

CITATION: Inquest into the death of Sylvester Nawirridj

[2002] NTMC 038

TITLE OF COURT: CORONER'S COURT

JURISDICTION: DARWIN

FILE NO(s): 133/2000

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FINDING OF: GREG CAVANAGH SM

TERRITORY CORONER

CATCHWORDS:

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REPRESENTATION:

Counsel:

Assisting the Coroner: Mr Mark Johnson

Cecilia Thompson: Mr Warren Hunter

Solicitors:

Cecilia Thompson: Northern Australian Aboriginal

Legal Aid Service

Judgment category classification: B

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

No. 133/2000

In the matter of an Inquest into the death of

SYLVESTER NAWIRRIDJ

ON 26 August 2000

at Royal Darwin Hospital

FINDINGS

(Delivered 27 September 2002)

Mr Cavanagh SM:

1. Sylvester Nawirridj (“the deceased”) was pronounced dead at the Royal Darwin Hospital at 1.00pm on 26 August 2000. He was 24 years old at the time of his death. He was an Aboriginal male born on 19 April 1976 at Oenpelli in the Northern Territory.

2. Section 121(1) of the Coroners Act (“the Act”) defines a “reportable death” to mean a death that:

“appears to have been unexpected, unnatural or violent, or to have resulted directly or indirectly from an accident or injury”.

3. For reasons that appear in the body of these Findings, the death fell within the ambit of that definition and this Inquest is held as a matter of discretion pursuant to s15(2) of the Act. Section 34(1) of the Act details of the matters than an investigating Coroner is required to find during the course of an Inquest into a death. That section provides:

(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;

(v) any relevant circumstances concerning the death.

4. 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.

5. The duties and discretions set out in ss34(1) and (2) are enlarged by s35 of the Act, which provides as follows:

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 the Director of Public Prosecutions appointed under the Director of Public Prosecution Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.

6. The public Inquest in this matter was heard at the Darwin Magistrates Court on the 24 and 25 January 2002. Counsel assisting me was Mr Mark Johnson. Mr Warren Hunter sought leave to appear on behalf of Cecilia Thompson. I granted that leave pursuant to s40(3) of the Act. The court heard from five witnesses viz.

1. Detective Sergeant Garry Barnett – Officer In Charge of the Investigation

2. Cecilia Thompson

3. David Narul

4. Jennifer Holt-Narul

5. Sandy Murdu

In addition to this evidence, a full brief of evidence was tendered through Detective Sergeant Barnett.

FORMAL FINDINGS

7. Pursuant to s34 of the Coroner Act, and upon the evidence adduced at the Inquest, it is submitted that the Inquiry should find as follows:

i) The identity of the deceased is Sylvester Nawirridj, a male Aboriginal who was born on 19 April 1976 at Oenpelli in the Northern Territory.

ii) The deceased died at Royal Darwin Hospital on 26 August 2000.

iii) The cause of death was multiple organ failure as a result of a closed head injury. This injury was sustained as a result of a blow to the head by an object which was likely wielded by Cecilia Thompson.

iv) The particulars required to register the death are:

a) The deceased was a male;

b) The deceased was an Aboriginal;

c) A post mortem examination was carried out and the cause of death was multiple organ failure as a result of a closed head injury;

d) The pathologist viewed the body after death;

e) The pathologist was Dr Derek Pocock, a locum at the Royal Darwin Hospital;

f) The father of the deceased was John Nawirridj;

g) The mother of the deceased was Grace Nawirridj;

h) The deceased resided at Lot 553 Oenpelli at the time of his death; and

i) The deceased was not employed in any occupation at the time of his death.

RELEVANT CIRCUMSTANCES CONCERNING THE DEATH INCLUDING COMMENTS, REPORTS AND RECOMMENDATIONS

8. The deceased lived in his mother's house at Lot 553 Oenpelli. He lived there with his traditional law wife, Cecilia Thompson. Prior to 14 August 2000, there had been a history of domestic violence disputes between the deceased and his wife. These disputes had been witnessed and heard by many of the neighbours.

9. On Monday, 14 August 2000 at lunchtime, the deceased and his wife went to the licensed club in Oenpelli. It is not clear how much alcohol was consumed by each of them during this visit. They left when the club shut at 1:30pm; they returned home for the rest of the afternoon. It seems that no alcohol was consumed at home. At 5:30pm, they returned to the club and both proceeded to consume some beer. They left the club when it shut at 8:30pm. It seems that both of them were fairly well intoxicated when they left the club, although no specific evidence was presented concerning the deceased's intoxication level. When they arrived home, they commenced to argue. It is not clear what the argument was about. The noise of the argument was such that it was clearly heard by several neighbours from various residences.

10. One of the neighbouring properties was occupied by a local ACPO (Aboriginal Community Police Officer) David Narul, his wife, Jennifer Holt-Narul, and a friend, Sandy Murdu-Murdu. They had, in the

evening, also been to the club where they consumed some beer. They returned to their home shortly after the deceased and his wife arrived at their home. When they arrived, the domestic dispute involving the deceased and his wife had already commenced and was able to be heard by them.

11. While their dinner was cooking upstairs, the Narul's, together with Sandy Murdu-Murdu, were on a concrete verandah area under the house. This group noticed the deceased and his wife on the roadway, in the area in front of the Narul residence. The deceased and his wife were very vocal as they continued arguing. It seems that the deceased was aggressively suggesting that his wife was having a sexual relationship with someone else. The dispute went further, involving a physical confrontation. The descriptions of the extent of this vary with such descriptions including 'punches', 'pushes to the ground' and 'dragging by the hair' by the deceased upon his wife. But, they are consistent in describing that it was the deceased who was the aggressor.

12. David Narul then asked Sandy Murdu-Murdu to go and call the Police. Sandy Murdu-Murdu then left as requested and ran to the Police Station.

13. At this stage, David Narul called out to the deceased:

"Warrl, you know, stop it."

['Warrl is a term meaning like grandson.]

This is an approach that David Narul had previously used to successfully calm down the deceased. On this occasion, it did not work. The deceased then approached David Narul and, in so doing, opened the gate and entered the yard. As this was happening, Jennifer Holt-Narul ran off to a neighbour's place, as she was scared.

14. The deceased came up to David Narul and physically attacked him. He kicked him to the area of the mouth. The deceased also hit him with a hard object. In evidence, David Narul told me that the weapon was "something hard, pole or something harder like that" (P.24 Transcript). David Narul put up his arm to protect himself and was hit on the forearm. He did not actually see what the deceased was using. David Narul then sought to defend himself and a fight started between the two of them.

15. The fight between them moved off the concrete area under the house and onto the grass area in the yard. David Narul describes it as a "wrestle" between them. This wrestle further proceeded out of the Narul yard and onto the area on or about the roadway. By this time, David Narul had become angry. He punched the deceased several times and also kicked him to the face with his bare foot. David Narul, in evidence before me denied hitting the deceased with any weapon and denied hitting the deceased behind the head. I believe him.

16. David Narul then turned to walk away. He says that, at this stage, the deceased was sitting up with his legs flat out in front of him. A few seconds later, as David Narul was walking away, he turned and saw that the deceased was still sitting on the ground, with Cecilia Thompson standing approximately 1½ metres behind her husband. David Narul could hear her abusing him. She was swinging her arms about whilst standing behind the deceased; he could not say, one way or the other, if Cecilia Thompson was holding anything in her hands at this time. David Narul was about 25 yards away from the deceased and his wife. He continued walking away and then turned around to look at the deceased. By this time, he noticed that the deceased was lying down and he could also see the police vehicle approaching. The period that elapsed between the time that he saw the deceased sitting and the time that he looked back to see him lying down was estimated to be 10-15 seconds. Cecilia Thompson took off upon the arrival of the police. David Narul was unable to say how the deceased was struck to the rear of his head or to otherwise explain the head injuries.

17. As already mentioned, David Narul's evidence puts Cecilia Thompson quite near the deceased when he was sitting on the roadway. She should therefore have been in a good position to see the fight, especially the latter stages when it moved out onto the roadway. However, in her various interviews and statements,

she consistently stated that she did not see any fight between David Narul and the deceased. She has said that her recollection was extremely limited, apparently as a result of her intoxication. She also could offer no explanation as to how the deceased received his injuries.

18. This version is consistent with the evidence of David Narul who mentioned that Cecilia Thompson approached him the next day to inquire what had happened the previous night. She told David Narul that she had no recollection of what had occurred.

19. Cecilia Thompson was called to give evidence at the Inquest. Consequent upon legal advice, and pursuant to her rights under s38 of the Coroners Act (subsequently amended) she declined to answer any questions about the death on the basis that her answers may tend to incriminate her of the crime of homicide in relation to the deceased.

20. It is not clear who arrived at the scene next. But, it would seem that the police officers and Jennifer Holt-Narul arrived at about the same time. All the witnesses described that Jennifer Holt-Narul was extremely distressed, and in such a state that Sergeant Bentham took her into protective custody. She was heard to make abusive comments which were aimed at her husband (David Narul). In the course of her evidence, she stated that she could not recall this.

21. The two police officers who attended were Sergeant Bentham and Constable Hazell. They noted that the deceased was unconscious and lying on his stomach. This was the same position that David Narul had last seen him sitting. They noted a pool of blood around the area of the deceased's head. They then moved him onto his side while awaiting medical assistance.

22. Gillian Cooper, a registered nurse from the Gungalunya Health Clinic arrived soon afterwards and the deceased was transported to the clinic. The local medical officer, Dr Theresa Yee, attended at the clinic and treated the deceased. She noted that the deceased was still unconscious and that the obvious injuries included three large haematomas on the rear of the deceased's head. Two of these also had deep lacerations. She then arranged for him to be transported by air to Royal Darwin Hospital. This transport was done in the early hours of Tuesday 15 August 2000.

23. The deceased was admitted into the Intensive Care Unit. His condition gradually deteriorated with some of his vital organs breaking down. By 26 August 2000, medical staff at Royal Darwin Hospital agreed that he had a "hopeless neurological prognosis" and active treatment was discontinued. He died at 1:00pm on 26 August 2000.

24. Forensic Pathologist, Dr Derek Pocock, described the cause of death as "multiple organ failure" resulting from a "closed head injury". He went on to state (and I find this to be significant):

"The findings are those of two or possibly three blows to side of head with a straight sided and fairly narrow weapon (pipe, post, etc) which has caused fracturing of the skull both where the force has been applied and also on the opposite side where the head has struck a hard surface, eg. the ground."

25. The only objects found by police which would appear to fit the general description of an object which could have caused the injuries described by Dr Pocock were located in a yard adjoining that of the Narul's. These were tested for DNA by analyst, Carmen Eckhoff. She could find no match which would amount to evidence suggesting that either weapon was used to cause the injuries to the deceased's head. This, of course, does not prove that the objects were not used.

26. On 17 August 2000, some two and a half days after this incident, Cecilia Thompson received treatment for an injury to her left forearm. The injury was described by medical practitioner, Dr McIlroy, as a:

"spiral fracture at the mid point of the distal (lower) third of the left ulna".

27. This opinion was confirmed by Dr Palmer, Director of Emergency Medicine at Royal Darwin Hospital. He commented:

“This injury is consistent with a twisting injury or with blunt force being applied directly to the outer border of the forearm. Isolated ulna fractures are often described as defensive injuries when someone raises their forearm to shield themselves from a blow.”

28. Dr Pocock was asked to provide an opinion on this injury which was less wide than that by Dr Palmer. He commented:

“...by the examination of the spiral fracture of her left ulna bone, one could be confident that this was caused by a severe twisting motion to the area rather than a direct blow with a bar of any sort.”

29. Cecilia Thompson’s versions of what the deceased did to her are not consistent. In her original statement, taken when she was about to leave for Darwin, she described how the deceased punched her and hit her with an iron bar. But in the later interviews she consistently indicated that her arm was injured by the deceased when he twisted it. This contrasts with Constable Hazell’s recollection at the time that the police located the deceased on the roadway. He says that Cecilia Thompson approached him and told him that the deceased had broken her arm with a bar. It seems that this injury was most likely sustained by her in the course of the physical confrontation with the deceased on the evening of 14 August 2000 and that it was caused by the deceased twisting her arm.

30. David Narul gave evidence in a forthright manner and I found him to be a credible and reliable witness. He described a situation whereby his actions would amount to nothing more than the use of reasonable force in self-defence. His version of events is essentially corroborated by his wife and Sandy Murdu-Murdu, at least so far as they are able to do so.

31. It seems that no one actually saw the deceased being struck with any object capable of having caused the fatal head injuries. But, David Narul aside, the only other person who was in a position to have caused the injuries to the deceased was Cecilia Thompson. In the circumstances of the dispute between her and the deceased, it is clear that she had both the opportunity and the motive to have struck the deceased to the back of his head with a hard object.

32. I find on balance that Cecilia Thompson struck the deceased with an object, on at least two occasions, to the rear of his head causing the fatal injury.

33. Pursuant to s35(3) of the Coroners Act I shall be sending these findings to the Commissioner of Police and the Director of Public Prosecutions as I believe a crime may have been committed in connection with this death, viz. offences contained in s154 or s161 of the Criminal Code (NT).

Dated this 27th day of September 2002.

GREG CAVANAGH SM

TERRITORY CORONER

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