

CITATION: *Inquest into the death of Kenneth Plummer* [2007] NTMC 052

TITLE OF COURT: Coroner's Court

JURISDICTION: Tennant Creek

FILE NO(s): A0069/2006

DELIVERED ON: 17 August 2007

DELIVERED AT: Darwin

HEARING DATE(s): 12 – 13 June 2007

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS:

Unexpected death, myocardial infarction, circumstances involving violence immediately prior to death.

REPRESENTATION:

Counsel:

Assisting:

Dr Celia Kemp

Family:

Mr James Ogilvy (NAAJA)

Judgment category classification: B

Judgement ID number: [2007] NTMC 052

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

No. A0069/2006

In the matter of an Inquest into the death of

**KENNETH PLUMMER
ON 28 SEPTEMBER 2006
OUTSIDE THE PETER KITTLE MOTOR
COMPANY, PATERSON STREET,
TENNANT CREEK**

FINDINGS

(17 August 2007)

Mr Greg Cavanagh SM:

FINDINGS

1. This Inquest inquired into the death of Kenneth Plummer who died early in the morning on Tuesday 28 September 2006 shortly after being involved in a fight with a Mr Rodney Cutta. His death was unexpected and was thus reportable to me pursuant to s.12 of the *Coroners Act*. The holding of a public Inquest was at my discretion pursuant to s.15 of that *Act*.
2. Mr Plummer's family were legally represented by Mr James Ogilvy of NAAJA Katherine, who asked questions and made submissions on their behalf. I heard oral evidence from Detective Sergeant Christopher Board, Dr Sinton (by video link), Wilfred Plummer, Alvin Jones, Justine Noonan, Andriana Anderson, Valerie O'Keefe, Rodney Cutta (by video link), Tammy Wilson (by video link), Donald Shadforth (by phone link) and Chris Kyriazis. I also had before me the brief of evidence compiled by the investigating police with respect to the death and a number of medical records, reports and statements totalling 5 exhibits.
3. Section 34 of the *Coroners Act* sets out the matters that I am required to find, if possible, at an Inquest:

“(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”

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.”

FORMAL FINDINGS

4. On the basis of the tendered material and oral evidence at the Inquest I am able to make the following formal findings as required by the *Act*.

- (i) The identity of the deceased was Kenneth Plummer, born on 25 August 1974 at Tennant Creek in the Northern Territory of Australia.
- (ii) The place of death was on the pavement in front of the Peter Kittle Motor Company, Paterson St, Tennant Creek. The date of death was 28 September 2006 at about 1:20 am.
- (iii) The cause of death was a natural cause, namely a myocardial infarction secondary to coronary atherosclerosis.
- (iv) Particulars required to register death:
 - 1. The deceased was male.
 - 2. The deceased’s name was Kenneth Plummer.
 - 3. The deceased was of Aboriginal Australian origin.

4. The cause of death was reported to the Coroner.
5. The cause of death was confirmed by post-mortem examination and was a myocardial infarction secondary to coronary atherosclerosis.
6. The pathologist was Dr Terence John Sinton of Royal Darwin Hospital.
7. The deceased's mother was Rosemary Plummer. The deceased's father was Frankie Fejo.
8. The deceased lived at 20 Shamrock St, Tennant Creek
9. The deceased was unemployed at the time of death.
10. The deceased was born on 25 August 1974

CIRCUMSTANCES SURROUNDING THE DEATH

5. The deceased was 32 at the time of his death. He had lived in Tennant Creek all his life. His brother, Wilfred Plummer, describes him as a good person and a supportive person. Chris Kyriazis, a friend of the deceased, said he was a 'good bloke' that was 'always smiling'. Wilfred Plummer described the grief suffered by the family because of this death, saying that 'it broke us down'. I commend the family of the deceased for the respect they showed to the coronial process by their co-operation with the investigation and the attendance of large numbers of family member at both days of the inquest.
6. The deceased had chronic schizophrenia which was treated with depot antipsychotic medication. He was known to laugh to himself, and talk to himself. On 28 September 2006 he was overdue to receive his antipsychotic medication (it was due on 19 September 2006). I have read his medical records and I note that although his family describes him as being a person that was not violent, there are some documented past instances of him being

involved in fights. These mainly involved his immediate family and seemed to particularly occur when his medication was overdue.

7. The evidence was that at approximately 8:30 pm on the evening of Wednesday 27 September 2006 there was an incident which resulted in Melissa Jackson sustaining a very bad fracture to her leg. Police were called and attended shortly afterwards. Mr Rodney Cutta has since been charged in relation to this incident and is currently in remand awaiting the outcome of those charges. The family of the deceased is concerned that Mr Cutta was not arrested that evening, believing that had he been arrested then the fight between Mr Cutta and the deceased would not have occurred and the deceased would not have died. The family is particularly concerned because at the time Mr Cutta had two outstanding warrants dating back to January 2006 (for a charge of assaulting a female) and February 2006 (for a charge of failing to comply with a restraining order). Mr Cutta was in fact arrested early in the morning of Thursday 28 September 2006 on the outstanding warrants but the immediate reason for his arrest at that time was for his own safety due to the fear of payback in relation to the death of the deceased. The family of the deceased wanted to know why Mr Cutta was not arrested earlier on his outstanding warrants.
8. Detective Sergeant Christopher Board was the officer in charge of this investigation. He was not at the earlier incident but gave evidence about it based on two statements from the attending members. Those statements were before me. Detective Sergeant Board also gave some general evidence on police procedure. I find based on the statements, and the evidence of Detective Sergeant Board, that when the police turned up they did not see Mr Cutta. Melissa Jackson told attending members that Mr Cutta and his partner, Valerie O'Keefe, were responsible for her injury, and that Mr Cutta had kicked her in the leg with steel capped boots. However several witnesses told police that what had occurred was a 'fair fight' between the injured woman and Valerie O'Keefe. Donald Shadforth told police that the

victim hurt her leg when she fell over and that Mr Cutta hadn't been there at all and had nothing to do with the matter. Ms O'Keefe told police that it was a fight between her and the victim, that the victim's leg was broken after a fall and that Mr Cutta had not been involved. Thus overall there was certainly enough information to make Mr Cutta a person of interest but I am unable to find that the police had sufficient evidence to arrest Mr Cutta at that stage.

9. Detective Sergeant Board gave evidence that police would have only become aware that Mr Cutta had outstanding warrants when they opened a job for the incident back at the station. It is not clear when that occurred. Detective Sergeant Board gave evidence that the attending unit was called away from that incident to another assault. He also gave evidence that there was some concern for the safety of police, the victim and ambulance officers due to the mood of the people at the scene and that police left fairly quickly for that reason. One of the attending police then went to the hospital with Ms Jackson who was affected by medication and unable to provide a statement. I am unable to find that police should have made locating Mr Cutta in relation to the assault on Ms Jackson, or locating and arresting Mr Cutta in relation to outstanding warrants, once they were back at the station and realized they existed, a higher priority than dealing with other incidents as they arose that evening.
10. Just after midnight on the next day, Thursday 28 September 2006, Joshua Green, Arnold Holt, Donald Shadforth, Rodney Cutta, Valerie O'Keefe and the deceased were sitting at tables outside the BP Service Station at 216 Paterson Street, Tennant Creek. Tammy Wilson, Justine Noonan, Esther Noonan and Andriana Anderson were sitting on chairs just outside the front of the GP. Mr Cutta was intoxicated. The deceased was not (his blood alcohol was measured at 0.019%).

11. Alvin Jones and Damien Foster arrived and went into the BP to get some food. They were talking about football as they came out. There was an interaction between Alvin Jones and Mr Cutta which resulted in Mr Cutta becoming angry. Alvin Jones gave evidence that Mr Cutta said something rude and that in response he asked Mr Cutta what his problem was and Mr Cutta did not say anything. Other witnesses state that Jones 'gave Cutta cheek' about Mr Cutta being an Eagles supporter.
12. In any case no physical fight occurred between the two men and Mr Jones left. The deceased had been laughing throughout. Mr Cutta said 'what are you laughing at' to the deceased. Mr Cutta gave evidence that he thought the deceased was laughing at him. This may have been the case however there was also evidence before me that the deceased often laughed to himself with no external reason.
13. The evidence is clear that shortly after this a fight involving Mr Cutta and the deceased occurred. There are various recollections of how the fight started and whether it was started by Mr Cutta or the deceased. This point is of great importance to the family of the deceased.
14. Three witnesses described the deceased as having made the first physical contact; Donald Shadforth, Arnold Holt and Mr Cutta. Mr Shadforth gave evidence that Mr Cutta threw a hamburger at the deceased which hit him and in response the deceased punched Mr Cutta, knocking him off his chair to the ground. Mr Shadforth was approximately a metre away at the time. I have some concerns about the evidence of Mr Shadforth. His description of the resulting fight doesn't match with others. He says Mr Cutta never went to the ground, everyone else said he went down at least once. Mr Shadforth says that he was trying to stop the fight. No one else describes that. Mr Shadforth was very intoxicated that evening; on his evidence he had been drinking since midday. He made appropriate concessions and I find that he

was endeavouring to give honest evidence but that his evidence was not reliable due to his intoxicated state during the incident.

15. Arnold Holt gave evidence that the fight started when Mr Cutta threw a hamburger on the ground and then the deceased hit Mr Cutta. Mr Holt is only 16 and appeared very frightened in the witness box. I did not find him to be a witness of truth. His demeanour, his hesitations and the contradictions inherent in his evidence suggest to me that he was partisan. He tried to minimize the involvement of Mr Cutta in the earlier incident that evening in complete contradiction to his written statement. Thus I consider his evidence unreliable and am not placing any weight on it.
16. Mr Cutta gave evidence that he was sitting down and the deceased came over and punched him, and then continued to punch him. He says that there was a two to three minute fight during which Mr Cutta threw only one punch. I find that Mr Cutta was not a witness of truth and was reconstructing the events of that night. His version of events bears no resemblance to anyone else's, and his claim that there was a two to three minute fight during which he threw only one punch is entirely unbelievable. He frequently said 'I can't remember' or 'I was too drunk' when faced with a difficult question but was then very certain about other aspects that were exculpatory. I don't place any weight on his evidence about how the fight started.
17. Justine Noonan, Esther Noonan, Tammy Wilson and Andriana Anderson were sitting on seats just outside the BP entrance. They were thus further away than other witnesses. They were all sober. Justine Noonan said she did not see the start of the fight because she was inside with the other three girls when it started. Tammy Wilson's statement says she was outside but with her view obscured until she stood up. In court she described hearing Mr Cutta fighting with his partner, and then looking and the first thing she saw in relation to the fight between Mr Cutta and the deceased was Mr Cutta

punching the deceased and knocking him to the ground. It is not clear whether this was the start of the fight. Andriana Anderson describes the deceased laughing and Mr Cutta throwing a hamburger at the deceased and then grabbing the deceased by the shirt. She said that Mr Cutta threw the first punch. Esther Noonan was not called as she was not watching when the fight started.

18. Thus two of the group of four say they didn't see the start of the fight, Tammy Wilson describes a punch by Mr Cutta which may or may not have been the start and only Andriana Anderson gives clear evidence that the first act of physical aggression was from Mr Cutta and she describes an event (the holding of the shirt) that is not described by anyone else.
19. Finally Valerie O'Keefe, Mr Cutta's partner, gave evidence that no hamburger was thrown. She says that Mr Cutta threw the first punch. I found her to be a reliable witness who was doing her best to tell me the truth.
20. There was undisputed evidence that Mr Cutta was intoxicated and in an aggressive mood that night. He was angry with his partner, and chased her both before and after the fight with the deceased, and he was angry with Alvin Jones. There is no evidence that the deceased was doing anything other than sitting quietly at the BP laughing to himself.
21. I find on the balance of probabilities that the first aggressive act came from Mr Cutta and that it was at the very least the throwing of his hamburger at the deceased. As to whether that aggressive act was accompanied by further physical action by Mr Cutta at that specific time I am unable to say.
22. The evidence is clear that thereafter the fight moved to the road and there was mutuality and consent by both men to the fight. The fight was very physical, lengthy and involved much exertion and, no doubt, stress. It continued for between 10 and 30 minutes. At one point Mr Cutta ended up

on the ground. The deceased did not end up on the ground. The deceased was winning the fight. The fight ended when the deceased walked away, saying something like 'I'll come back and see you tomorrow when you are sober'.

23. The deceased seemed fine to onlookers as he walked away. However after walking a short distance he started to sag to the right and he collapsed about 50 m from the scene of the fight, on the pavement in front of the Peter Kittle Motor Company. Family members went over to him and found that he didn't have a pulse. They asked a BP attendant to call for help. Police and St John's ambulance attended a short time later. They found that the deceased did not have a pulse and was not breathing. An ECG monitor showed asystole, that is his heart was not beating. Cardio Pulmonary Resuscitation was commenced and the deceased was transferred to the Tennant Creek Hospital. Sadly he was unable to be resuscitated and he was pronounced dead at 2:16 am by Dr Vinay Rane. I find that the deceased died on the pavement.
24. The family of the deceased have raised concerns about a possible connection between the fight and the death of the deceased. Dr Terry Sinton, the forensic pathologist who conducted the post mortem examination on the deceased, gave evidence before me by video link and his evidence was not challenged. His report concluded that the deceased died from a myocardial infarction caused by coronary atherosclerosis, on a background of cardiac hypertrophy.
25. Dr Sinton said that he looked at the deceased's heart under the microscope and found evidence that the deceased had had a myocardial infarct, or heart attack, about three months prior to his death. He said that it was common for people to have a heart attack and not know about it. He said that when that heart attack occurred the deceased may have had some pain but attributed it to another cause such as indigestion or heartburn, or it may

have been that the deceased had no pain at all (a 'silent infarct'). Dr Sinton said that the infarct caused damage to the heart of the deceased.

26. Dr Sinton said that the deceased had serious coronary artery atherosclerosis, and that the coronary arteries were 80% blocked in the worst affected areas, which he described as 'severely blocked'. He described how results from fatty material, or atheroma, being deposited on the arteries. He said the two main causes of this are a genetic predisposition and lifestyle factors such as food, smoking, obesity and diabetes. He said the deceased's coronary arteries were 'severely blocked'.
27. Dr Sinton said that the deceased had another heart attack just before he died. He said that the hard physical fight was too much for the already damaged heart of the deceased, causing the heart to fail.
28. Dr Sinton said that 'any form of exertion could have caused this', giving as an example running for 10 -15 minutes. However he agreed that the stress caused by the fight on this night was the reason the deceased had a heart attack when he did and that without this fight he was likely to have survived longer. He was unable to estimate how long the deceased would have lived had this fight not happened, saying 'he could have dropped dead in the next 20 minutes or survived for the next 20 years'.
29. Dr Sinton found some swelling on the right upper eyelid and some bruising on the right side of the anterior chest; he said these were consistent with being caused by a punch during a fight shortly before death. He did not find any other evidence of trauma.
30. There is no evidence that the deceased, or anyone else, was aware that he had a heart condition. I find that the fight contributed to the death insofar as the exertion put strain on an already damaged heart. However any other sort of exertion could equally have done this at any other time. Although

the deceased did not start the fight, it is clear that the deceased voluntarily participated in the fight.

31. The family have asked that I refer this case to the Commissioner of Police and the Director of Public Prosecutions pursuant to s 35 of the *Coroner's Act*. The central question is whether the initial aggressive act from Mr Cutta satisfies the test in section 35 of the *Coroners Act*, that is, that a crime may have been committed in relation to this death.
32. Although it is clear that the exertion and stress from the fight caused the deceased to have the heart attack when he did, there is no evidence that his death was intended or foreseeable by anyone. There is therefore no evidence before me to suggest that a crime may have been committed in relation to causing his death.
33. It was put to me that a crime may have been committed by Mr Cutta in starting the fight. The throwing of a punch by itself could constitute a simple offence but not a crime. Thus although a simple offence may have been committed, there is no evidence before me that a crime may have been committed.
34. There are therefore no grounds for me to report this matter to the Director of Public Prosecutions and the Commissioner of Police pursuant to section 35 of the *Coroners Act*.

RECOMMENDATIONS

35. I make no formal recommendations in respect to this death.

Dated this 17th day of August 2007.

GREG CAVANAGH
TERRITORY CORONER