

CITATION: *Inquest into the death of Peter Wiryal* [2005] NTMC 019.

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

FILE NO(s): D0052/2003

DELIVERED ON: 6 April 2005

DELIVERED AT: Darwin

HEARING DATE(s): 15, 16 November 2004, 4 January 2005

FINDING OF: Mr G Cavanagh SM

CATCHWORDS: Death as a result of a Motor Vehicle Accident, police investigation, referral to Commissioner of Police and Department of Public Prosecutions

REPRESENTATION:

Counsel:

Assisting: Lyn McDade

Commissioner of Police: Michael Grant

Judgment category classification: B

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

No.D0052/2003

In the matter of an Inquest into the death of

**PETER WIRYAL
ON 26 APRIL 2003
AT ROYAL DARWIN HOSPITAL**

FINDINGS

(Delivered 6 April 2005)

Mr GREG CAVANAGH SM:

1. Peter Wiryal (“the deceased”) was struck by a motor vehicle whilst walking along George Crescent, Fannie Bay on 4 April 2003 at about 12:30am. On 26 April 2003 at about 2330 hours PETER WIRYAL (“the deceased”) died at Royal Darwin Hospital. His death was reported to the Coroner because it appeared to have resulted directly or indirectly from the accident and the injuries sustained by the deceased on 4 April 2003.
2. A public inquest into his death pursuant to section 15 of the *Coroner's Act* (the “act”) Darwin on 15 and 16 November 2004, and 4 January 2005. Counsel Assisting me was Ms Lyn McDade. The family of the deceased was not represented. The NT Police were represented by Mr Michael Grant of Counsel. I thank all Counsel for their assistance.

FORMAL FINDINGS

3. The deceased was PETER WIRYAL also known as Peter WIRAL, WEDYAL and WIRIYAL, a male Aboriginal Australian born on 1 September 1954 at Goulburn Island in the Northern Territory of Australia.

4. The deceased died at 2330 hours on 26 April 2003 at Royal Darwin Hospital.
5. The cause of death was Cerebrovascular Accident (stroke) caused by a subdural haemorrhage which in turn was caused by the deceased being struck by a motor vehicle.
6. The particulars required to register the death are:
 1. The deceased was male.
 2. The deceased was of Australian Aboriginal origin.
 3. The death was reported to the Coroner.
 4. The cause of death was confirmed by post mortem examination.
 5. The cause of death was Cerebrovascular Accident.
 6. The pathologist viewed the body after death.
 7. The pathologist was Dr Terry Sinton.
 8. The father of the deceased was Minigdji and the mother of the deceased was Gurawag 2.
 9. The deceased followed an itinerant lifestyle and his usual place of residence was "long grass" Darwin.
 10. The deceased was unemployed.

RELEVANT CIRCUMSTANCES SURROUNDING DEATH

7. On the night of the 4 April 2003 the deceased was walking with his wife Amy Gaden along George Crescent, Fannie Bay. He had spent the night drinking with his wife and others in the Fannie Bay area. He was leaving the foreshore area to return to the Kurringal Flats, Fannie Bay where he was staying at the time; the route took him along George Crescent.

8. Whilst walking along George Crescent the deceased and his wife decided to relieve themselves. It appears that the deceased took a position near the edge of the road and was urinating in the gutter at the time he was struck on his left side by a motor vehicle. The accident was witnessed by his wife, who at the time was relieving herself on the footpath. The noise of the vehicle impacting the deceased awoke the resident of a house at 4 George Crescent who came out to investigate. The resident, Gary John Want, indicated in his statement which was tendered at the Inquest that he was awoken by “the screeching of tyres, a loud thud and a sound of a car accelerating away”. He found the deceased lying on the edge of the road adjacent to the footpath. He observed that his head and shoulders were on the concrete edge of the footpath and his legs and feet were on the road. His wife, Amy Gaden, was sitting next to him. Amy Gaden immediately informed Mr Want that a white van had hit the deceased. Want called “000” by telephone and informed police and ambulance of the accident. In due course the Police attended.
9. The first to arrive were Constables Andrew McGrath and Scott Smith. They arrived at about 0045 hours. They saw the deceased lying in the gutter being comforted by Amy Gaden. Shortly after their arrival the Darwin Police Supervisor, Acting Sergeant Erika Sims and Senior Constable Ben Martin arrived. The ambulance then arrived. Police assisted the Ambulance Officers in putting the deceased into the ambulance for his conveyance to hospital. At this stage it is clear that neither the Ambulance Officers nor the Police in attendance believed that the deceased had been seriously injured. He was observed to have some lacerations to both knees which were bleeding and some other abrasions. At the time he was put into the ambulance the observations of the police present were that the deceased was fully conscious and speaking.

10. Constables Andrew McGrath and Ben Martin made a cursory inspection of the scene using their torches but were unable to find any skid or brake marks that would assist in the investigation of the accident. Constable Smith and McGrath conveyed Amy Gaden to the Karringal Flats, while Sims and Martin conducted patrols of the Fannie Bay area looking for a white van.
11. It is not in dispute that Amy Gaden and the deceased were intoxicated at the time of the accident. Amy Gaden in her statement tendered to the Coroner informed the inquest that she and Peter Wiryal had been consuming alcohol during the course of the night. On his admission to hospital the deceased's blood alcohol level was .209%.
12. The vehicle that struck the deceased did not stop. The incident in which Peter Wiryal was injured is correctly described as a hit and run accident. The accident was witnessed by the deceased's wife Amy Gaden, and possibly a passenger in the white van by the name of Gloria Numamurdirdi. The only relevant information Amy Gaden was able to give to the police at the time was that a white van had struck the deceased and failed to stop.
13. The deceased upon his arrival at Royal Darwin Hospital was assessed in the Accident and Emergency Department. At the time of his admission he had a Glasgow Coma score of 13, which quickly changed to 15 (this is a measure of alertness and consciousness). He was examined and abrasions were found to his knees and shoulders. A laceration to the back of his head about mid-distance between the two ears at the top of the back of the head was sutured. He was kept in the Accident and Emergency Department awaiting admission. Regular observations were made of him. The medical record clearly shows that the deceased was improving as time passed.
14. At 1300 hours on 4 April 2003 the deceased was well enough to drink tea and sit up in bed at the hospital. Shortly after 1445 hours the deceased got dressed, the intravenous drip (IV) that had been inserted was removed, his head was bandaged and he walked to the toilet, unassisted. At 1750 hours

doctors were unable to find the deceased in the hospital and he was discharged “on the screen”, meaning effectively, discharged "*in absentia*". The doctor concerned, Dr Tang, immediately faxed a discharge summary to Danila Dilba (an aboriginal health clinic) in anticipation of the deceased's attendance at that facility. It read as follows:

"Peter was hit by a car around 12:30am today. The left side of the car apparently swiped the patient causing him to roll on to the ground. His wife witnessed the accident and claims he had a loss of consciousness for around 5 to 10 seconds. He apparently drank 1 to 2 litres of wine that night. In emergency in ED he remains high modynamically stable and his initial confused state resolved. Trauma x-rays were unremarkable. A formal ETOH was done. A scalp laceration and left knee laceration was sutured which should be removed in 7 days. ADT was also given. Emergency diagnosis open scalp wound."

15. It appears that the deceased left the hospital and with his wife, returned to Fannie Bay. The deceased and his wife were observed that evening by Police Officers who had attended at the Fannie Bay shops to move on itinerant drinkers. Sergeant Greene Noble Harris had spoken with Peter Wiryal earlier that day in hospital about the accident. The Sergeant was one of the officers attending at Fannie Bay, and he again asked the deceased whether he could recall anything. The deceased was unable to provide any relevant information to Greene Noble Harris about the accident. Amy Gaden reiterated that all she could remember about the accident was that Peter had been hit by a white van.
16. The movements of the deceased from 6:00pm on 4 April 2003 until his attendance at Danila Dilba on 8 April 2003 are largely unknown. His wife Amy Gaden was with him during this time, and in her statement tendered at the inquest she indicates that he was, during that time, unwell. She observed that from time to time he was unable to walk and was crawling around unable to eat or drink. She attempted on a number of occasions to have the deceased return to hospital but he resisted. These attempts

included calling Ambulances however, the deceased declined to accept conveyance to hospital.

17. Finally on 8 April 2003 the deceased was persuaded to take a taxi to Danila Dilba where he was seen by Dr Watts. Dr Watts was able to obtain a history from Amy of the deceased's progression since the accident. On presentation he was confused and difficult to wake; he was immediately referred to Royal Darwin Hospital. In the referral letter the Doctor queried whether or not the deceased may have been suffering from a subdural haematoma. At what point his condition deteriorated is unknown. Dr Watts in the referral note indicates that Ambulance Officers had purportedly seen him on the morning of 8 April walking, talking and coherent. By the time he presented to Danila Dilba his condition had deteriorated. He was admitted later that day to Royal Darwin Hospital and diagnosed with a subdural haematoma.
18. A right sided craniotomy was performed to evacuate a clot on 9 April 2003 by Dr Carson. On 10 April 2003 the deceased was discharged from the intensive care unit to a surgical ward. The surgery appeared to have gone well. By the time of his admission to the surgical ward the deceased had a Glasgow Coma score of 13.
19. During the course of the days leading up to his death, the deceased's condition varied. Generally speaking his conscious state as indicated by his Glasgow Coma score continued to improve. It is also clear from the hospital notes that the deceased was a particularly unhelpful patient. He would frequently remove the nasal gastric tube, and attempt to get up from his bed and interfere with the helmet that had been placed on his head to protect his skull post surgery. The medical notes show that the treatment administered to the deceased was appropriate and that his improvement, albeit variable, was progressive.
20. On 24 April 2003 the deceased's condition had improved to such an extent that he was observed to be awake, mobile and able to tolerate food. A

routine follow-up CT scan of the brain conducted on 23 April 2003 indicated that the residual subdural haematoma that had been evacuated on 9 April 2003 had largely resolved. During the course of the evening on 24 April 2003 the deceased's condition declined quickly. He was diagnosed with a massive right cerebral haematoma with intraventricular bleeding. He was immediately transferred to the Intensive Care Unit (ICU) and taken to surgery where attempts were made to drain the bleed. The deceased's prognosis at this time was dire given the extent of the bleed. Despite surgery he did not regain consciousness and passed away about 11:30pm on 26 April 2003.

POLICE INVESTIGATION

21. The deceased's death was reported to the Coroner pursuant to section 12 of the *Coroner's Act*. It was believed that the original trauma suffered by the deceased as a consequence of having been hit by a motor vehicle in the early hours of the morning of 4 April 2003 directly or indirectly caused his death.
22. The Police investigate reportable deaths on behalf of the Coroner. Initially the accident investigation was conducted by “general duties” police officers. They attended the scene and were responsible for conducting enquiries to ascertain the driver of the vehicle and the circumstances of the accident. It is clear from the statements contained in the Police brief tendered at the Coronial that not enough was done by police in this respect. General duties police did attend the accident and made a cursory investigation of the scene but found nothing of forensic value.
23. On the night of the accident there was a police Accident Investigation Unit on duty. That Unit was not called to the accident scene to make any inquiry or investigation of it. Further, there was also an on-call duty forensic police officer who could have been called to the scene to examine and obtain information that may have assisted in the police investigation of the accident. He was not called out. Instead the investigation was passed to a

Police Officer (Constable Stephen Payne) who, in his statement tendered at the Inquest says he did not have time to attend to the investigation of the accident due to other commitments and other ongoing investigations. Unfortunately the Police did not seriously commence to investigate the accident until the deceased died.

24. Acting on information provided by the owners of a white van that had been damaged on the night the deceased was struck, photographs of the van and forensic samples of blood found on the van were taken on the 5th of April. Those samples were analysed. No DNA matching the deceased was found, but DNA found matched an aboriginal woman named Gloria Numamurdiridi. The Police Officer Tim Sandry was involved in examining the van on the 5th of April. He gave evidence (transcript P 68 and P 67)

MS McDADE: Please take a seat and tell the court your full name, address and occupation?---Full name is Timothy Bruce Sandry. I'm a Senior Constable of Police, stationed at the Forensic Science Section at the Peter McAulay Police Centre.

How long have you been a police officer?---Almost 20 years.

How long have you been, if I could put it this way, dealing in the expert area of forensics?---I joined the Forensic Science Section in 1998.

As a consequence of that, what training have you done in relation to forensic matters?---Basically we've done modular base training which includes, first of all the going out and looking at people doing crime scenes, collection of blood, collection of evidence, photographing of evidence, the video of evidence, how to interpret a scene. Of which then you are signed off, after you've done a theory exam.and a practical exam.

Have you done those?---Yes.

When you talk about examining the scene, are you talking about a scene whereby things remain in situ?---That's correct, yes.

Is it preferable that you attend a scene quicker rather than later after the event?

---Yes.

Why is that?---It's because less chance of contamination the scene in regards to the removal of evidence or the contamination of that evidence, which may be crucial to either proving or disproving a suspect's story in regards to the offence.

What about motor vehicle accidents, do you often get called out to them?---We only get called out to . we used to get called out to fatals, every fatal. But (inaudible) now do their own photography in regards to that. Hit and run accidents we get called out to, both fatal and injury.

And otherwise?---Yep. So basically at the moment we're only getting called out to hit and runs.

How long has that policy been extant that you get called out to hit and runs whether they are fatal or not?---I'm actually not sure when the policy was in . brought in but I have been called to hit and runs since basically joining the forensic section itself

So since 1998?---Yes.

THE CORONER: We can see the reason for that, can't we, Mr Sandry. Hit and runs are . as opposed to other motor vehicles . are obviously going to be crimes of one sort, aren't they?---That's correct, your Worship, yes.

Where as some other motor accidents may not be crimes, just may be accidents?

---That's correct, your Worship.

MS McDADE: Now you appreciate this is an inquest into the death of Peter Wiryal?---Yes.

And he was struck by a motor vehicle on 4 April, the early hours of 4 April 2003?

---Yes.

You weren't called to that scene?---No.

In fact, your first involvement in the investigation occurred on the Saturday?---That's correct, yes.

The 5th?---Yes.

Now were you the duty forensic man?---I was, yes

On the Sunday, Sandry also attended the accident scene in George Crescent and said (transcript P 71 and P 72

And you subsequently went and attended the scene?---Yes, I did.

And you took photographs of George's Crescent??---I did, yes.

And did you locate any forensic evidence at the scene?---Yes, I - what appeared to be blood on the concrete verge was pointed out to me by Acting Sergeant Greene Noble-Harris and - - -

You've marked that with a tab in paragraph - sorry, photograph 13 and 14?---That's correct, yes.

A white marker?---Yep.

You took a swab of that?---I did, yes.

And subsequently you'd keep custody of those?---Those - those were taken back to the Forensic Science Section and due to the fact that the exhibit officer of the Forensic Science Section only works from Monday to Friday, they are stored into a -in our secure laboratory of the crime scene area and then come the next available time, they are then submitted to the exhibit officer.L

Now when you attended the crime scene, sorryr the incident scene, did you conduct your own independent investigation or were you only concerned with what Sergeant Noble-Harris pointed out to you?--Is this the George Street one?

George's Crescent?---I had a cursory look around but not to the extent that I would have if I'd got called out at that time.

Why not?---Because the scene had been opened to and contaminated by passing traffic and basically the fact that I'd look for skid marks, to see if there were any skidmarks. I couldn't see or observe any skid marks. I looked to see if there was any area of the concrete verge that had any tyre marks or any scrapings along and I couldn't see anything like that and that's - and then I concentrated on the (inaudible) photographs and then that was my examination of the scene.

Tell me - it's only an opinion - are you able to say as to whether or not you may have, had you been called out at the time of the accident, obtained any greater information than you did on the Saturday?---Depending on the - if- if- if there was a huge transference of paint samples around or glass fragmentation or anything, yes. To be called out exactly at that time would have given us the best results in regards to forensic evidence or trace evidence at that time.

THE CORONER: There may well have material from the vehicle which had hit the person?---That's correct, yes.

Flakes of this, that and the other?---Yes.

Samples of this, that and the other that might have come off the vehicle, in and around the accident scene?---That's correct

That may have been able to have been collected, but within several hours, might have blown away, washed away or been driven - well, cars driving over it or otherwise interfering with it, isn't that the case?---That's correct, your Worship, yes.

MS McDADE: And equally, you never had the opportunity to seize the deceased's clothing, did you?---No, I didn't.

And is it not the case in a hit/run, that the clothing of the person who's struck may indeed contain some of that fragment, the paint or otherwise, it may connect it, that person to the vehicle that strikes them?---That's correct, yes.

And you never got the opportunity to examine the clothing?---No.

In the event that you had been called out at the time, as part of your forensic training, would you have not have requested the clothing of the person who had been struck?---If I would've gone to that scene and if I'd have known the complete story, I would've probably asked for the clothing because I would've liked to have looked at the clothing just to - in case there was some sort of transference from the vehicle onto that clothing. So, yes.

And you know that you may have well found something to make a connection between - - -

25. I should mention at this point that Sargent Greene Noble Harris was summonsed to attend at the Inquest but failed to answer his summons.

Inquiries indicated that he was on leave in London at the time of the Inquest. I issued a warrant for his arrest as a consequence of his non-appearance. I ordered that warrant lie until 4 January 2005. His failure to attend at the Inquest is a serious matter. On 4 January 2005 he appeared before me and provided the following explanation: (transcript P 91 and P 92)

“Now can you tell us why it is you did not attend, in answer to that summons, on 15 November?---Yeah, I can only apologise for not attending. I was served a summons and a number of summons. Unfortunately - basically it was that basically forgot due to a number of factors but as I've said, I can only offer me apologies to the court and for any inconvenience it may have caused.

THE CORONER: Where were you on the day you should have been here?---I was actually in London, your Worship.

Go away on holidays, did you?---I was.

When did you leave to go away on holidays?---22 October.

And when were you served the summons

MS McDADE: 14 October.

THE CORONER: 14 October.

MS McDADE: Acting sergeant, can you tell us why it was you made no contact with the Coroner's Office in relation to the matter, bearing in mind I presume your travel plans had been made some time in advance?---I actually only paid and completed booking for the trip about a week before I left but to be honest, I just forgot about the whole thing and when I got a phone call in London, I was very surprised and yep, that it was on, but - - -

THE CORONER: Okay.

MS McDADE: You've indicated you received other summons, what did you do in relation to those matters?---Those summonses? Well, normally I put them in me phone a few days before and it will remind me if I've got a court case coming up but unfortunately for my part and unfortunately for the court, it doesn't appear that I did it with this matter.

Now you were involved in relation to the initial investigation concerning the accident that resulted in injuries to Peter Wiryal?---
Yes.

THE CORONER: Before you go any further.

So you ask me not to take any action or suggest any action be made in respect of your non-attendance?---I would ask that, your Worship.
Yeah.

THE CORONER: Yes, okay?---Thank you.

You know that in fact it's a criminal offence not to obey a summons under the Coroners Act?---I am aware of that.

Penalty \$5000 or imprisonment for six months?---Yes, your Worship.

Okay.

MR GRANT: Can I also indicate - - -

THE CORONER: We all - go on.

MR GRANT: - - - to your Worship that the member is now the subject of disciplinary procedures brought by the Commissioner and he's been issued with a notice to show cause in relation to this matter.

THE CORONER: Constable, I appreciate your frankness. You simply forgot, no doubt in your excitement about going overseas. It's a serious matter especially for a police officer to fail to obey a summons. It ought not be taken lightly. It's not a matter of lack of respect for me personally, it's not a matter against me personally. It's a matter in respect of the judicial process generally and there's an officer of the law, you and police of all people should be seen to be the first to obey such summonses. And having said that, I accept that you forgot and for my own part, especially given the fact that apparently your superior officers will deal with you in respect of that oversight, I won't be suggesting the matter go any further as far as I'm concerned.

MR GRANT: Thank you for that, your Worship. Can I also say whilst the member hasn't given evidence in relation to the matter today, I'm aware that he was involved in - at about this time, in a nasty relationship breakup which was also diverting his attention. Now he hasn't fallen back on that as a recourse or an excuse - - -

THE CORONER: No, no.

MR GRANT: - - - but I'm aware of that matter.

THE CORONER: I didn't ask what the several other matters were. But he did mention them in (inaudible).

MR GRANT: Yes.

THE CORONER: And I took that into account.

MR GRANT: Thank your Worship.

26. Sergeant Greene Noble Harris was involved in the investigation from its inception, in that he spoke with the deceased in the hospital and subsequently at Fannie Bay. He was also on duty on the night of *Sunday 6 April 2003* when a young man attended at Darwin Police Station to report an accident. In his statement tendered at the Inquest, Sergeant Greene Noble Harris recited the conversation that he had with the young man as follows:

"What's your name?"

He said: "Daniel Johnson"

I said: "Have you got any ID?" and Johnson showed me his driver's licence.

I said: "I understand you are here to report an accident."

He said: "Is that bloke dead?"

I said: "No, he is alright. Another bloke got killed that night. He is out of hospital and walking around."

He said: "I saw something in the paper that a bloke died."

I said: "No that was another bloke. What happened?"

He said: "I was a bit depressed so I went for a drive about Fannie Bay. I was driving back later along Georges Crescent and I fell asleep. I think I hit something but I didn't know what it was and then I read in the paper about that bloke."

I said: "Did you go back and check to see what you had hit?"

He said: "No, I just went home."

I said: "Where's that?"

He said: "32 East Point Road."

I said: "When did this happen?"

He said: "On Thursday night. I can't remember what time, maybe around midnight or 1 o'clock in the morning."

I said: "Thursday the 3rd?"

He said: "Yeah."

I said: "What were you driving?"

He said: "The work van. It's a white Suzuki."

I said: "Where do you work?"

He said: "Total Avionics."

I said: "Well a man was hit by a car in Georges Crescent around that time, do you know anything about that?"

He said: "No. I didn't know what I hit."

I said: "We received a complaint that the vehicle involved in this incident was vandalised. Do you know anything about that?"

He said: "No."

I said: "Daniel, we are going have to speak to you about this in a formal record of interview OK. However, we can't do this at the moment as all the units are flat out and I'm heading out myself. Is there some time you can come in?"

He said: "Whenever."

I said: "OK. I will record that you have attended here today and get the investigating officer to get in touch with you so he can talk to you formally. OK?"

He said: "OK thank you. I'm just glad that bloke is alright."

27. Notwithstanding that information Sergeant Greene Noble Harris did not conduct a record of interview with the young man. He informed Daniel Johnson that Police would be in touch with him. At the time Greene Noble-Harris knew that Peter Wiryal had been struck by a white van in George Crescent Fannie Bay in the early hours of 4 April 2003. He also knew that a report of damage to white van had been made to police by Daniel Johnson in the early hours of 4 April. That report alleged the van had been vandalised by unknown persons, (a false report to police by Johnson).
28. The failure of Sergeant Greene Noble Harris to interview Daniel Johnson jeopardised the early completion of the investigation of this matter, and may have resulted in Mr Johnson avoiding prosecution for criminal offences. The Sergeant said in evidence. (transcript P 94 and P 95)

You knew that there'd been a hit and run, correct?---Yes.

You knew that happened at George Crescent, Fannie Bay?---Yes.

You knew that that involved Peter Wiryal?---Mm mm.

In fact you'd spoken to Peter Wiryal at hospital on 4 April?---Yes.

And subsequently again in the evening of 4 April at Fannie Bay?---
Yes, that's correct.

And subsequently get involved in organising the - a white van to be photographed the next day at Fannie Bay--Yes, that's correct.

And for DNA samples to be taken?---Yes.

You were also aware that there's been a false report made in relation to how the van got damaged?---Yes, that's correct.

You knew all that when you spoke with a young man by the name of Daniel Johnson who came and saw you on 6 April, correct?---
Correct.

After the conversation, and it's quite detailed, isn't it?---Mm mm.

Why didn't you conduct a record of interview with Daniel Johnson?--
-Basically practicality. At the time it wasn't practical for me to do so. At that stage the police station was in Smith Street, it was the old police station. But having said that, all of the - all of my people that I was supervising were out attending other urgent jobs and I was actually on my way out to a job. I can't remember the exact nature of the job only that it was along the lines of a disturbance that needed quite prompt attention. Now, I got a call that Johnson had come in and I went down to the front counter to speak with him and basically know that okay, he was involved in a hit and run. He was just about in tears. I think that he thought that he'd actually killed the person involved.

THE CORONER: As it turned out, he may well have?---That's very correct, your Worship.

Yes?---At this time I said, 'The guy - the guy involved is okay. He received injuries, that he was out of hospital the next day'. I said, 'You do need to be interviewed, okay, but correctly. You need to be interviewed formally under caution', etcetera. Now in that I work by myself I'm not able to conduct interviews under caution or formal interviews, just because it's only me and secondly, my role as a supervisor, you can't - you can't go out and - basically you don't generally do interviews because then you will be out of touch by radio, you won't be able to supervise your troops. Now, when I say that, that's not in anyway saying, 'Well, it's not problem', because I did have quite a lot to do with this matter. So what I basically did, checked his photo

ID, made sure that it was definitely him at this point in time. He'd come of his own free will. I'd reassured him that - 'cause he seemed to think that he'd killed someone. I said, 'Look, you haven't'. And at that point in time it was certainly my opinion, and given his demeanour to me, that he was definitely going to re-attend. So I got his contact details so he could be contacted at a later time to conduct a proper record of interview.

MS McDADE: Now you were a supervisor?---That's correct.

I appreciate that - how you've indicated that you were on your own and can't conduct a record of interview?---Mm mm.

Why could you not have organised for others, that is other persons?--
-Mm mm.

Police officers to be called in to conduct a record of interview?--- Unfortunately it was just due to the nature of the jobs that were coming in that night. At this time, it was just after changeover of shift, this was when we were doing 12 hour shifts, so the amount of police officers working in the city station at that time was myself and four others. So only two units. Now I know that certainly in hindsight, if I had've known that this matter would have resulted or possibly resulted in the death of someone, of course, I would have had to, you now, calling out additional resources.

That was available to you, wasn't it?---Additional resources at the time? No. They were tied up on other jobs.

THE CORONER: Just as you've said, I think what Ms McDade's saying is you did have the authority to call out additional resources depending on the seriousness of the matter?---I would've had to have - I could have certainly tried. I would have had to have got approval from the watch commander though.

Yes?---And as it was at that station, there's no holding cells or anything like that, should I have wanted to hold him there. Not that I would've in that case 'cause at that time, he'd come in of his freewill and - - -

But are you saying that if you had've known that in fact there had been a death from this incident that would have been serious enough to call - - -?---Definitely.

- - - the watchhouse command?---Definitely, your Worship. Yeah, if - yeah, of course, if I'd have known that there would have been a man's life involved over it, well, of course, I would have called out other people.

And you are aware, aren't you, that despite your assessment that there'd be no problems getting a record of interview from him, given his co-operative nature when you spoke to him?---Mm mm.

In the end there was no record of interview got from him and he ended up some months later in Gove?---Mm mm.

29. When he attended at the Police Station Daniel Johnson wanted to report an accident. He may have informed the Police about what had actually happened when he was driving his vehicle on the night of 4 April 2003, he may not have. It is clear that Daniel Johnson told lies on the morning of the

accident to Police and that he probably did not tell Police the whole truth when he attended the Police Station on 6 April 2003. Nonetheless, an opportunity was lost to ensure that this investigation was conducted thoroughly and expeditiously.

30. Mr Joel Poole gave evidence at the Inquest and stated that on the night of 3 April he came and went from his residence at 32 East Point Road. Daniel Johnson was also living at 32 East Point Rd at the time and parked the white work van there. He did not see Daniel Johnson or the work vehicle during his coming and going. He was awoken at about 1:00am on the 4 April by Daniel Johnson banging loudly on his bedroom door, drunk, upset and indicating that the work van had been attacked and damaged by a person wielding a baseball bat whilst it was in the yard at 32 East Point Road. Mr Poole went downstairs looked at the van and saw that it was significantly damaged, particularly on the front left hand side. He informed Mr Johnson that as the van was in his control and his responsibility he should report it to the police. He rang the police and gave the phone to Daniel Johnson to make a report. There is a record of this report by Daniel Johnson to the police and during his conversation Daniel Johnson informs the operator that the van had been vandalised by a person wielding baseball bat as it was parked outside the premises at 32 East Point Road. It is clear that when he makes this report he is intoxicated. He was told to come and make a report to the police in the morning. Police had that report on 4 April 2004.
31. Mr Poole also gave evidence that he and Mr Johnson were meant to attend at work on Friday 4 April. He called a taxi, informing his employers of the damage to the van, caught that taxi and went to work. Mr Johnson begged off and indicated that he wasn't going to go to work. He did not attend work that day. During the course of the day the owners of the vehicle attended at East Point Road to inspect it and in their statements indicate that say they were dubious about the explanation given by Mr Johnson as to how the vehicle had been damaged. The owners of the vehicle attended at the police

station to inform Police of their concerns on Saturday 5 April. Mr Johnson also attended at the police station on Sunday 6 April and reported an accident that had occurred on 4 April in George Crescent to Sergeant Greene Noble Harris.

32. After the death of Peter Wiryal the investigation was handed over to the Accident Investigation Unit and in particular Senior Constable Palmer. By this time Mr Johnson was gone, he had left his employment and accommodation.
33. Philip Palmer commenced his investigation on 28 April 2003. He was able to assemble the reports that had been made relating to the accident by its owners and Mr Johnson. He made attempts to contact Daniel Johnson to participate in a record of interview but was unsuccessful. He submitted a coronial file and prosecution file noting that Johnson and another person Gloria Numamurdirdi would be spoken to when located. The presence of Gloria in the car became likely after the DNA samples taken by Senior Constable Sandry were analysed. Mr Johnson was not spoken to formally by police until March 2004 when he was spoken to by Nhulunbuy Police. He declined to answer any questions and make a record of interview. Gloria Numamurdirdi has still not been located.
34. The investigation became stalled it appears because Daniel Johnson left Darwin. He didn't return to work again after the incident on 4 April and as far as his flat mate, Mr Poole, was aware he had left and gone to Katherine. He informed police of that in his statement on 27 May.
35. As I have indicated the Police, that is general duties, did not do enough to investigate this accident thoroughly and expeditiously. The major reason for the delay in the investigation was the failure of Sergeant Greene Noble-Harris to conduct a record of interview on 6 April 2004 or soon thereafter. I appreciate he may have been busy – but given the knowledge he had of the

accident and the information Mr Johnson provided him, in my view he should have made an effort to obtain a record of interview forthwith.

THE EVIDENCE OF DANIEL JOHNSON

36. Daniel Johnson declined to speak to Police when he was finally spoken to in March 2004. He gave evidence at the Inquest. His evidence was different to what he had previously informed Police. He conceded that he was driving the work vehicle, a white van during the early hours of 4 April 2003, and that he had been drinking prior to driving the van. In his evidence he indicated that he was at the Parap Hotel and had drunk for a couple of hours before he left the hotel in the van. On his own admission he had had too many (drinks) to drive. He says he went to the beach at Fannie Bay near Lake Alexandra. There he smoked some cigarettes. He did not drink any more alcohol and did not smoke cannabis. An Aboriginal woman joined him in the vehicle. She wanted a lift. He left that location intending to return to the Parap Hotel. He reluctantly conceded that he drove along George Crescent with the female passenger on his way to the Parap Hotel. He said he believed he hit something as he was driving, and believed it was a signpost. He had never mentioned a signpost to the Police previously.
37. He says that after he had struck the signpost he returned home and took the female with him, (home being 32 East Point Road). He agreed that he had made the telephone call to Police in the presence of Joel Poole whereby he indicated that the vehicle had been vandalised whilst it was in the yard at Fannie Bay. In his evidence at the Coronial he conceded that was a lie. He also admitted that he had attended at the Police Station to report an accident. It was suggested to him that he attended the Police Station on Saturday 5 April and that he was already packed ready to leave when he reported the accident. He denied that that was the case, informing me that he went on the 6th and having reported the accident he returned to his residence and spoke

with Mr Poole telling him that he had sorted it with the Police. I accept his evidence on this point.

38. Mr Johnson left his residence, his work place and his apprenticeship and travelled to Katherine where he stayed for some time before travelling interstate, and eventually moved to Nhulunbuy (Gove). He admitted in his evidence that he was trying to avoid the Police and failed to return their calls.
39. The female passenger Gloria Numamurdirdi has not been located and was not called to give evidence at the Inquest. In my view she may well be able to give important evidence in relation to the death
40. The totality of Daniel Johnson's evidence is this. He admits to having control of a white van. The white van that was photographed at 32 East Point Road badly damaged by Police Forensics on Saturday 6 April 2003. He admits that it was the work van and that he had borrowed it. That is confirmed by his employers. He admits driving on George Crescent after having drunk alcohol, and he admits striking something. He stopped short of conceding that he knew that he had hit the deceased. He also admits to having a female Aboriginal passenger in the vehicle with him at the time.
41. I am of the opinion that Mr Johnson thought that he had hit a person early that morning. That was confirmed to him over the following days. Certainly by 6 April he knew he had hit a person. That person was still alive at the time. He claimed not to have become aware that the person struck had died until police informed him in March 2004, that may be so. However, I do not accept his evidence that he thought he hit “something” as he told Police on 6 April or that he hit a “sign post” as he told me in his evidence at the Inquest. I find that Daniel Johnson knew that he had hit a person on the morning of 4 April with the white van he was driving along George Crescent, and that person was Peter Wiryal.

DR SINTON'S EVIDENCE

42. The Forensic Pathologist gave evidence in relation to the cause of death. His report was tendered and exhibited as Exhibit No 5. Dr Sinton was unable to say beyond reasonable doubt that the cause of the deceased's death was as a result of his having being struck by a motor vehicle on 4 April 2003. He did however indicate that it was more than likely that his death was caused by the initial trauma sustained in the accident. His report dated 15 July 2003 states that the condition leading to directly to death was the Cerebrovascular Accident the deceased suffered on 24 April 2003 and the morbid conditions giving rise to that cause was the subdural haemorrhage sustained in the motor vehicle accident.

CONCLUSION

43. I am satisfied that Daniel Johnson was the driver of the motor vehicle that struck the deceased, Peter Wiryal, as he urinated on the side of George Crescent during the early hours of the morning of 4 April 2003. I am also satisfied that Daniel Johnson knew that he had struck the deceased and that he failed to stop.
44. I am also of the view that a crime may have been committed and therefore I refer the papers to the Commissioner of Police and to the Director of Public Prosecution for their consideration pursuant to sec. 35 (3) of the act. In this regard for the reasons I articulated at the Inquest, I urge the Police to continue in their efforts to locate the female passenger, Gloria Numamurdirdi. She may be able to assist the Police and Prosecuting authorities in their inquiries

Dated this 6th day of April 2005

GREG CAVANAGH
TERRITORY CORONER

