

CITATION: *Inquest into the death of Dwayne Joseph Berto* [2011] NTMC
008

TITLE OF COURT: Coroners Court

JURISDICTION: Darwin

FILE NO(s): D0142/2010

DELIVERED ON: 15 March 2011

DELIVERED AT: Darwin

HEARING DATE(s): 27, 28, 31 January 2011

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: Suicide by hanging, circumstances in
relation thereto including alcohol and
violence

REPRESENTATION:

Counsel Assisting: Ms Elisabeth Armitage

Family of the Deceased: Mr Robert Welfare

Judgment category classification: B

Judgement ID number: [2011] NTMC 008

Number of paragraphs: 60

Number of pages: 18

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

No. D0142/2010

In the matter of an Inquest into the death of
Dwayne Joseph Berto

ON 27, 28, 31 January 2011
AT Darwin

FINDINGS 15 March 2011

Mr Greg Cavanagh SM:

Introduction

1. Mr Dwayne Joseph Berto (the Deceased) was 23 years old. He died in his bedroom in his family home during the morning of 25 August 2010 sometime between about 6 am, when last seen by his mother, and 11 am, when found deceased by his mother. I find, after due consideration of all the evidence heard and tendered at the Inquest, that the cause of death was self-inflicted hanging.
2. Mr Damien Berto and Ms Theresa Young, the Deceased's parents, are naturally devastated by their son's death. They have found it almost impossible to accept that their son killed himself. Prior to this inquest they were convinced that the Deceased was murdered and that police investigating his death were part of a conspiracy to cover up his murder. The Deceased's parents raised their concerns with the Coroner's Office in writing on 2 November 2010, and complained to the Police Service, Ethical and Professional Standards Command, on 12 November 2010. In my view, there has been no conspiracy as alleged.

3. The death was reportable because it was unexpected and not of natural causes. Although the Deceased had been driven home by police from Discovery Nightclub at about 4 am on the morning of his death, I find that he was not a person held in the care or custody of police **immediately** before his death. Police discharged their care of the Deceased when they left him at home with his mother; at least two hours (and possibly as many as seven) then passed before the Deceased took his life. In those circumstances, I did not consider that an inquest was mandatory, however, determined in the exercise of my discretion to hold an inquest due to the serious allegations raised by the Deceased's parents.
4. I granted leave for Mr Berto and Ms Young to be represented at this inquest by Mr Robert Welfare. Ms Elisabeth Armitage appeared as Counsel Assisting. The death was investigated by Detective Senior Constable David Hamlyn. Having considered the initial brief of evidence, I required further investigations to be carried out particularly concerning what occurred at Discovery Nightclub in the early hours of the morning before the Deceased committed suicide. Statements were also requested from persons nominated as potentially relevant to the investigation by Mr Berto. Those further inquiries were carried out diligently and in a timely fashion. In addition to receiving into evidence the brief of evidence, I heard evidence from S/C David Hamlyn, Samuel Kuhn, Shane Gregory, James Thompson, Michael Siebert, Gavon Petterson, Roseanna Bruncker, Cst Nathan Tomaszewski, Cst Clint Bailey, Kim Western, S/C Neil James, Dr Terence Sinton, S/C Raymond Wilson, S/C Gary Hunt, D/S/C Crispin Gargan, Andrew Allison, Matthew Allison, and Simone Bell.
5. Mr Robert Welfare cross examined witnesses and adduced further evidence on Mr Berto's and Ms Young's behalf. Mr Welfare called or tendered evidence from Dane Duncan, Darrell Young, Theresa Young, Damien Berto, Simona Berto, Reece O'Donoghue and Brian Holm; and tendered into evidence a copy of CCTV footage, a telephone (the "drug phone"), and

telephone recordings. I have carefully considered all the evidence that was presented at this inquest.

6. It is understandable that a grieving and shocked family, who have lost a beloved son in the way this family did, might look for alternative explanations for his death. I have considered whether there is any evidence objectively capable of supporting the family's theory of murder. I find none. I find that their concerns that their son was murdered are speculative and, indeed in my view, incorrect.
7. The family were represented by legal counsel at the Inquest; he cross examined witnesses and made final submissions. Subsequent to the Inquest, Mr Damien Berto has delivered a list of queries to my Office; many of the queries and concerns might have been made at the Inquest by their counsel, Mr Welfare, but were not. It is apparent that Mr Berto continues to harbour the concerns of murder and conspiracy in relation to the death of his son. He has also delivered photographs including, for example, photographs of Simone Bell's motor vehicle and that of a police officer apparently living opposite to her; they allegedly have regular conversations. In my view such material is no evidence of the conspiracies alleged by family members.
8. I have also considered whether there is anything in the evidence presented to indicate that police have either failed in their duty to investigate this death, have interfered with the crime scene, or have tampered with relevant evidence. I find no evidence of any complicity or wrong doing by any police member.
9. 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;

10. 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.”

11. 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

12. Pursuant to section 34 of the *Coroners Act* (“the Act”), I find, as a result of evidence adduced at the public inquest, as follows:

- (i) The identity of the Deceased person was Dwayne Joseph Berto born 2 November 1986. The Deceased resided at 36 Raffles Road, Gray, in the Northern Territory of Australia.
- (ii) The time and place of death was between 6 am and 11 am at 36 Raffles Road, Gray on 25 August 2010.

(iii) The cause of death was suicide by hanging.

(iv) Particulars required to register the death:

1. The Deceased was Dwayne Joseph Berto.
2. The Deceased was of Aboriginal descent.
3. The Deceased was employed as a loader operator.
4. The cause of death was reported to the Coroner.
5. The cause of death was confirmed by post mortem examination carried out by Dr Sinton.
6. The Deceased's mother is Ms Theresa Young and father is Mr Damien Berto.

Relevant circumstances surrounding the death

Background

13. The Deceased was born in Darwin and lived in the Northern Territory with his parents, and siblings, Simona, Brianna and Francis. He completed secondary school at Palmerston High School. He was a keen sportsman and played football for St Mary's Football Club. He was well liked by his friends and supported by his family. He was happy with his employment driving earth moving equipment.
14. On 27 January 2008 the Deceased was disqualified from driving for a period of 3 years, having received his second conviction for a drink-driving offence.
15. In late 2009 the Deceased commenced a boyfriend / girlfriend relationship with Ms Simone Bell. The relationship was on and off again. In July 2010, the Deceased and Ms Bell were not boyfriend and girlfriend but remained on friendly terms.

16. In early August 2010, the Deceased's parents separated following a domestic disturbance. A Domestic Violence Order was obtained restraining Mr Damien Berto from contacting his immediate family or visiting the family home, however, this was varied by consent to allow contact between Mr Berto and the Deceased. Mr Berto and the Deceased were in the process of buying the Deceased's "dream car", a 2003 Holden Monaro GTO. Mr Berto had agreed to take out a loan to purchase the car for the Deceased and the Deceased had agreed to make the loan repayments. Mr Berto insisted that the Deceased not drive the car until he regained his licence but the Deceased was unhappy about this restriction. The Deceased had a number of arguments with his father about the car.
17. About two weeks before his death, the Deceased was drinking with a friend, Mr Matthew Allison. The Deceased told Mr Allison "I got my dream car, got a good job but still feel like shit". Mr Allison told police that for about five days before his death, the Deceased was on a drinking binge and by the Monday (23 August 2010), "he was like just committed to it...didn't want to live anymore".
18. On the morning of Sunday 22 August 2010, the Deceased told his mother about the problems the car was causing between him and his father. He told her he was "going to drive into the first Mack truck he sees", and tried to give his younger brother a favourite ring. On that occasion, Ms Young managed to stop the Deceased from leaving home in his car.
19. On the afternoon of Sunday 22 August 2010, the Deceased visited Ms Bell. He appeared fine to her, they had a few drinks and he was showing off his new car. The Deceased left but returned later in the afternoon. Ms Bell said that his mood had noticeably changed and she said he was "disturbed and angry". Ms Bell recalls the Deceased repeating "everything's fucked, everything's fucked, I want to go and do something stupid, I can't take this".

20. At 4 am on Monday 23 August 2010, police were notified of a single vehicle crash on the Stuart Highway in Acacia. On attending, police located the Deceased, intoxicated and sitting next to his crashed and extensively damaged Monaro. He was arrested and charged with a number of offences.
21. Ms Young saw her son later that morning and was concerned that the Deceased thought that “life wasn’t worth living anymore”. Ms Bell visited the Deceased and was also concerned about his mental state. The Deceased told Ms Bell that he was depressed and that he was going to commit suicide. Ms Bell stayed with the Deceased overnight.

The last hours

22. During the evening of 24 August 2010 the Deceased decided to go drinking with a friend, Mr Gavon Petterson. Mr Petterson collected the Deceased at about 8.30 pm and they drank Jack Daniels for a couple of hours at Mr Petterson’s home. They then went to Discovery Nightclub in Mitchell Street, Darwin, arriving there at 1.14 am on 25 August 2010. They met a friend, Mr Dane Duncan, and continued to drink for about an hour without incident inside the club. I heard evidence that the Deceased appeared quite happy.
23. Mr Sam Kuhn and Mr James Thompson, neither of whom were known to the deceased, arrived at the club at about 2 am. At approximately 2.30 am they became involved in an altercation with the Deceased in an upstairs bar. Mr Thompson told me that Mr Berto flicked a drink on him and he pushed Mr Berto away. Nobody else gave evidence of seeing the start of the altercation and I cannot make a finding as to how the incident started.
24. Mr Thompson reported the incident to Mr Kuhn, who decided to leave and started down the stairs. An employed security guard, Mr Shane Gregory, told me he approached the Deceased to encourage him to leave the premises.
25. The Deceased came down the stairs towards Mr Kuhn. Mr Kuhn thought the Deceased was lunging at him but Mr Petterson gave evidence that the

Deceased was pushed down the stairs by a “short, solid, coloured (possibly Asian) bloke”. Mr Duncan told me the Deceased was punched by a security guard. Mr Duncan was familiar with Mr Michael Siebert and told me that he did not know the name of the security guard who punched the Deceased. I can therefore only infer that the security guard who Mr Duncan saw was not Mr Siebert.

26. The incident was captured on CCTV footage which was tendered in the inquest. The upstairs area is difficult to see in the footage, but the CCTV footage shows the Deceased coming down stairs in what appears to be an uncontrolled way and falling to the ground at the bottom of the stairs. It is not possible to say with any certainty either from viewing the footage or from the conflicting evidence received in this inquest, whether the Deceased was punched, pushed or simply stumbled and fell due to his level of intoxication.
27. The footage then shows the Deceased in the ground floor bar area. He can be seen removing his shirt. Mr Kuhn approached the Deceased. The Deceased pushed Mr Kuhn in the chest with both hands and Mr Kuhn threw at least one punch at the Deceased’s face. The punch connected and it is likely that it was this punch that caused the Deceased to lose a front tooth and suffer a significant laceration to his lip.
28. Mr Thompson and Mr Gregory approached the Deceased and immediately started to remove him from the club. As the Deceased was being removed Mr Thompson punched him in the stomach and it appears from the footage that he was kned to the body or head. Mr Gregory vigorously threw the Deceased out onto the street. Whatever motivated the altercation, the violence inflicted on the Deceased was public and humiliating, and may have been a factor that contributed to the Deceased’s distress and decision to commit suicide.

29. Mr Petterson followed the group outside but did not physically involve himself in the incident.
30. The Deceased's movements on the street were thereafter captured by street CCTV footage which was tendered in these proceedings. The Deceased can be seen in the street, waving his arms around and apparently shouting. Mr Petterson can be seen doing his best to calm the Deceased down. Ms Roseanne Bruncker, a cousin of the Deceased who also happened to be at the club, did her best to provide support and calm him down too.
31. Mr Michael Siebert was working as a security officer at the nightclub. Mr Siebert saw Mr Petterson at the front of the club and asked him to take the Deceased home. After some time had passed, and when the Deceased refused to leave, Mr Siebert waived down a passing police car containing Constables Nathan Tomaszewski and Clint Bailey.
32. The police received a brief history from Mr Petterson about what had happened and could see for themselves that the Deceased had lost a tooth and was bleeding from the mouth. The Deceased told the police that he had been in a fight but that he didn't want to press any charges. The police offered to get the Deceased an ambulance or take him to hospital but the Deceased refused medical assistance. The police gave him a card with contact details and an incident number in case he later decided he wished to pursue the matter. The police, Mr Petterson and Ms Bruncker convinced the Deceased to accept a lift home. Ms Bruncker travelled with the Deceased in the back of the paddy wagon.
33. When they arrived at his home at about 4 am, the police were met by Ms Young. They told her that her son had been in a fight. She thanked the police for bringing him home and he went inside for a shower. In her statement, Ms Young said that she had been happy with the way police had treated her son, and also willing to take her son into her care.

34. Having heard evidence from both Constables and Ms Brunker, and taking into account what can be seen on the street CCTV footage, I find that both Constables complied with the duty of care they owed the Deceased. They were patient, sympathetic and caring. That they took both the Deceased and Ms Brunker home is to their credit and demonstrated sound judgment.
35. Constable Bailey was of the clear understanding that during the drive from the nightclub to the Deceased's home, the Deceased was in the protective custody of the police pursuant to s128 *Police Administration Act* due to his intoxication. Constable Bailey was of the view that the Deceased was not simply dropped off, but was released into the care of his mother pursuant to s131 of the *Police Administration Act*. I find that Ms Young was a person capable of taking adequate care of her son and that police complied with the requirements of the *Police Administration Act*.
36. Ms Young, the Deceased's sister, Simona, and Simona's boyfriend, Reece O'Donoghue, all asked the Deceased what had happened. He told them that "he did pick a fight with two fellas", he thought he had been punched by a bouncer, and "all he can remember was arguing with these two blokes, going flying down the stairs and then getting up". The Deceased asked Ms Young to drive him to Mr Petterson's house to collect his remaining Jack Daniels as he wanted to keep drinking. Ms Young and Mr O'Donoghue drove the Deceased to Nightcliff to collect the alcohol and stopped while the Deceased purchased two bottles of Coke and a packet of Winfield Blue cigarettes.
37. After they returned home Ms Young watched a movie. The Deceased poured himself a drink, and listened to music on Simona's phone outside. The Deceased then went to his room and listened to music. At about 6 am Ms Young went to the Deceased's bedroom for a cigarette. The Deceased gave her a scrunched up packet that held about 6 cigarettes and Ms Young fell asleep on the lounge. Ms Young woke up at about 11 am. She noticed that the Deceased's air conditioner was not on, which she thought odd. She went

to her son's bedroom and discovered that it was locked. She banged on the door and when it was not opened she forced her way in. Tragically, Ms Young found her son hanged by the neck with a garden hose tied to the ceiling fan.

38. Ms Young was greatly distressed and rang 000. Her distraught call was tendered in this inquest. It was made shortly after 11 am. She reported "my son's hung himself".
39. In response to the 000 call, police and ambulance officers immediately attended and entered the bedroom together. The Deceased was seen to be hanging by the neck from the ceiling fan with a garden hose. The ambulance officers held the Deceased while Constable Neil James cut the hose. The ambulance officers found no signs of life and concluded that the Deceased had been dead for a period of time. Ambulance Officer Kim Western recalled that the knot around the Deceased's neck was tight, and as the Deceased could touch the ground she thought he must have "laid down against it".
40. Police established a crime scene and detectives and a crime scene examiner attended. Photos were taken of the Deceased's bedroom, of a glass sliding door about three metres from the bedroom that led outside, and of an outside yard area. The photos of the yard area depicted a cut, green, garden hose. The hose was about three metres from the glass sliding door.
41. The police seized and exhibited: a black handled knife from the bed of the Deceased, a length of green garden hose from the neck of the Deceased, and short and longer pieces of green garden hose from the yard. The black handled knife was one from a set kept in the kitchen. During the inquest it was demonstrated that the black handled knife easily cut the garden hose used by the Deceased as a ligature. I also heard evidence from the crime scene examiner, Senior Constable Gary Hunt, that an end of the portion of

hose used by the Deceased, matched an end of the cut hose found in the garden.

42. The Deceased had access to the garden hose and a means to cut it.
43. All seized items were subjected to fingerprint and DNA analysis with nil result.
44. Other items were observed but not seized by police including: a partially full bottle of Jack Daniels, an open packet of cigarettes, and torn-up drink-driving charge sheets.
45. Ms Young told police that the Deceased had been heavily intoxicated for the last few days because of his depression, that the Deceased's room was locked and she had to force her way in, that as far as she was aware no-one else had been in the house between when she fell asleep and when she found the Deceased, and that no-one normally could enter the house without notice because the dogs would "go ballistic". Ms Young also said "I feel in my heart that I know he's done that to himself".

The autopsy

46. An autopsy was conducted at 2.30 pm on 25 August 2010. Dr Sinton observed a one cm laceration to the left upper lip and a missing left upper medial incisor. Those injuries were consistent with the punch to the face by Mr Kuhn at the club and with what I could see of the Deceased's face on the CCTV footage. Dr Sinton also observed some abrasions and bruising on both legs. These might be attributable to the Deceased's fall down the stairs at the club, or they might be football injuries. None of these injuries were of themselves significant and none contributed to the death. No other injuries were observed, in particular, there were no defensive type injuries.
47. Toxicological results revealed that the Deceased had a blood alcohol level of 0.268% and that cannabinoids were present in his blood.

48. Dr Sinton observed a garden hose ligature around the Deceased's neck. Dr Sinton concluded that the Deceased died from hanging while concurrently suffering from acute alcohol toxicity. I accept and agree with his conclusions.

The Deceased's family's concerns

49. Shortly after his death, the Deceased's parents developed concerns that he might have been murdered and that police investigating the matter were involved in a cover-up. They complained to the Ethical and Professional Standards Command on 12 November 2010 and a 56 page transcript of their concerns was provided to me as part of the brief of evidence. In response to their concerns I exercised my discretion and ordered this inquest. Mr and Mrs Berto had a four hour conference with Counsel Assisting on 16 December 2010. In response to matters raised by them, my Office requested that further investigations be conducted by police. Statements were obtained from persons nominated by Mr Berto as possessing potentially relevant information to this inquest including: Gavon Petterson, Samuel Kuhn, James Thompson, Shane Gregory, Michael Siebert, Simone Bell, Andrew Allison and Matthew Allison. These additional witnesses were summoned by my Office to give evidence at the inquest. Forensic examinations were requested and conducted on the exhibits with nil result. I gave Mr and Mrs Berto leave to be independently represented in this inquest and, as noted above, their Counsel has cross examined witnesses and adduced further evidence on their behalf.
50. The Deceased's family were convinced Mr Siebert was involved in an assault on their son inside the Nightclub and have claimed that Mr Siebert can be seen on the CCTV footage at the bottom of the stairs when the Deceased was assaulted. However, during evidence no-one pointed him out to me on the CCTV footage nor was it suggested to Mr Siebert in cross examination that he could be seen on the footage. Mr Duncan did not give

evidence that Mr Siebert was inside at the time of the assault. Mr Siebert gave evidence that he first became aware of the Deceased after he had been ejected. There is no evidence before me to suggest Mr Siebert was involved in any assault on the Deceased at the nightclub and certainly nothing to suggest that he was involved, either directly or indirectly, with the Deceased or his death after he left the club.

51. The Deceased's family were concerned that the CCTV footage had been altered or tampered with. Emails from Mr Brian Holm were tendered on behalf of the family which raised the possibility of errors with the times shown on the footage and queried how and when it was downloaded. Neither the investigating police nor Mr Siebert (who gave evidence that he provided the footage to police) were cross examined about these issues. I heard evidence from several witnesses about what happened in the night club, including evidence called on behalf of the Deceased's family, Mr Dane Duncan. The eye witness evidence was substantially consistent with what can be seen on the CCTV footage. The injuries noted by Dr Sinton are consistent with what is seen on the footage. Even if the family are correct, and there were further assaults on the Deceased inside Discovery, those assaults did not cause any additional injuries to him and could have no relevance to his cause of death.
52. Ms Young was concerned that when she asked the Deceased for cigarettes in the early hours of the morning, the Deceased did not fully open his door. On reflection after his death, she thought he might have been concealing someone in his room. Counsel Assisting suggested that an equally available inference was that the Deceased was concealing items later used by him to self-harm. Both suggestions are purely hypothetical and do not influence my findings.
53. Ms Young was concerned that the telephone number recorded in the police records was not the number of the phone she used to call 000. Police

inquiries revealed that the phone number in the records was one registered to the Deceased. I can only conclude that in her distress, Ms Young was mistaken about the phone she used.

54. Mr Berto was concerned that certain items, depicted in the photos of the Deceased's room or described by police as being in the room, were later found to be missing from the room. In particular he nominated, inter alia, a wallet, a metal cup, and torn-up charge sheets. Also missing was the scrunched up packet of cigarettes given by the Deceased to Ms Young. Although I heard evidence that the Deceased's room has been substantially left as it was when the Deceased was found, I also heard evidence that family members entered the room to grieve on 25 August 2010, and Mr Berto allowed friends of the Deceased to enter the room on 26 August 2010. Mr Berto himself searched the room from time to time, and examined and moved some items. I note that no police were cross examined to the effect that they had tampered with any items. I draw no conclusions and infer no significance from the fact that over time certain items seen in the photos or referred to in evidence can no longer be accounted for.
55. Mr Berto was concerned that more could have been done to examine the scene for evidence that another person was in the room that night. Mr Welfare suggested that fingerprint or DNA testing could still be conducted. However, in my experience it is well understood that DNA and fingerprints cannot be dated and the mere presence of either, without any evidence as to when or how it came to be there, would be of no evidentiary value to this inquest.
56. Mr Welfare tendered into evidence a phone (the "drug phone") which he found in the Deceased's room. Mr Berto gave evidence that the phone was not the Deceased's and contained many drug references. It had not been used for some weeks before the Deceased died and apparently the Deceased knew that it was in his room. Mr Welfare made an application that I obtain further

analysis of this phone. There is nothing other than pure speculation to link anyone connected with the phone to the Deceased's death or to suggest that possession of the phone could be a reason for his death. I consider the phone to be irrelevant and decline Mr Welfare's application.

57. The family discovered that some of the CCTV footage from Discovery Nightclub involving the Deceased was being shown at private parties in Darwin. I heard evidence from Mr Kuhn that he obtained footage from Mr Siebert's computer without Mr Siebert's knowledge and showed it to others. He could not say how many people had seen the footage. I find Mr Kuhn's explanation as to how he came to have the footage less than convincing. That the footage became publicly available and was viewed at parties after the Deceased had passed away has caused the Berto family a great deal of unnecessary additional distress. It is a despicable act. That private persons gained access to this footage does the management of Discovery Nightclub no credit.
58. I have considered all the additional evidence presented in this inquest and the submissions made by Counsel representing Mr Berto and Ms Young. However, there is nothing in the evidence that objectively supports their concerns about the circumstances of their son's death.

Conclusion

59. I find that the Deceased took his own life by hanging whilst intoxicated.

60. No recommendations arise from this inquest.

Dated this 15th day of March 2011.

**GREG CAVANAGH
TERRITORY CORONER**