

CITATION: *Inquest into the death of Rita Dandy [2003] NTMC012*

TITLE OF COURT: Coroner's Court

JURISDICTION: Darwin

FILE NO(s): D0190/2001

DELIVERED ON: 28 March 2003

DELIVERED AT: Darwin Magistrates Court

HEARING DATE(s): 17 & 18 June 2002

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS:

CORONERS – INQUEST
Death In Custody,
Section 128 – Police Administration Act,
Apprehension and release of severely
intoxicated persons

REPRESENTATION:

Counsel:

Assisting:	Ms Elizabeth Morris
Family of deceased:	Mr Gerard Bryant
Northern Territory Police:	Mr John Lawrence

Judgment category classification: A

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

No. D0190/2001

In the matter of an Inquest into the death of

**RITA DANDY
ON 13 DECEMBER 2001
AT OR NEAR THE INTERSECTION OF THE
STUART HIGHWAY AND LAGOON ROAD,
BERRIMAH, IN THE NORTHERN
TERRITORY**

FINDINGS

(Delivered 28 March 2003)

Mr GREG CAVANAGH SM:

THE NATURE AND SCOPE OF THE INQUEST

1. Rita Dandy (“the deceased”) died at around 22:19hrs on the 13th of December 2001 near the intersection of the Stuart Highway and Lagoon Road, Berrimah. The cause of her death was multiple injuries that she received when she was struck by a motor vehicle whilst lying prone along the roadway.
2. The death occurred after the deceased had been released from protective custody at the Berrimah Police Station. The deceased was released from protective custody at 20:59 hours on that same day.
3. Accordingly the death is one which is reportable to the Coroner pursuant to section 12(1) of the *Coroner’s Act* (“the Act”) on two bases. Firstly the death was unexpected and resulted directly from an accident (in which case I have a discretion to hold an Inquest). Secondly, immediately before her

death the deceased was in the custody of a member of the Northern Territory Police Force (in which case I must hold an Inquest)..

4. The question of immediacy in terms of police custody is relevant to whether or not the death is a “death in custody” pursuant to the expanded definition of such deaths found in the Act. In my view, I should not take a narrow or restrictive view of the wording having regard to the aims and policy behind the legislation. Furthermore, the care and attention the deceased received while in actual custody, and the decision to release her from actual custody, are all matters to be canvassed in this Inquest. I note the counsel for the Northern Territory Police Force submits that the circumstances of the death do not meet the criteria for a “death in custody”, however, he did not press the submission and did not present any argument. Indeed, he agreed that even if the death was not a “death in custody”, I had a discretion to hold a public Inquest in any event. I further note that the Northern Territory Police detectives pursuant to my direction investigated the death as a “death in custody” in accordance with Standing Orders.
5. I find that the death was a “death in custody” pursuant to the definition of that term in the Act. As a result of the operation of section 15(1)(a) of the Act it is mandatory that a public inquest be held into the death of the deceased. This is to say that this death is properly categorised as one that is a “Death in Custody”.
6. This inquest took place in Darwin on the 17th and 18th of June 2002. Ms Elizabeth Morris, the Deputy Coroner appeared as counsel assisting the Coroner. Mr Gerard Bryant appeared on behalf of the senior next of kin and family of the deceased. Mr John Lawrence appeared on behalf of the Commissioner of Police.
7. Five witnesses were called to give evidence during the Inquest. These witnesses were Detective Sergeant Jeanette Kerr, the police officer in charge of the investigation of the circumstances surrounding the death of the

deceased, Robyn Matten, police auxiliary, John Gregory, police auxiliary, Sergeant Wendy Schultz and Cherubim Ruediger, Ambulance Officer. In addition to their evidence, statements from other witnesses were admitted into evidence.

8. I also had the benefit of observing a video tape taken by a security camera of the admission of the deceased into the watch house on the night in question, and her release later during the evening. The relevant videotape was admitted into evidence. There was also tendered into evidence a number of records relating to the health and antecedents of the deceased.
9. The senior next of kin of the deceased is her husband Robert Crowson. He was aware of the inquest proceedings but chose not to attend the formal hearings. I respect his decision in this regard. Mr Bryant of North Australian Aboriginal Legal Aid Service (NAALAS) represented the family of the deceased. He was instructed by the deceased's sister, Susan.

CORONER'S FORMAL FINDINGS

10. Pursuant to section 34 of the Act, I find, as a result of the evidence adduced at the Public Inquest the following:
 - (a) The identity of the deceased was Rita Dandy an Aboriginal female who was born at Wave Hill Station in the Northern Territory on the 7th of March 1963.
 - (b) The time and place of death was the 22:19hrs on the 13th of December 2001 near the intersection of the Stuart Highway and Lagoon Road, Berrimah.
 - (c) The cause of death was from multiple injuries sustained by the deceased in a motor vehicle accident in which the deceased was a pedestrian who was struck by a motor car.
 - (d) Particulars required to register the death are:
 1. The deceased was a female;
 2. The deceased was Rita Dandy;
 3. The deceased was an Australian resident of Aboriginal origin;

4. The cause of death was reported to the Coroner;
5. The cause of death was from multiple injuries sustained in a motor vehicle accident in which the deceased was a pedestrian. The cause of death was confirmed by post-mortem examination.
6. The pathologist was Dr Derek Pocock of the Royal Darwin Hospital and he viewed the body after death.
7. The deceased's mother was Barbara Yalyarul.
8. The deceased's father was Dandy Jalmairi.
9. The deceased had no fixed place of address.
10. The deceased had no usual occupation.
11. The deceased was married to Robert Crowson.
12. The deceased was aged 38 years of age, having been born on the 7th of March 1963.

RELEVANT CIRCUMSTANCES SURROUNDING THE DEATH

Background of the Deceased

11. The deceased was born at Wave Hill Station on 7 March 1963 and she continued to live in that area for most of her life. In 1977, at age 14, she became the wife of Robert Crowson of Wave Hill. She was his second promised wife. He also traditionally married the deceased's sister, Susan, in 1978.
12. The deceased remained as Mr Crowson's spouse. They had a son, Darren, who was born with disabilities such that he needed to go to a special school in Darwin. Accordingly the couple moved to Darwin so Darren could attend the school. They lived at Bagot until 1986, and then moved back to Wave Hill. Her husband reports that the deceased was not a heavy drinker until around 1986.
13. The deceased returned to Darwin with Darren in 1987 in order for him to attend school. She later moved back to Wave Hill and remained there until 1993/94, when the family moved to Katherine. The deceased was a heavy

drinker at this time, and would often be admitted to the Sobering Up Shelter in Katherine. The deceased attempted to address her problem with alcohol many times, by attending alcohol rehabilitation courses at the “Rockhole Centre” in Katherine, at “Forwaard” in Darwin, and in 1996, along with her husband, the deceased resided at the alcohol rehabilitation centre, Bradaag, in Tennant Creek.

14. The family moved back to Wave Hill in 1998, again to Darwin in 2000, finally moving back to Wave Hill in 2001. At the time of her death, the deceased was in Darwin having been brought up by the police prosecution unit to appear as a witness in a court case in early December. The deceased did not avail herself of the transport arrangements made by the prosecutions unit for her return to Wave Hill.
15. The deceased’s husband describes her as “a good women”, but that drinking made her do and say silly things. He last spoke to her on the morning of her death, and was concerned that she was worried, but she did not tell him why. I heard evidence that the deceased had been attended to by St John’s Ambulance personnel the day prior to her death, and that (sadly) she was drunk and upset that she had lost Christmas presents intended for her family. Perhaps this was why she sounded worried to her husband.
16. The deceased’s medical files indicate at least three other occasions, since 1999, when she had been found lying on a roadway in an intoxicated condition. In the year 2001 the deceased had been in protective custody in Katherine 10 times, and had 18 admissions to the sobering up shelter. She had some minor dealings with the police regarding shoplifting.
17. On the day before her death, St John Ambulance was called to attend the deceased near Lake Alexander. She was lying in the middle of the road and gave various stories to the attending officers. She eventually agreed to be transported to the sobering up shelter, however walked away before the night patrol arrived to take her there.

The Investigation of the Death

18. The investigation as a “death in custody” was thorough, objective and professional. I commend Detective Jeanette Kerr in this regard. The investigation of the road accident itself was also thorough, and I make no criticism of the police because the driver of the motor vehicle which ran over the deceased has not been able to be identified.

The Protective Custody Provision of the Police Administration Act

19. Section 128 of the *Police Administration Act* empowers members of the Northern Territory Police to apprehend persons who are intoxicated in public places and take them into custody. This is the procedure commonly known as protective custody. The law only allows detention for protective custody if the person concerned is seriously intoxicated either by alcohol or some other drug.
20. The police are also able, for sensible and humane reasons, to divert persons who would otherwise be detained by them for protective custody to the care of others who are equipped to deal with intoxicated persons, viz. sobering up shelters. I have commented in the past on the excellence of these facilities, and especially how they are so much more appropriate to care for drunks than police watchhouse cells (which, after all, are built to house alleged criminals).
21. Division 4 of Part VII of the *Police Administration Act* deals with the circumstances in which a person can be initially detained for protective custody and the period for which that apprehension may extend. Detention is justified only if the person concerned is and continues to remain intoxicated.
22. The nature of this intoxication is circumscribed by section 127A of the Act as meaning “seriously affected apparently by alcohol or a drug”.

Accordingly continued detention is justified only if the person detained remains seriously intoxicated.

23. If a person is still seriously intoxicated after a period of six hours has passed after his or her initial apprehension it is required by section 132 of the Act that the person be brought before a justice for it to be ascertained whether grounds still exist for the continuing detention of the person concerned.
24. At this juncture it is convenient and appropriate that I should provide the protective custody provisions of the *Police Administration Act* in full:

“Division 4 – Apprehension without Arrest

127A. Definition

In this Division “intoxicated” means seriously affected apparently by alcohol or a drug.

128. Circumstances in which a person may be apprehended

(1) Where a member has reasonable grounds for believing that a person is intoxicated with alcohol or a drug and that that person is in a public place or trespassing on private property the member may, without warrant, apprehend and take that person into custody.

(2) For the purposes of carrying out his duties under subsection (1), a member may, without warrant, enter upon private property.

(3) A member of the Police Force who takes a person into custody under subsection (1) may –

- (a) search or cause to be searched that person; and
- (b) remove or cause to be removed from that person for safe keeping, until the person is released from custody, any money or valuables that are found on or about that person and any item on or about that person that is likely to cause harm to that person or any other person or that could be used by that

person or any other person to cause harm to himself or another.

(4) For the purpose of subsection (3), the person of a woman shall not be searched except by a woman.

(5) All money or valuables taken from a person under subsection (3) shall be recorded in a register kept for that purpose and shall be returned to that person on receipt of a signature or other mark made by that person in the register.

129. Period of apprehension

(1) Subject to this Division, a person who has been apprehended and taken into custody under section 128 shall be held in the custody of a member of the Police Force, but only for so long as it reasonably appears to the member of the Police Force in whose custody he is held that the person remains intoxicated.

(2) Subject to this Division, where it reasonably appears to a member of the Police Force in whose custody a person is held at the time under this section that the person is no longer intoxicated, the member shall, without any further or other authority than this subsection, release that person or cause him to be released from custody without his entering into any recognizance or bail.

(3) A person who has been taken into custody under this section and who is in custody after midnight and before half past 7 o'clock in the morning on that day, may be held in custody until half past 7 o'clock in the morning that day, notwithstanding that the person is no longer intoxicated.

130. Protection of apprehended person.

(1) A person in custody after apprehension under section 128 –

- (a) shall not be charged with an offence;
- (b) shall not be questioned by a member in relation to an offence; and
- (c) shall not be photographed or have his fingerprints taken.

(2) Where a person is questioned in contravention of subsection (1)(b) any answers which he may give to any such question shall be inadmissible in evidence against him in any proceedings.

131. Release

(1) The member of the Police Force in whose custody a person is held under this Division may, at any time, without any further or other authority than this subsection, release that person or cause him to be released without his entering into a recognizance or bail, into the care of a person who the member reasonably believes is a person capable of taking adequate care of that person.

(2) A person in custody shall not be released under subsection (1) into the care of another person if the person in custody objects to being released into the care of that person.

132. Continued detention

(1) If, after a period of 6 hours after a person has been taken into custody under section 128, it reasonably appears to the member in whose custody he is held that that person is still intoxicated with alcohol or a drug, the member shall bring the person, as soon as practicable, unless sooner released under this Division, before a justice.

(2) Where a person is brought before a justice under subsection (1), the justice shall, if it appears to him that the grounds for continuing the person's detention under subsection (1) –

- (a) no longer exist – order the release of the person from custody; or
- (b) continue to exist – give such directions as he thinks fit to a member for the safety and welfare of the person including, if he thinks fit, keeping him in the custody of a member (but only for so long as it reasonably appears to the member in whose custody he is held at the time that those grounds continue) or releasing him from custody.

133. Application to a member for release

(1) A person apprehended under section 128 may, at any time after such apprehension, request a member to take him before a justice in order that the person may make an application to the justice for his release.

(2) Where a request is made of a member under subsection (1) he shall, if it is reasonably practicable for the person to be brought before a justice forthwith, bring the person, or cause the person to be brought, before the justice forthwith unless sooner released.”

The Deceased’s Apprehension for Protective Custody on 13 December 2001

25. The evidence before me reveals that on the 13th of December 2001 the deceased was in Palmerston. She was attended to by St John’s Ambulance Officers at 3.06pm. She was found on or near Maluka Road, apparently feigning a seizure and intoxicated. The police were called as the Ambulance Officer did not believe the deceased had a medical condition. Constable Brown and Whiting attended, and assessed the deceased as intoxicated.
26. At the request of Mr Bryant, Ms Cherubim Carol Ruediger was called to give evidence. The witness was a fully qualified paramedic with St John’s Ambulance. She had attended the deceased on the day of her death, and attendance separate to that of paramedics who attended at the of the apprehension of the deceased by police for “protective custody”. By coincidence the witness had also seen the deceased the day prior to her death. On the first occasion the witness was “off duty”, and in the second, she was “on duty”, both times, the deceased was drunk and lying on the road.
27. The witness was cross-examined somewhat vigorously by Mr Bryant. I quote her evidence (Transcript P113):

“So did you discuss with her why it was, a day later she had again laid down on the road?---Yes, I had. I think I remember saying that,

‘I’ve seen you lying in the middle of the road yesterday, do you remember that?’ And we talked about her Christmas presents.

Yes?---And I asked where they were. And she said that she’d hidden them and she couldn’t remember where she’d put them.

Yes?---Yeah, I just said it’s pretty dangerous to lie in the middle of the road. So - - -

Did she say that she’d missed her bus?---Yeah, I think she did. I think from memory she did.

Did you ask her then how she was feeling as a result of missing the bus to Katherine and perhaps not being able to find the gifts and toys that she had with her?---Well, I guess at times she was pretty un-cooperative and quite angry at times, so – like her voice, her tone seemed to me that she was, you know, annoyed that she’d missed her bus, but that was really it.

And what was her demeanour then, was she flat or was she animated or what was her - - -?---Like I said, she was just angry at times, you know, unco-operative at times and then really nice, you know, really quiet, you know, pleasant person. You know, quite happy, cheerful, you know, joking with us.

So her mood shifted quite rapidly?---Yeah, yeah.

Through the conversation?---Yeah.

Do you consider that her behaviour in lying down on the road on the Monday and again on the Tuesday, in your professional opinion, was evidence of someone wanting to harm themselves, self-harm?---No, I don’t think so.

You don’t think lying on the road is evidence of self-harm?---Well - - -

Wanting to hurt themselves?---I – I can’t say what she was going to do or why she wanted to do that, but - - -

Did you ask her?---It - - -

THE CORONER: Just let her finish, thanks.

THE WITNESS: I think – I think it was more of an attention thing than anything; I don't think it was self-harm. I don't think she wanted to harm herself.

And (Transcript P118):

“MR BRYANT: You didn't think that a woman lying down on the road 2 days in succession was evidence of mental illness or some mental disturbance?---No.

Why not?---Mainly due that she was intoxicated on both times that I'd seen this lady. On the second occasion the notes say that she was actually drinking metho. So alcohol disguises a lot of things. You can't - - -

And in answer to Mr Lawrence (Transcript P125):

“Right. So you had two dealings with her, two days in a row. You've been in the service 9 years; would you agree that on occasions you get called out to attend to people who are actually just putting it on?---Yes.

And that often happens as well when people are intoxicated?---Yes.

And that can be for various reasons, including wanting attention?---Yes.

I got the impression from your evidence that that was the impression you seemed to have with this lady in the 2 days of dealing with her; I think you said she enjoyed a chat?---Yes.

Would that be your overwhelming belief as to what she was up to, was that she was in fact seeking attention?---Yes.

More so than trying to harm her actual health?---Yeah.

28. In my view, the care and treatment of the deceased by Ms Ruediger was competent, appropriate, caring and professional. I do not believe that she should or could be criticised for not having the deceased mentally assessed. To find otherwise, would be relying on hindsight that the deceased may have been suicidal. The deceased presented to the witness as, sadly and unfortunately, a drunken woman in need of detoxification.

29. The Constable's made the decision to take the deceased into protective custody, and conveyed her to the Sobering up Shelter in Coconut Grove, arriving at around 3.40pm that afternoon. The Shelter did not open until 4.00pm, and rather than wait, the deceased was taken to the watch house at Berrimah, the Peter MacCaulay Centre.
30. The processing of the deceased prior to her lodgement in the protective custody cells was recorded on a video surveillance camera positioned above the watch house counter. This video was seen during the course of the Inquest and shows the deceased appearing to be very intoxicated. I find that her detention pursuant to section of 128 of the *Police Administration Act* was lawful.

The Period of the Deceased's Detention and Her Release from Protective Custody

31. The period of the deceased's incarceration passed uneventfully. Appropriate cell checks were conducted in accordance with Standing Orders. I heard evidence from Police Auxiliary Robyn Matten; she was in attendance at the watchhouse on the night of the deceased's admission and took care of her. I found Auxiliary Matten to be an impressive and credible witness. She was an experienced watchhouse attendant and has been trained in the reception and care of "protective custody" drunken persons. Since commencing her duties in April 2000 she had had to take care of hundreds of drunken persons under the provision of the *Police Administration Act*. Auxiliary Matten had met the deceased on more than one occasion prior to the night of her death (on previous admissions as a "protective custody" drunk).
32. Auxiliary Matten told me in evidence in relation to the deceased on the night of the death (Transcript P11):

“And from your recollection can you remember approximately what time the deceased came in to your care?---About quarter to 4 in the afternoon.

And what was your impression of the condition of the deceased?---
She was seriously affected by some intoxicating substance.

And what gave you that impression? What was it about her?---Her inability to walk unaided. She smelt very strongly of alcohol and she was incapable of speaking.”

And (Transcript P12):

“Now you can recall what time the deceased left your custody that day?---Around about 9 o’clock in the evening.

And how did she – what did you do to release her?---I went to the cell. I stood outside the cell and woke her up, just using my voice. Called her name. She woke up and she walked out the cell.

Was she by herself at that time?---Yes, she was.

So there was no-one else in the cell?---No, she was on her own.

And what was your impression of her at that time?---That she was no longer seriously affected by the intoxicating substance.

And did you have a conversation with her?---Briefly.

Can you remember what it was about?---Only that she – outside of the cell, just as she was being released, before I actually walked her outside, she asked me for help.

What sort of help did you – did she ask you for?---That’s all she asked and I took it to mean that she wanted money.

33. During Auxiliary Matten’s evidence the watchhouse video tape was played. As I have already stated the deceased was shown to be apparently seriously effected by alcohol on admission. On release, the video shows, and I find it to be the case, that the deceased was walking with a normal enough gait, no unsteadiness, and appeared to understand and comply with directions. The evidence shows that she signed for her personal effects in legible script. Auxiliary Matten said in evidence (Transcript P21):

“So that your understanding of the legislation is that you can still release someone whom you believe to be intoxicated?---Well, yes provided they’re in a position to be able to care for themselves. She

was upright. She was vertical. And she was responding to commands. She wasn't staggering or reeling. And she was speaking."

34. Auxiliary Matten was cross-examined by Mr Bryant; she was questioned at length about her reaction to the information that the deceased was found lying in the middle of the road immediately prior to her detention and transport to the watchhouse. The witness denied that such information did or should have alerted her to the possibility of suicidal thoughts by the deceased. My impression was that the witness viewed such information as merely a manifestation of her seriously intoxicated state. I could not criticise her for this. The witness stated in relation to the release of the deceased (Transcript P22):

"It is fair to say that at the time that she was going to be released she – it was night-time?---Yes.

She didn't have any money?---Yes.

And therefore she wouldn't have been able to catch public transport, would she?---Yes.

And did you make any inquiries as to whether she had a place to go to?---No.

So it didn't occur to you that when she asked for help she maybe asking for assistance with transport or accommodation?---No.

And it didn't occur to you that given that you were about to release a single woman at night-time that she may require some assistance in leaving the police station to a place where she would be safe? That didn't occur to you either?---That's all true. That's always a concern for us for their safety. But she was an adult female and she was deemed to be capable of looking after herself."

35. Auxiliary Matten appeared to express genuine care and concern for the people in her custody. I do not find that her refusal to "help" the deceased, at the deceased's request, was callous. Auxiliary Matten assumed that the request was one for money; her concern was that the deceased would spend any money on further alcohol."

36. It is relevant to note the geographical location of the watchhouse; it is in the outer suburban area of Darwin, not in a residential area, adjacent to a couple of main roads, none or little public transport at night, an absence of passing taxi cabs and the like, and at night time not much passing traffic at all. The question of her release was canvassed in evidence, not just in relation to her sobriety and general physical condition (which I find to have been sufficient to allow her release) but also as to her safety in the circumstances.

37. Auxiliary Matten states (Transcript P35):

“Is there techniques used in relation to women from protective custody? Is there any policy as to when women should be released from protective custody?---They’re treated exactly the same as the males. We do have the discretion, if we think it necessary, to call for assistance from other external sources if they’re available. We also try to make sure that any protective – or any person in protective custody is not travelling on their own.

THE CORONER: Sorry?---If we have people in protective custody at night we try in particular to make sure they’re not travelling on their own. So if we can release two together we will do so. But not – and that’s not just respective if they’re a female. We do that for the men as well.

And what other things do you do in terms of that concern, other than just release them in pairs or – other than just release them in pairs?---If we’re able to we can ask a night-patrol unit to come back and pick them up and convey them to somewhere. But it’s not a matter of course.

Do you mind, Mr Lawrence, if I follow this up?

MR LAWRENCE: Not at all.

THE CORONER: So have you done that before?---Yes, sir.

And have you done that regularly?---Wouldn’t say regularly but I have done it on more than one occasion.

In 2 years?---Yes, sir.

And what would cause you to do that?---An elderly female with walking disability in particular.

And does the night-patrol come?---They have, sir.

That's the night-patrol run by the Aboriginal organisations in Darwin?---That's correct. But we don't make that decision without actually getting some sort of authorisation from our watch commander. We don't just do that off the bat. We speak to someone of a higher position."

And (Transcript P36/37):

"What do you mean she was going one way?---She would have gone to Palmerston and the other four people would have gone back to Darwin.

But 10 or 11'clock at night, how do you expect someone in her position to get to Palmerston, other than walking?---Well, sir, it was 9 o'clock at night and it's not something that we can - - -

Well whether it was 9 o'clock, 10 o'clock or 11 o'clock. I'm not saying this in a critical way, I'm just asking you, would you have expected her to have gone to Palmerston by any other means except walking?---Or by public transport.

As you said, you don't know anything about public transport?---I don't that's right.

What about if it was around 11 or half past 11 and you had the likes of Rita there and you knew they lived either at Palmerston or Bagot, Bagot being – oh, no, Bagot's not too far away so – been in that position before?---I have.

And did you release them?--- I have.

MR LAWRENCE: There was mention of a phone at reception?--- Yes.

What's the situation with the phone at reception?---It's freely available for anyone to use and there is a list of telephone numbers there that are for taxi companies and the like and it's a big board, stands about probably 18 inches tall. It has in very big writing the name of the company and the telephone number. They know that it's there and they're able to use it, if they wish.

And it's a free phone?---It is a free phone.

THE CORONER: Doesn't help when you haven't got any money though."

38. Police Auxiliary John Gregory gave evidence corroborating the evidence of Matten as to the care and attention shown to the deceased at the watchhouse. As to her release he stated (Transcript P43):

"You haven't ever rung the night-patrol in order to assist somebody?--Yes, we have, but after a little while it was told to us by night-patrol that they didn't get paid to take sober people home. They are only paid to pick up drunks. As a result we don't call them any more. But in the past we certainly did call night-patrol to take people home."

And (Transcript P49):

"All right. And you were at the counter, we've seen from the video, when she collected her belongings. It's fair to say that she didn't collect any money, did she?---I think it was just a hair tie that she collected.

So she would have had some problems catching a bus, wouldn't she, without any money?---Yep.

And it's fair to say that you had no idea which way she was going or where she was going to stay?---I assumed she'd head back towards Palmerston. That's where she was picked up from.

And how far is Palmerston from the station?---14.8 kilometres.

You assumed that she was going to walk 14.8 kilometres that night?--I assumed she'd probably stop at Knuckeys Lagoon.

Would have Rita Dandy been the sort of person that, had you not received this – I'll paraphrase here – direction not to call the night-patrol, do you think she might have been someone who you may have called and asked the night-patrol to pick up, given her level of intoxication?---Well when she was being released I – she was no longer seriously affected, in my opinion. She wasn't elderly. She didn't appear to have any injuries.

So when you were talking to – or giving evidence previously, she wouldn't be one of those people that you would previously ask for assistance from the night-patrol?---Probably not, no.

And you're comfortable with allowing single females out at night to make their own way home with no means of transport?---Yes."

39. In relation to the night-patrol service I note the evidence of Sergeant Wendy Schultz (Transcript P63/64):

"But your – it's correct, isn't it, that you can also request night-patrol to attend?--- Yes. Night-patrol is not normally despatched by the dispatch operator, because they run on a different channel. They use the emergency services old analogue channel 40 which is handled by my inquiry operator; so what happens is, the inquiry operator takes control of night-patrol when they're working, so that the dispatch operator's free for only police vehicles and the jobs that we're going to send police to. So the inquiry operator is the one that handles that. Because they're actually on a separate channel to the police one.

THE CORONER: But they're organised out of Berrimah Police Station?---Yes, we have – we can select as many channels as we like.

Sorry, the police don't run the night-patrol?---We – the night – we give them a – when they book on, they book on with us at night on channel 40. They give us their start mileage, they give us what time they're on duty to, and we call – we make what we call a generic job for them. We give them a drunk patrol or a general patrol job and everything they do, they tell us and we type on the job for them.

So you provide their communications?---We provide their communications.

How long you been doing that?---For as long as I've been in there. So since we started the new one."

40. I also heard evidence from Sergeant Shultz in relation to the response times of the police communications unit in relation to events on the day of this death. I accept her evidence and find nothing to criticise in relation thereto.
41. In my view the matter of the release of "protective custody" drunken persons back into the community, in a situation where they may very well be still intoxicated but not severely so, is a matter for some consideration by police and Government. My recommendations contained herein suggest the same. In my view, there are potential safety problems in releasing partially

intoxicated females into the night by themselves in an location where they have no funds for travel or friends to assist (such as the deceased when released from the Peter McAulay Centre, Berrimah). The matter appears to be further complicated by potential problems arising from the transfer of police headquarters to the central city area of Darwin. Apparently this move also involves the transfer of the police watchhouse lock-up facility. Senior Sergeant Kerr told me in evidence (Transcript P91/92):

“Now in relation to Berrimah Police Centre, you’re aware are you that a new police centre is being built in Darwin City?---Mm mm, yes.

And that police cells form part of the new police centre?---Yes.

And are you aware whether or not those cells are to be used or intended to be used for people who have been put into custody under section 127?---Yes, they are.

And do you know what the current intention of the police department is in relation to who would go there or who would be taken there?--- They’ll be fully operational police cells just as the ones at Berrimah are.

And what will happen to the ones at Berrimah?---They may be closed down. I don’t think a determination’s been made on that.

THE CORONER: They’re not really going to keep two 24 hour watchhouses going are they?---I don’t know, sir.

You wouldn’t think so though, would you? Anyway, no, you can’t comment.

MS MORRIS: But as far as – you can say that the one in town is going to have a fully operational watchhouse?---Yes.

And are you aware whether the intention to take most of the section 127’s to town – whether that’s their current intention or - - -?---That don’t go to the sobering up shelters?

Yes?---Yes.

Yes. And you’d agree that that would create a whole new set of circumstances for detained people upon their release?---Yes.

THE CORONER: Well, they're going to be much closer to a lot of pubs and places to go back to drinking, aren't they?

And: "It's just the new police centre is on the corner of Mitchell Street, is it not?----It is Mitchell and Knuckey.

And Knuckey?---Yep.

How many drinks – I won't ask. There are numerous drinking establishments within a 500 metre radius?---Yes."

The release into the central city area of the types of people who are detained in police lock-ups for their own protection because they are severely intoxicated, is going to create many problems in my view. Especially given the fact that most of them will still be intoxicated albeit not severely so, on release.

42. At Inquest there appeared to be a suggestion (flowing from the fact that the deceased was initially apprehended lying on the road) that police should at first instance have become alerted to (and therefore investigated) suicide ideation by the deceased. Sergeant Shultz corroborated the thoughts of Auxiliary Matten in this regard, viz (Transcript P69):

"Yes?---And I wouldn't – I would not even think of putting this in as an attempt suicide.

On the information that you - - -?--- On the information that we've got there.

- - - you've received?---We get numerous complaints of people running out in front of traffic in various areas and - - -

THE CORONER: You sadly – isn't it a fact that a lot of drunken people, usually Aboriginal, just wander out on the roads and stop vehicles and - - -?---Yes, they do.

- - - sit down and even lie down?---Yes.

Yes. Unfortunate though it may be, it's not immediately seen as an attempt to suicide?---No, we don't view it as that. It tends to be more a – I've got the angries with somebody and I'm going to make

someone else upset and angry, rather than actually physically want to hurt themselves.

Even when it's deliberate they - - -?---Yes, they're not doing it to physically hurt themselves a lot of times. I think it's – a lot of times, just to be very – they've got the aggro and they want to take it out on something. And we get also - - -

Has it happened to you; I mean, it's happened to me driving down Bagot Road?---Yeah, Bagot Road, yes.”

43. I also find that it was appropriate to release the deceased from custody, given the marked change in her demeanour, despite the fact that it is now known that she was still intoxicated.

The Motor Vehicle Accident

44. The exact movements of the deceased after she left the watch house are not known. However from the evidence, including the statements of people who saw someone matching the deceased's description on the road, I do find that she walked out of the police station at Berrimah, along Vanderlin Drive towards the “Berrimah lights”, turned left and continued towards Lagoon Road on the Stuart Highway.
45. The deceased attempted to hail a number of vehicles on three separate occasions. At the intersection of Lagoon Road and the Stuart Highway the deceased has lain on the road in the outbound right lane. She was observed on the road, and shortly thereafter was run over by an unknown vehicle. Despite investigation, and a media campaign, no evidence as to the vehicle or identity of the driver has been found.
46. Several concerned people made calls to the police communications centre in relation to the deceased being on or in the vicinity of the roadway.
47. The deceased was discovered by an off-duty Auxiliary, Donna Amory, at around 22:20hrs. St John Ambulance attended at 22:26hrs but found no

signs of life. Police attended, and the deceased was recognised as someone who had been in protective custody earlier that night.

48. On the 14th December 2001, at Royal Darwin Hospital Mortuary, an autopsy examination was conducted on the body of the deceased by Dr Derek Pocock a Forensic Pathologist. His opinion was as follows (and I accept it):

“Death would have been instantaneous and the appearances would suggest that the deceased was lying in a prone position on the road when a large vehicle with a wheel/tyre width of some 35cm has passed over the upper body. This has resulted in massive damage to the sternum and chest, as well as forcing the cervical spine downwards against the force of the jaw such as to totally dislocate the neck and cause instantaneous death. Provisional evidence indicates the deceased was heavily under the influence of alcohol at the moment of death.

There is no evidence of any significant pre existing disease. The appearances are compatible with a heavy vehicle passing across the upper part of the body from head to mid chest whilst the deceased was lying in a prone position with a vehicle passing from left to right sides.”

The Physiological Effects of Alcohol on the Deceased

49. An issue in this Inquest is the blood alcohol level of the deceased at the time of her death. On any analysis it represented a significant level of intoxication (blood analysis shows 0.277%, urine shows 0.299%).
50. It is necessary to consider the physiological effects of alcohol generally and on habitual drinkers, such as the deceased, in particular. In a previous Inquest into the death of George Miller (198/2000) I heard evidence from Dr Wells, an expert in relation to alcohol and its effects. I drew counsel’s attention to this evidence during this Inquest, and provided copies of the transcript.
51. In Dr Wells opinion a police station watch house did not provide either a suitable or safe environment for a person to go through alcohol withdrawal.

The only suitable place for a person to go through this process was in a suitably equipped and manned hospital. I quote from my findings:

“In his clinical experience Dr Wells indicated that it was relatively common for him to come across chronic alcohol users who as a result of their use of alcohol had become habituated to functioning with residual blood alcohol levels of 1.5% to 2.5% at all times, simply because they felt so awful when their blood alcohol levels dropped below these level.

Because of this Dr Wells believed that there were grave dangers incumbent in the introduction of breathalysers into watch houses. His view was that in such an environment the behaviour, the presentation and the performance of the individual concerned provided the best criteria for the assessment of whether any given individual should be released from protective custody. In Dr Wells’ opinion such observations provided the best marker of how any given individual was likely to function subsequently.”

52. I continue to agree.

“Because of the wide disparity in the extent of tolerance of alcohol in any given group of individuals it would be extremely unsafe to mandate the use of a breathalyser or similar scientific instrument as a means of setting a fixed scale on the basis of which it could be assumed that it was appropriate and safe to release any given individual from protective custody.”

The Deceased’s Actions

53. I have considered in this case, whether, the deceased by her actions intended to end her life. I remind myself that it is a serious matter to find that a person deliberately intended to take his or her life; common sense and case law direct me to not draw such a conclusion without weighty evidence. The question in this case is not easily answered; there is no suicide note, no threats or verbal expressions of intent by the deceased that day, no eye witnesses to her actual behaviour immediately prior to death.

54. The investigating Detective (Senior Sergeant Jeanette Kerr) told me her opinion in evidence, viz (Transcript P93):

“And what was your opinion in relation to that?---I believe that she committed suicide.

What – what do you base your opinion on in particular that you can recall from the evidence?---Her background and history. Her comments that she made to her husband.

THE CORONER: Her husband seemed to think she’d been expressing suicidal ideation, didn’t he?---Yes. She had a prior attempt. A definite attempt of jumping off a bridge or was going to. And the persistence of her behaviour in laying on the road on that day, from Palmerston prior to her – prior to and after her release, and also that she was laying on the road with her back to the traffic, I felt was telling.

MS MORRIS: Yes. Have you – you’ve done some special training; is that correct, in suicide and suicide negotiation?---Yes.

And is your – was – does your training give you a background in recognising suicide ideation?---Yes.

And what sort of training was that?---I’ve had crisis negotiation training. I’ve got a Bachelor of Science with a double major in psychology; Bachelor of Arts psychology and I’m in the third year of Doctorate in psychology.”

55. After considering all the evidence, including that given by the investigating officer, I am unable to come to a conclusion that there is sufficient evidence that the deceased’s death was suicide. The deceased may well have intended to kill herself, however it is possible that she did not, it is possible she was craving attention, it is possible she may have intended some self-harm but not death, it is possible she was merely stupefied by tiredness and alcohol and was reckless to her safety, other scenario’s are possible albeit unlikely. That is to say, it is possible that her death was accidental. Accordingly, on this question I make no finding. However, as to the cause of death I accept Dr Pocock’s autopsy conclusion.

RECOMMENDATIONS AND CONCLUDING COMMENTS

56. Aboriginal pedestrians, being run over by motor vehicles, is a serious problem, especially in the Darwin area. The Itinerant Report (Exhibit 12)

quotes the statistic that from 1995 to 1999 ten Aboriginal people lost their life as pedestrians on Bagot Road. As at the date of this Inquest, in the Northern Territory seven people have been killed in a similar way. It appears that most were intoxicated.

57. I quote again from my findings into the death of George Miller.

“My own experience as Territory Coroner has alerted me to the extraordinary volume of people, the vast majority of whom are Aboriginal who pass through watch houses in police station in the Northern Territory because of the protective custody provisions in the *Police Administration Act*.

In their administration of the *Police Administration Act* the Northern Territory Police have to walk a tight rope between properly detaining a person against his or her will because that person is “seriously intoxicated” and arbitrarily and unnecessarily prolonging that detention.

In accordance with section 127A of the *Police Administration Act* the police mandate is to detain for protective custody only those people who are “seriously intoxicated”. Once people are no longer “seriously intoxicated” it is the duty of the police to release them.

The legislation provides police with no imprimatur to hold persons until they are sober or moderately drunk or indeed have sobered to any other level of intoxication.

Arresting a person without warrant is a serious matter as is the continuing detention of that person without recourse to bail. The purpose of protective custody is to allow police to take the extreme step of depriving a person of his or her liberty only when that person is the extreme circumstances of serious intoxication. Once the extremity of that situation has passed the justification for detention has also passed. This, in my view, is as it should be.

For reasons that have already been provided I am of the view that visual observation of detainees provides the best means by which police can ascertain whether or not any given individual continues to be “seriously intoxicated”. Watch House Keepers, such as Mr Ascoli are the people best placed to make the necessarily subjective judgement as to whether any particular individual is or is not “seriously intoxicated”. They after all deal with many hundreds of

intoxicated persons each month and as a result have extensive experience on which to base such assessments.

In the case in question there was a marked difference in the demeanour and behaviour of the deceased between the time of his initial apprehension and the time of his release.

There will always be cases where the behaviour of an individual both during the period of his protective custody and at the conclusion of six hours will be a cause of concern for the police involved. This is inevitable given the high volume of persons being detained for protective custody and the number amongst those who are chronic abusers of alcohol. For reasons that I have already provided I am of the view that it is inappropriate that police watch houses be used as de facto alcohol detoxification units. The appropriate environment for detoxication is a medical one.”

58. Considering the evidence I have heard in this and other Inquests, I recommend that the Sobering Up Shelter in Darwin be funded to allow it to operate for 24 hours a day. This would allow it to be the first “port of call” for police officers who have detained someone for their own protection due to their intoxication.
59. I also recommend that funding be allowed for the Shelter to be able to provide follow up services in relation to the health and welfare of the clients of the service.
60. However, considering that there will be occasions that it is necessary to detain people for intoxication in watch houses and police cells, I also recommend that the Northern Territory Police and the Department of Health and Community services examine and review appropriate options for the care and safety of persons upon release from protective custody, especially when they are released at night. The need for this review is urgent given the transfer of the Berrimah watchhouse facility to the centre of Darwin.
61. In making the aforesaid recommendations, I remind Government of recommendation 80 of the Royal Commission into Aboriginal Deaths in Custody and I quote:

“That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.”

It is a pity that the evidence in this and other Inquests reveals the need for the reminder. However, I understand from advice tended to me at a subsequent Inquest (death of Gaykamangu) by Counsel for the Northern Territory (Mr Peter Barr) that more funding has recently been made available for sobering up shelters and I commend this.

62. I reiterate the recommendations contained in the findings into the death at Katherine of George Miller (198/2000) and request the Commissioner to advise me of outcomes in relation thereto.
63. Finally, the simple reality in the Northern Territory is that alcoholism is one of the greatest problems the community has. In my view, something more than “talk” should be used to address the problem.

Dated this 28th day of March 2003

GREG CAVANAGH
TERRITORY CORONER