primary and Nyangatjatjarra College at Yulara and later worked at MacDonnell Shire Council. He loved and cared for his father. He was a proud footy player for the Imanpa Demons and his nickname was 'No.5'.
- e. D. Wongaway also spent his early childhood at Apatula Community and went to Finke Primary School, Imanpa Primary and Nyangatjatjarra College at Yulara. D. Wongaway married Katie Kitson and they had a daughter, Dannika. He had a number of jobs over the years, including at Power & Water and as a Ranger for Central Land Council. He had a passion for playing footy for the Imanpa Demons. He was very close with his family and would support the old people in his family and help his siblings and cousins with their own children.

3. As to the loss suffered by reason of their deaths she said:

“We're so sad. They were our [old people's] caretakers, would look after us ... they would be second mum and dad to help with their cousin's kids ... I see a lot of changes ... lots of the cousins, they can't stay in Imanpa for too long now. Too much memory.”

The circumstances

4. D Wongaway had purchased a Mitsubishi Outlander in the last month from a local car yard. However, the registration had not been transferred and had expired on 11 December 2019.¹
5. During the afternoon of Christmas day in 2019 D Wongaway, D Mumu and S Wongaway were at a large family gathering for Christmas lunch in the Ilparpa Camp in Alice Springs. Later that afternoon they along with a nephew and another woman, drove around Alice Springs visiting family in D Wongaway's Mitsubishi Outlander.
6. At the same time two members of the Police Southern Traffic Operations had been tasked to conduct general traffic patrols targeting drink driving and other traffic offences. They were in a marked, bright orange Holden Commodore Sedan, call sign Tango 207, fitted with number plate recognition technology that provided alerts as to unregistered vehicles (amongst other things).
7. It was late in the afternoon and D Wongaway with the passengers still in the vehicle was driving the Outlander vehicle along Kurrajong Drive in East Side, Alice Springs in a southerly direction. They passed Tango 207 heading the other way. The automated numberplate recognition system alerted the officers that the vehicle was unregistered.
8. The police conducted a U-turn with a view to stopping the Outlander. The time was about 6.44pm. Those in the Outlander saw the police turn. One of the occupants said they thought they were being chased for drink driving. The Outlander turned left onto Undoolya Road and sped up. Coming up to the intersection of Undoolya Road and Spearwood Road the vehicles were

¹ The submissions made on behalf of the family suggested that D Wongaway had sought to have the vehicle registered but a disagreement with the car yard prevented that.

about 9 seconds apart and travelling at about 70 km/h (according to calculations made by police from CCTV vision).

9. Mr Wongaway then turned right onto Spearwood Road and sped up. He was captured on CCTV vision passing the car in front on the inside. The following police saw him pass the car on the inside and then another on the outside. The police had not turned on their flashing lights or used their siren and seeing the Outlander speed up and pass the other vehicles, pulled over and stopped.
10. They notified Police Communication: “just turned on a vehicle ... it is overtaking vehicles on the wrong side of the road, we are not in pursuit 1=DRO”. The “DRO” is a code that means one vehicle “drove off” and finalises the incident in the communications log. The radio transmission was made at 6.44 and 56 seconds. The police then continued down Spearwood Road.
11. Witnesses in a front yard in Spearwood Road heard the sound of the Outlander and saw it go past at a fast pace. One estimated its speed as “over 90 k/h”. One of those inside the Outlander later said:

“We went speeding up from police and I was that scared, because it was too fast ... he took over two cars I think ...”
12. The Outlander rounded a right hand curve and came upon a utility vehicle coming in the opposite direction that commenced turning across its path into Kilgariff Crescent. The utility crashed into the right hand side of the Outlander, pushing it into a clockwise yaw. The Outlander mounted the left hand kerb and made contact with a tree on the verge. It rotated and while upside down and airborne collided with a second tree 13 metres further down the verge. The rear driver’s side door was likely flung open by the time of that collision and D Mumu also made contact with the tree and was left on the ground nearby.

13. The Outlander continued and hit a third tree and S Wongaway was thrown from the vehicle. D Wongaway was still in the driver's seat with his seatbelt on, crushed by the vehicle. All three likely died instantly. The nephew and the other woman were not fatally injured. Those in nearby houses rushed to assist and commenced cardiopulmonary resuscitation (CPR), but there was nothing that could be done.
14. Meanwhile Tango 207 had continued down Spearwood Road until they saw a vehicle coming the other way that appeared to have an unrestrained child in the back seat. They did a U-turn and stopped the vehicle. They turned on their bodycams. The bodycams provide 30 seconds of vision leading up to the moment they are turned on. That 30 seconds of vision shows the police driving south on Spearwood Road and doing a U-turn to stop the vehicle just before the bend in the road leading to the crash. Police were speaking to the driver and passengers for about 3 minutes before they received a call as to the crash. They left immediately and attended the crash. They were the first police on the scene. It was a very confronting scene with two limbs on the road separated from one of the bodies.
15. Spearwood Road is 1.4 kilometres in length. The scene of the crash was 774 metres down the road. Police calculated that the Outlander took 31 seconds to cover that distance being an average speed of a little over 90 kilometres an hour.
16. There were no tyre friction marks for Major Crash investigators to calculate the speed at which the vehicle crashed and there was no data available from the airbag control module as to terminal speed. That made it difficult for the Major Crash investigators to determine the speed at which the Outlander crashed.
17. However, the likely range of speed was said to be between 103 kilometres per hour and 142 kilometres per hour. The lower speed was at best a guess based on assumptions and the higher speed was the critical speed of the bend

(if the bend was taken on the correct side of the road). In evidence the Officer in Charge of the investigation thought the speed likely about 120 kilometres per hour. The vehicle was almost cut in half and barely recognisable.

18. Autopsies performed by the forensic pathologist found that they died from the trauma of the crash. Toxicology found that D Wongaway had a blood alcohol reading of 0.24%. The other deceased had similar readings.



The family placed a memorial at the third tree.

Issues

19. The primary issue raised by the family was whether or not the police had pursued the Outlander and whether or not the deaths should or should not be viewed as deaths in custody.
20. The actions of police were not a pursuit in accordance with the Police General Order.² There was no issue taken with that by the family. But they said making the U-turn and attempting to catch up to the Outlander while the Outlander attempted to speed away amounted to a pursuit as it would be commonly understood. Counsel for the family stated:

“It is respectfully submitted on behalf of the family that it is open to the Coroner to find that there was in fact a pursuit which was ceased when it became apparent to the members that the driver of the vehicle intended to continue to take (potentially dangerous) action to evade police.”

It was said that the deaths should be categorised as deaths in custody.

21. In my opinion, police did not pursue the Outlander, but whether it is said to be a pursuit or not is to a large extent a semantic exercise because that would not also lead to the categorisation of these deaths to be ‘deaths in custody’ unless also in accordance with the definition of “person held in custody” in the *Coroners Act 1993*.
22. The *Coroners Act 1993* relevantly states:

person held in custody means:

(a) a person in the custody or control of:

(i) a police officer;

² NTPF General Order – Emergency Vehicle Driving (EVD) and Pursuit Driving. The General Order defines the context of a pursuit to be a requirement to stop, an awareness of the requirement to stop by the driver, failure to stop and an active attempt by police to apprehend the vehicle with lights and sirens.

and includes a person in the process of being taken into or escaping from:

(c) the custody or control of a person mentioned in paragraph (a).

23. When the police undertook the U-turn they had the intention of stopping the vehicle. Police call it a traffic apprehension (TRAP). They sped up to try and close the distance to the vehicle. If they had closed the distance they would have signalled for the Outlander to pull over, most probably with lights and sirens.
24. However, the Outlander sped away and they were unable to close the distance. They saw that the driver in attempting to evade them drove dangerously and so as to not increase the risk to themselves, the occupants of the vehicle and the public, they stopped.
25. On any reading it is difficult to see that the deceased's were in the process of being taken into the custody or the control of the police. If there was to be such a process it had not commenced.
26. However, there is the likelihood that the persons in the Outlander were, by speeding away, at the very least trying to evade police. But that is not tantamount to 'escaping'. The definition in the Act requires more than that. It requires that there is custody or control from which to escape. At a minimum the police officer would need to have sought to exert a form of custody or control from which the persons were escaping to give the wording of the section proper meaning.³
27. That reading also accords with the general definition and understanding of 'escape': that is, to break free from confinement or control.⁴

³ If it were to be interpreted otherwise, persons completely unknown to and unseen by police could be said to have died in custody, simply because they sought to evade police.

⁴ Oxford English Dictionary

28. In this case the police had not sought to exert any form of control. They readily conceded that they were attempting to get themselves in a position to do so. But from nine seconds behind the Outlander they were not in a position to require the driver of the Outlander to pull over and stop.
29. It follows that the deceased's were not persons held in custody. As such they cannot be said to have died in custody.
30. The family also submitted that on any risk assessment, being unregistered is not such a serious offence as to warrant a traffic apprehension. The more so because the police have access to the registrant's name and address. They submitted that I should make recommendations that:

- (i) "Police practice, policies and training be reviewed to critically evaluate the value of traffic apprehensions and pursuits in relation to low level or infringement offending; and

- (ii) As a matter of urgency, the Police Force further investigate and implement non-pursuit enforcement mechanisms to avoid the need for police pursuits in cases of low-level suspect offending."

31. It is always a good thing to have the dangers of attempted traffic apprehensions and pursuits reiterated. The Assistant Commissioner, Michael White who gave evidence during the inquest indicated at paragraph 28 of his affidavit:

"There is inherent danger in attempting to intercept or stop an alleged offender in a moving vehicle. The dangers surrounding police pursuits, emergency vehicle driving and vehicle intercepts are well known."

32. However, the facts in this case are that if the officers had simply followed up the name and address as appearing on the vehicle registration they would

have found the previous owner. It maybe that one day systems and technology will obviate the need to stop vehicles for such non-compliance but on these facts police would have been frustrated in carrying out their core function of ‘managing road safety education and enforcement measures’ if they did not stop unregistered vehicles.⁵

33. That is not to say that this tragedy should not be seriously considered by Police as to how they might lessen the risks. But it should also be remembered that the police turning their vehicle and attempting to close the gap to the deceased’s vehicle was not the proximate cause of these deaths.

Comment

34. The three deceased were killed on Christmas Day 2019. They crashed after rounding a bend on Spearwood Road in Alice Springs travelling well in excess of 100 kilometres per hour. A vehicle travelling in the opposite direction and seeking to make a right hand turn, turned into them hitting their vehicle from the right front hand corner and pushing their vehicle sideways and into trees that were positioned along the side of the roadway.
35. The reason for them travelling so fast on a suburban road was that they feared police were attempting to stop them due to being intoxicated. Police initially attempted to close the gap with a view to requiring the vehicle to pull over. But when it was realised the driver had no intention of stopping the police pulled over, stopped by the side of the road and radioed Police Communications that the vehicle had driven off.
36. Less than 30 seconds later two siblings and a partner travelling in the vehicle were dead. It was an immense tragedy and left their families and community absolutely devastated. The more so because the chain of events commenced over a relatively insignificant regulatory breach, the vehicle being unregistered.

⁵ *Police Administration Act* section 5(2)(d)

37. The parents of the siblings attended and participated in the inquest along with other members of the family for which I thank them. They were discerning and objective in the way they analysed the evidence. It is my hope that the inquest answered some of their questions.
38. Unfortunately, this was the second inquest in 2021 relating to the deaths of first nations young people killed in vehicle crashes after fleeing from police.⁶ In both cases they appear to have fled to avoid detection of their significant consumption of alcohol. The alcohol no doubt affected the judgement of the drivers when making the decision to flee.
39. The results were devastating. However, in neither instance were the police doing anything other than what was expected of them by both the police hierarchy and more generally the community.
40. I wish to note my appreciation for the excellent investigation overseen by Detective Senior Sergeant Michael Schumacher and I note the family, more than once, stated their great appreciation for the time and efforts of Detective Schumacher in his communication with the family.
41. Pursuant to section 34 of the *Coroners Act*, I find as follows concerning the three deceased:
42. First deceased
 - (1) The identity of the first deceased was Sonia Wongaway, born on 2 July 1987 in Alice Springs in the Northern Territory.
 - (2) The time of death was 6.45pm on 25 December 2019. The place of death was Spearwood Road near the intersection of Kilgariff Road, Sadadeen, Alice Springs.
 - (3) The cause of death was blunt force injuries to the head and chest.

⁶ The first was the inquest into the death of *Patrick Wayne Bloomfield [2021] NTLC 010*

- (4) Forensic Pathologist, John Rutherford confirmed the cause of death.

43. Second deceased

- (1) The identity of the second deceased was Dan Wongaway, born on 10 May 1992 in Alice Springs in the Northern Territory.
- (2) The time of death was 6.45pm on 25 December 2019. The place of death was Spearwood Road near the intersection of Kilgariff Road, Sadadeen, Alice Springs.
- (3) The cause of death was blunt force injuries to the head, chest and abdomen.
- (4) Forensic Pathologist, John Rutherford confirmed the cause of death.

44. Third deceased

- (1) The identity of the third deceased was Dixon Mumu (also known as Dixon Mick), born on 19 August 1984 in Alice Springs in the Northern Territory.
- (2) The time of death was 6.45pm on 25 December 2019. The place of death was Spearwood Road near the intersection of Kilgariff Road, Sadadeen, Alice Springs.
- (3) The cause of death was multiple blunt force injuries.
- (4) Forensic Pathologist, John Rutherford confirmed the cause of death.

Dated this 7 day of March 2022.

GREG CAVANAGH
TERRITORY CORONER