

CITATION: *Inquest into the death of Marie Kirwin* [2004] NTMC 093

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

FILE NO(s): D0163/2002

DELIVERED ON: 24 December 2004

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HEARING DATE(s): 4, 5, 6 May 2004

FINDING OF: Mr G Cavanagh SM

CATCHWORDS:

Unexpected death, Drowning, uncertain circumstances concerning death, open finding as to some circumstances concerning death.

REPRESENTATION:

Counsel:

Assisting: Ms Elizabeth Morris
For Husband: Mr John Lawrence

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

No. D0163/2002

In the matter of an Inquest into the death of

**MARIE KIRWIN
IN THE EARLY HOURS OF 15
SEPTEMBER 2002
AT DARWIN THE NORTHERN
TERRITORY**

FINDINGS

(Delivered 24 December 2004)

Mr GREG CAVANAGH:

1. Marie Kirwin (also known as Maria Kirwin and formerly Maria Chin) died sometime between 0130 and 0630 hours on 15 September 2002 at Darwin. The cause of her death was drowning associated with drug toxicity. At the time of her death the deceased was 39 years of age. Her death was unexpected.
2. Section 12(1) of the *Coroners Act* (“the Act”) defines a “reportable death” as a death that:

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

For reasons that appear in the body of these findings, the death fell within the ambit of the definition and the Inquest is held as a matter of discretion pursuant to section 15(2) of the Act.

3. Section 34 of the Act details the matters that a Coroner is required to find during the course of an Inquest into a death. That section provides:

“(1) A coroner investigating –

- 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.

b)

- (2) 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.
- (3) A coroner shall not, in an investigation, include in a finding or comment a statement that a person is or may be guilty of an offence.
- (4) A coroner shall ensure that the particulars referred to in subsection (1)(a)(iv) are provided to the Registrar, within the meaning of the *Births, Deaths and Marriages Registration Act*.

4. Furthermore Section 35 states:

- “(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 Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”

5. The Public Inquest in this matter was held at Darwin Magistrates Court on 4, 5 & 6 May 2004. Counsel assisting me was the Deputy Coroner, Ms Elizabeth Morris. Mr John Lawrence of counsel sought leave to appear on behalf of Christopher Kirwin husband of the deceased. I granted leave pursuant to section 40(3) of the Act.
6. Seven witnesses were called to give evidence during the Inquest. In addition to the evidence of these witnesses, several statements from other witnesses were admitted into evidence together with associated documentary exhibits.

CORONER'S FORMAL FINDINGS:

- (a) The identity of the deceased is Marie Kirwin also known as Maria Kirwin and formerly known as Maria Chin, who was born at Darwin Hospital in the Northern Territory of Australia on 21 November 1962.
- (b) The time and place of death was between 0130 and 0630 hours on 15 September 2002 at Darwin in the Northern Territory of Australia.
- (c) The cause of death was drowning.
- (d) The particulars required to register the death are:
 1. The deceased was a female.
 2. The deceased was an Australian citizen.
 3. A post mortem examination was carried out and the cause of death was as per (c) above.
 4. The pathologist viewing the body after death was Dr Terence John Sinton forensic pathologist of the Royal Darwin Hospital who carried out the post mortem examination.

5. The father of the deceased is Reginald Chin and the mother is Dianne Chin (nee Lister).
6. The deceased lived at 39 Tambling Tce, Wanguri at the time of her death.

RELEVANT CIRCUMSTANCES CONCERNING DEATH.

7. The deceased was discovered on the morning of 15 September 2002 floating in the swimming pool at her family home at 39 Tambling Tce, Wanguri. She was deceased. Her death was unexpected, and a coronial investigation was commenced.
8. On the night prior to her death the deceased was at home with her son, Michael Kirwin, and her daughter, Bobby Kirwin. Also present was her daughter's boyfriend, Savvas Christodoulou. The deceased's mother-in-law, Michelle Kirwin, was also home living in a flat situated under the house. The deceased's husband, Christopher Kirwin had gone out to have dinner with some business associates. He returned home at around 10 or 10:30pm that night.
9. During the evening, the deceased, had been on the telephone for two lengthy periods to a friend at 7:45pm for an hour and then again at 9:05pm for 81 minutes. At about 11:30pm, the boyfriend of her daughter, Savvas, left the house and Michael and Bobby, the two children, went to bed. The deceased and her husband fell asleep in the lounge watching television.
10. Christopher Kirwin woke at about 1:30 hours on Sunday morning and then woke the deceased, telling her he was going to bed. The deceased said she was going outside to have a cigarette. At some stage during the early hours of the morning, she went downstairs and placed her garments in the washing machine. The evidence suggests that it was normal for her to place her clothes in the washing machine during night time hours, wait until the wash cycle had ceased, put the garments in the dryer and then go back upstairs to bed.

11. At about 6:30 hours on Sunday morning, Christopher Kirwin awoke to find that his wife was not in bed. He went downstairs and asked his mother, Michelle Kirwin, if she had seen her. He then went out to the pool area and found the deceased in the pool. The deceased was under the water in a face down position. He pulled his wife out of the pool and laid her down on the side. He detected no pulse or breathing and alerted his mother. He carried out CPR for about five minutes but then called police and ambulance on 000. Police and St John's both attended. The deceased was dead and had been for awhile.
12. The deceased had a history of prescription and non-prescription drug abuse, as evidenced by medical records and her doctor. Specifically the sedatives Fhenergan, Mersyndol and Temazepam were known to be used by her.
13. That morning, Detectives Huysse and Whitlock attended the scene, liaised with some uniform members who were also there, and the Coroner's Constable, Anne Lade, who was also attending. A crime scene examiner attended, took photographs and took a sample of the pool water. The deceased was seen to be clothed in her nightdress , and still had her jewellery on. The yard and the house and the pool area were checked, and nothing odd or suspicious was detected. The upstairs living area of the house was checked and nothing suspicious was detected however, various packets of drugs were seized.
14. Present on the bench near the kitchen in the house was a small bowl containing what appeared to be Fhenergan tablets. The house presented as immaculately clean with nothing appearing out of place. On the kitchen drying rack were two medium sized drinking glasses.
15. A door knock was carried out of the area. No argument or disturbance had been seen or heard during the night. Nothing else suspicious or odd was seen or heard during that night. Investigators carried out preliminary

interviews with Christopher Kirwin and his mother, Michelle Kirwin. Notably, Christopher Kirwin gave an account of a substantial history of painkiller drug abuse. Nothing suspicious was detected by the investigating officers as regards the accounts, behaviour or demeanour of these witnesses.

16. In regard to the investigation and interviewing of witnesses, the officer in charge of the original coronial investigation was Detective Sergeant Huysse. The detective said in evidence (transcript p.7):

“And how long have you been a detective for, sergeant?---
About ten years.

And how long have you been in the Northern Territory
Police?---Nearly 27 years.

Sergeant, you were tasked because you were on call to
investigate the death of Marie Kirwin, is that correct?---That's
correct.

And you attended the house of Ms Kirwin on the morning of
her death?---15 September 2002, that's correct.”

And in regard to the husband, Mr Christopher Kirwin (Transcript p10 & 11):

You - just back to the index, you also interviewed
Christopher Kirwin, that's correct, as a result of this death?---
Two or three occasions, that's correct.

My records indicate that you interviewed him on four separate
occasions that were recorded on 19 September 2002 for about
an hour, on 13 December for about five

minutes, from 14 December for about 15 minutes, and on 4
April - 4 April, was that you or Detective Lade?---No, 4 April
was myself again.

Yes?---That's 2003.

For about nine minutes?---That's correct.

And you're aware also that Mr Kirwin has been re-interviewed
by Detective Lade in addition to those four recorded
interviews?---Yes, I am.

You - 19 September, 13 December, 14 December and 4 April.
You, on arrival at the house to investigate the death on 15
September, you spoke to Mr Kirwin?---I did.

And what was your impression of his demeanour at that
time?---The impression I got was that Mr Kirwin was open
and honest. I didn't pick up on anything that would suggest to
me that he was lying or being evasive. He maintained eye
contact with me. I've spoken to a lot of people over the years
and I'm pretty good at picking up when people are lying but I
didn't get the impression on this occasion.”

and

“And did he also volunteer various items?---He did. When I
went and saw him. It was on the 15th, I went and interviewed
him again on the 19th and he volunteered on that occasion,
Marie's diary.

I just - - -?---The deceased's diary.

I just show you this?---I believe that was sitting on the dining
room table.

And minus the pink and coloured tabs, is that the diary that
was given to you as indicated as belonging to Marie Kirwin?--
-Yes, it was.”

And in regard to the cause of death (transcript p.18):

“Sergeant Huysse, as an experienced detective and
investigator, did you form an opinion from all of the evidence
as you were aware of it as to what led to Maria Kirwin's
death, the circumstances surrounding her death?---Yeah.
Looking at all the facts that I was aware of I formed the
deduction that the deceased went downstairs to wash clothing
which apparently was almost routine because she couldn't
sleep at night, and she would go downstairs, put a load of
washing into the machine. She would wait downstairs until
the machine had cycled to then put the clothing into the dryer
and my deduction is she went to the pool area, sat on the edge
of the pool waiting for the machine cycle to complete, and
whilst there, it's my opinion that she lapsed into
unconsciousness and simply has toppled into the pool and
drowned.”

and p.19:

“Just picking you up from your ultimate conclusion having gathered all the evidence and applied your skills and experience as an investigator, would it be fair to say that part of what led to the unfortunate deceased lapsing into unconsciousness and slipping into the pool and thereafter drowning was the level of Temazepam in her blood?---Yes, that combined with the - the other drug that was in her blood and from what I could gather from the MIMS book, and speaking to a pharmacist that - and from the toxicology report, they apparently have a combining or combination of toxic effect.

Synergistic, I think, is the term they use where they can lead to unconsciousness individually but when they're combined it actually accelerates that process?---That's correct.

And the science involved here is that the deceased had a toxic level of Temazepam in her blood and also a therapeutic concentration of what's called Promethazine, which is Phenergan, which is the drug that you discovered?---Yes, that's correct.

And of course, you understand from the evidence that you gathered throughout the investigation, much of which was at the volunteering of her husband, is that there was Temazepam on the premises that evening by virtue of him having a prescription that week?---That's correct.

And there was also an unfortunate history of the deceased having a dangerous relationship with Temazepam herself the previous year or so, which in fact the doctor's intervened and eventually stopped prescribing her because they themselves understood that she was abusing it?---That's correct.

Doctor Welch, when I interviewed him, stated that he had prescribed Temazepam to her which he ceased doing because he was - he had concerns.”

17. A post-mortem examination was carried out on the Monday morning by Doctor Sinton. No signs of injury or trauma were evident on the deceased and the preliminary cause of death was given as drowning. During that post-mortem examination, samples were taken for toxicological analysis. Later analysis revealed that the deceased's blood contained a toxic level of Temazepam being at 1.2 milligrams per litre and a therapeutic level of Promethazine. The toxicologist who did the testing noted that when those

two drugs are taken together “additive toxicity” results, and they make each other more dangerous. That is to say, taken together the drugs intensify the effects of either.

18. Shortly after the death, police received information that various persons, friends and relations of the deceased, had suspicions in relation to her death. The deceased's sister, Lia Chin, contacted the police in this regard. There were allegations from her that there were problems including domestic violence within the marriage, that the deceased's husband, Christopher Kirwin, had extramarital affairs, that he had let his own long term life insurance lapse, however he had kept the deceased's life insurance going worth \$1,000,000, that the deceased told her the week before her death that her husband was drugging her Scotch, and that the week before her death the deceased had seen solicitors to organise restraining orders and an eviction notice in relation to her husband’s mother. Lia Chin also told police that at the time of her death, the deceased was planning to leave her husband and have her mother-in-law removed from the house, and that her husband may have hired a private investigator to follow the deceased around and carry out harassment.

19. Mr Hugh McKenzie was also contacted; he was a very good friend of the deceased, lived interstate, and was the one the deceased had had the two very long telephone conversations with on the evening of her death. He spoke of suspicious circumstances so far as he was concerned, viz that there was conflict and violence with Michelle Kirwin, (the mother-in-law), that around 10 September the deceased stated to him on the phone that her Scotch was cloudy and that her husband may have spiked the drink, and that she then fell unconscious while talking to him on the phone, that she also said to him in the week prior to her death that she was going to obtain a court order to remove her mother-in-law from the house, and that in 2001

she had had solicitors remove a power of attorney that her husband had previously held.

20. Another friend of the deceased, Karen Dunham, alleged that the deceased, was violently assaulted by her husband. Natalie Hunter, also a long time friend of the deceased alleged domestic violence upon the deceased by the husband.
21. Christopher Kirwin, upon request from Detective Huysse, supplied information regarding life insurance policies. He also volunteered the deceased's personal diary. It was confirmed that both the deceased and her husband, Christopher Kirwin, had an insurance policy, the death of one of them would benefit the other, and that a substantial amount of money was involved. The evidence showed that, in fact, the husband did not let the life insurance policy on his own life lapse.
22. In the diary of the deceased a couple of weeks before her death, the deceased alleges in writing that her husband was trying to push her in the pool.
23. Furthermore, inquiries with family and extracts from that diary, reveal that she did have some contact with legal practitioners but it would appear that some of the things that she had written were not carried through to any kind of fruition. Family Lawyer, Janet Terry, who was mentioned by some of the witnesses as being involved, stated that she saw the deceased on 19 November 2001. She discussed options regarding possible divorce proceedings but nothing happened and she did not see or hear from the deceased again. Vanessa Lee of Withnall Maley (lawyers) stated she believes the deceased may have made an appointment but did not see her. In any event, they had no record of acting for her and no record of orders or court processes.

24. Solicitor Asha McLaren acted for the deceased in 2001 regarding a failed business (a dress shop called, 'Have To Have') which was in Cavenagh Street, and the disposal of property regarding that business. Within the same year, she acted for the deceased in the preparation of documents removing power of attorney from her husband. The deceased also discussed general marital problems with Ms McLaren. The major source of the problem according to Ms McLaren appeared to be Christopher Kirwin's mother, Michelle Kirwin, living in the family home. Approximately two weeks before her death, the deceased rang Asha McLaren and asked that the power of attorney for her husband be reinstated. Shortly before her death, the deceased again rang McLaren requesting that the power of attorney again be removed from her husband. Ms McLaren stated the deceased would ring her often, make appointments which she would not keep and the last such appointment made by the deceased was for 3 pm on 16 September 2002.
25. The allegations by friends and associates regarding the deceased were canvassed by coronial investigators and, indeed, further checked and reviewed by a most experienced senior detective, viz, Detective Sergeant Greg Lade who said in evidence (transcript p.32 & 33):

MS MORRIS: Now, sergeant, it's been claimed by several of the witnesses, one of those being a friend of the deceased, Natalie Hunter, on page 12 of her interview, that the insurance policy for Mr Kirwin had lapsed. What inquiries did you - did you make an inquiry in relation to that and what was the result?---Certainly made inquiries in regards to insurance policies. None of the insurance policies had lapsed. In fact, a bit of fine tuning had taken place in regards to amalgamating, rolling them into one for a cost saving exercise, I'd say.

THE CORONER: So the life insurance policies on both of them had been kept up?---That's correct.

And Mr Kirwin had been paying the premiums on both of them?---That's right.

And any suggestion that he let his lapse but had been paying for hers is wrong?---There's no evidence of that, no.

If that was the case, that would add to some suspicion, wouldn't it?---Certainly would.

But it's not the case?---Not the case, no.

Even though it was said to be the case by friends of the deceased?---That's right.”

and further (transcript p.34):

Now, the other matters that you followed further up apart from the insurance was entries in the deceased's diary, particularly relating to assaults on her by Christopher Kirwin?---Correct.

And as a result of that, you did a formal record of interview with Christopher Kirwin?---That's correct.

And you put the allegations to him that were recorded in the diary?---That's right.

And he, in that record of interview which has been tendered, denied that allegation?---That's correct.

THE CORONER: And one of them being that he attempted to push her in the pool some weeks before her desk?---That's right, carried her over his shoulder down the stairs and threatened to drown her.

Yes?---June, I think it was.

MS MORRIS: And did you find any other evidence to confirm that those events occurred?---No, couldn't find any evidence at all to suggest that they occurred. In fact, the - this was said to have occurred in front of her son, so I interviewed him as well. He's never seen his father assault his mother.

He admitted to you that he had heard them arguing at length?--Yeah, for sure. He'd make himself scarce when that happened.

In your interview with the son, what impression did you form of the answers that he was giving you?---Look, I found his son to be quite a truthful and nice young kid. I mean, it didn't seem to me that he'd been pressured to say anything and I was certainly looking for signs of that.

THE CORONER: Well, you're a senior sergeant of police, been a detective for many years and you interviewed this young boy and he appeared to be truthful, co-operative, frank and non-evasive?---That's right.

And be telling the truth to you?---Yes, exactly.”

And as to the cause of death (transcript p.36):

“And in fact you've done that with much larger investigations than this recently. As a result of doing that and of also of your own inquiries, did you form any opinion in relation to the circumstances surrounding the deceased coming to be found in the swimming pool?---Yeah, look, my opinion at the end of the day I could attribute no blame to any one person and I felt it was an accidental drowning, if you like. Obviously I say that with some reservations. It's all on the balance of probabilities as opposed to any other standard that we like to apply.”

26. The deceased consulted Doctor Welch, for over ten years. Evidence from Dr Welch confirms that the deceased suffered anxiety, had trouble sleeping and used alcohol and medications to help her sleep and manage her day to day life. The doctor's records confirm that Christopher Kirwin (the husband) went to consult Doctor Welch on the 15th of August 2001, regarding concerns he had for his wife and her erratic and paranoid behaviour.
27. Evidence from the doctor suggests that changes to the white blood cells and raised enzyme levels of the liver of the deceased were consistent with excess use of alcohol and medication, and in fact the records show that the deceased, in the year prior to her death, had been regularly using Temazepam. Subsequently, the doctor refused to prescribe Temazepam further because he recognised that she was becoming addicted to that particular drug.

28. The evidence at Post Mortem showed that the drug Temazepam was found in the system of the deceased. I think it probable that it came from Temazepam prescribed to Christopher Kirwin in the week leading up to the deceased's death. Christopher Kirwin contacted the Coroner's office the day after the death saying that he had some Temazepam in his bedside cupboard and that it was missing and that the Temazepam bottle was also missing.
29. In all the circumstances, I find that the deceased died from drowning in the swimming pool at the family home at 39 Tambling Tce, Wanguri in the Northern Territory. In my view the death was probably accidental, however, in the absence of any witnesses as to how the deceased come to be in the pool (or any other specific evidence in this regard) I must leave that matter open. However, after considering all of the evidence, and hearing the husband Mr Christopher Kirwin in the witness box, I believe his denial that he had anything to do with that matter.

Dated this 24th day of December 2004.

GREG CAVANAGH
TERRITORY CORONER