

CITATION: *Inquest into the death of Roselle Nelson* [2004] NTMC 088

TITLE OF COURT: Coroner's Court

JURISDICTION: Katherine

FILE NO(s): D0044/2002

DELIVERED ON: 10 December 2004

DELIVERED AT: Katherine

HEARING DATE(s): 26, 27 February, 10 May 2004

FINDING OF: Mr G Cavanagh SM

CATCHWORDS:

Violent death, unreliable witnesses,
suspected unlawful killing, reference to
Commissioner of Police, DPP

REPRESENTATION:

Counsel:

Assisting: Ms Elizabeth Morris
Family: Peter O'Brien

Judgment category classification: B

Judgement ID number: [2004] NTMC 088

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

No. D0044/2002

In the matter of an Inquest into the death of

**ROSELLE NELSON
ON THE EVENING OF 28 FEBRUARY 2002
AT KATHERINE IN THE NORTHERN
TERRITORY OF AUSTRALIA**

FINDINGS

(Delivered 10 December 2004)

Mr GREG CAVANAGH:

1. Roselle Nelson (“the deceased”) died sometime between 9pm on 28 February and 6pm on 1 March 2002 at Katherine. The cause of her death was lacerations of the liver. At the time of her death the deceased was 16 years of age. Her death was sudden, unexpected and violent.
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”.
3. 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.
4. 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*.

5. 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.”

6. The Public Inquest in this matter was held at Katherine Magistrates Court on 26, 27 February and 10 May 2004. Counsel assisting me was the Deputy Coroner, Ms Elizabeth Morris. Mr Peter O'Brien of the Katherine Regional Aboriginal Legal Aid Service sought leave to appear on behalf of the family of the deceased. I granted leave pursuant to section 40(3) of the Act. Members of the family of the deceased were present throughout the Inquest and I thank them for their presence.
7. Eleven 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. Furthermore, efforts were made to find and summon other witnesses (especially some requested by the family viz. some of the "Wave Hill mob") but without success.

CORONER'S FORMAL FINDINGS:

- (a) The identity of the deceased is Roselle Nelson also known as Antionette Rose Nelson, an aboriginal female who was born at Katherine Hospital in the Northern Territory of Australia on 19 June 1985.
- (b) The time and place of death was between 9pm on 28 February 2002 and 6pm on 1 March 2002 at Katherine in the Northern Territory of Australia.
- (c) The cause of death was lacerations of the liver.
- (d) The particulars required to register the death are:
 1. The deceased was a female.
 2. The deceased was an Aboriginal Australian.
 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 Derek Pocock locum forensic pathologist of the Royal Darwin Hospital who carried out the post mortem examination.
5. The father of the deceased is unknown and the mother is Rebecca Nelson.
6. The deceased lived at 18 Bernard Street, Katherine at the time of her death and was unemployed.

RELEVANT CIRCUMSTANCES CONCERNING DEATH

8. The deceased was a young woman of 16 at the time of her death. She was raised in the Katherine area for much of her life. Prior to her death she was living with her mother, Rebecca Nelson. Previously the deceased had lived in a de facto relationship with Derek Donnely Thompson. This relationship had lasted for about two years, but had faltered some time prior to her death. She had recently been seeing David Junior Wilfred. She had no children, and was barely older than a child herself at the time she died.
9. On the 27 February 2002, the deceased was staying with her mother at 18 Bernard Street and her current boyfriend, David Junior Wilfred (who has since passed away). The following morning Derek Thompson turned up and was apparently intoxicated at the time. Some witnesses say that he smelled of petrol and he attempted to take the deceased away from Wilfred. After a struggle the deceased managed to get away from Thompson.
10. Subsequently the deceased and her current boyfriend walked to the BP service station on Katherine Terrace and had some coffee. Wilfred then left Katherine and went to Hodgson Downs; He did not come back into town until after the body of the deceased was found. The deceased stayed in Katherine township with friends and family, drinking alcohol during the afternoon. One of the people she was drinking with was Derek Thompson, her former boyfriend, who she had the altercation with that morning.

11. Late in the afternoon of Thursday the 28th of February, there was a concert at the Katherine Hotel attended by many people, there was a well-known local aboriginal band who were playing at the concert. The deceased went to the carpark where she met a number of people and continued to drink and listen to the music from the band. Derek Thompson was also there. At around 8 o'clock that night, Thompson assaulted the deceased and struck her a number of times, although he denied that that occurred. A witness (J Venables) confirmed at the Inquest that Thompson had assaulted the deceased on 28 February and also said (transcript p45 & p46):

“But you know Derek quite well?---Yeah.

Do you know what it was that he was angry about that he was punching her about?---He was getting jealous about his.

and

And how do you know he was jealous was it because of what he was saying?

---Yeah.

Can you remember exactly any of his words?---He said, I don't know, he said - them two was getting jealous - he say about that boy.

But you can't remember any words?---No.

Was Derek charged up or little bit?---Little bit charged up.

Little bit full or?---Little bit.

Was he falling over drunk or?---No.

No. What sort of mood was he in?---Like - like - like dangerous mood.

And did he seem to you to be angry or just upset?---Upset.”

12. The altercation occurred in the carpark of the Katherine Hotel and witnesses in addition to Venables say that it did in fact happen. I find that it did occur. Afterwards the two appear to have settled their differences; they left the area, walking over to some chairs and tables near the old courthouse. They spent about half an hour at this location before a taxi pulled up, and apparently a person in the taxi called out to the deceased, who went over to the taxi, got in and left.
13. Evidence was heard from Senior Sergeant White about efforts to try and track down the identity of the taxi driver and what happened after that time. There was no success; this was the last time the deceased was seen alive. Subsequently the deceased was discovered just before 6 o'clock on Friday 1 May, lying in the ground near the statue of Mary at the rear of the Catholic Church in Katherine. The body was discovered by one of the nuns who contacted police.
14. Police attended the scene and began their investigation, it was obvious from the injuries she'd sustained, that it was a suspicious death and so senior officers commenced an appropriate forensic examination of the site. However, as Senior Sergeant White said in evidence (transcript p9):

“And did you find, or did your offices find anything of significance in relation to - forensically, as a result of that search or examination of the area?---No.

The forensic pathologist in his report, says that it would appear that the body may have been dragged or rolled, did you find anything from your search of the area that would indicate from where or when that had happened?---No, the actual area of where the body was found was unremarkable, there was no signs of anything on the ground. The ground was actually very wet, we had a large storm overnight and had quite a substantial amount of rain so there was no evidence of any drag marks or anything like that on the ground.

Was there any evidence or anything that indicated to you whether or not the deceased had passed away where her

body was found or somewhere else and been placed there by someone?---No, all I could say is that the body had been in that position for some time.”

15. Furthermore, the detective said in evidence in relation to the former boyfriend of the deceased as follows (transcript p11):

“MS MORRIS: Now, as a result of the investigation and the information you were aware of, did police form any view as to possible suspects in relation to an assault on her?---Yes, Mr Derek Thompson became the, what I would call the main suspect, he was seen earlier in the evening at the back of the Katherine Hotel having an argument with her where he physically assaulted her and they were seen walking off together after that assault to the Katherine Court House and were later seen sitting at a table at what they would call the old Court House, before she got in a taxi and left.

And police spoke to Mr Thompson on three occasions, is that correct?---Yes, initially I took a statement from him and then I conducted a formal record of interview on 6 March with him and he was later interviewed in Pine Creek by Detective Thompson and Sims.

And when you spoke to him, first you took a statement at that stage he wasn't a suspect, is that correct?---No, no, he wasn't.

And you reinterviewed him because some of the things he said in his statement weren't verified or confirmed by other people?---Yes, that's right.

And did you form the view that some of the things he'd told in his statement were lies?---Yes.

And that he had in fact, left out important matters?---Yes, he had.

And when you spoke to him the second time or when Senior Constable Thompson spoke to him the third time, he gave different explanations as to the events of that preceding couple of days?---Yes.”

16. In addition to the investigative problems caused by heavy rainfall the detective also mention another problem (transcript p17):

“THE CORONER: Is that one of the foundations, I think from what comes through an investigation report is that there are probably eyewitnesses or persons who know a fair bit more about what happened, but are shutting up, is that right in your view?

---Yes, yes, it is.

And one of the reasons I think you speculated is fear of payback?---Yes.”

17. There does not appear any room at all for the death to have been accidental. The forensic pathologist (Dr Derek Pocock) opined in evidence (transcript p55, 56, 57 & 58):

“Now you performed a post mortem on 4 March 2002 at Royal Darwin Hospital?

---Yes, that was in 2002.

Yes, now could you just tell the court, you've given her death as laceration of the liver and I'll start with that injury first?---Yes.

You say in your report 'that the injury was caused by severe pressure on the abdomen'?---Yes.

'Like jumping onto the deceased while in a prone position'?---Yes.

And by that do you mean that the deceased was lying down?---Lying down on her back.

And so it's not possible for that injury to have occurred if she fell from something?

---No I would not have found this injury from falling.”

and p.56

“Was there any indication from any of her injuries that you say that she might have been dragged somewhere?---Yes, there are running abrasions as if she's been pulled across a rough surface, there's marks down on her leg, there's marks on the back, and others which also indicate that she has been dragged over a rough surface.

Were there any injuries that you saw which were consistent with what's called self-defence injuries?---No, I would not expect any of these to be self-inflicted in any way.

I mean, any injuries that were defence injuries?---Yes, on the back of the hand and the arm there is bruising as if the arm had been held up to try and protect herself against an assault, these are fairly typical of what we call defence wounds.”

and p.57

“MS MORRIS: From the extent of the injuries that the deceased suffered, how long after she received those injuries would you estimate if you can, that she would have passed away?---I think death would have occurred within half an hour when she's got injuries to her stomach area which have bled, and had caused considerable shock. But she also has bruising to the lungs and fractured ribs, which also in themselves, would make breathing painful and limit the probable time that she would survive.”

and p58:

“MS MORRIS: Doctor Pocock, from all the injuries that you saw on the deceased, can you exclude that she would have received those in an accident?---It would be a rather unusual accident, I mean she would have to be run over by a vehicle which hasn't left any marks on the vehicle itself. No, I can't envisage really any sort of accident that would have caused the overall picture that I found.

THE CORONER: So is it your opinion, doctor, that the death was caused by deliberate infliction of injuries of the kind that you found by someone?---There's certainly injuries that would be inflicted by somebody else, yes.”

18. From the evidence I find that the deceased was unlawfully killed. The evidence of Dr Pocock being compelling in that regard; given her injuries, an accidental death can be excluded.
19. The Inquest transcript, various witness statements and his own statements to police have the deceased's former boyfriend lying about his association with the deceased prior to her death. Indeed, I found Thompson to be an unreliable witness without credibility who ended up simply being unresponsive to embarrassing questions at the Inquest. Certainly, he appears to have had the capability, the motive, and the opportunity to inflict the wounds that killed the deceased. As to whether he did or someone else did, I must on all of the evidence leave that question open.
20. Furthermore, I share the concern of the family of the deceased that person(s) may know more about the matter than they are letting on, whether they be the "wave hill mob" or others, I do not know.
21. In conclusion I believe that the crime of "unlawful killing" may well have been committed in connection with the death. Accordingly, I refer the matter back to the Commissioner of Police and the Director of Public Prosecution. I urge the Commissioner to review and renew the investigation and attach the full transcript of proceedings. The documentary exhibit remain at the coroner's office for inspection and uplift in due course.

Dated this 10th day of December 2004.

GREG CAVANAGH
TERRITORY CORONER