

CITATION: *Inquest into the death of Kenny Malthouse* [2008] NTMC 026

TITLE OF COURT: Coroner's Court

JURISDICTION: Alice Springs/Hermannsburg

FILE NO(s): A0021/2007

DELIVERED ON: 12 May 2008

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HEARING DATE(s): 10, 11 December 2007 (Alice Springs)
3 March 2008 (Alice Springs)
4 March 2008 (Hermannsburg)

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS:

Accidental death by suffocation, petrol sniffing, Opal fuel and inherent dangers.

REPRESENTATION:

Counsel:

Assisting: Dr Celia Kemp
BP Australia: Mr Patrick McIntyre

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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A0021/2007

In the matter of an Inquest into the death of

**KENNY BURNS (also known as KENNY
MALTHOUSE)
ON 13-14 APRIL 2007
AT BUNNYHILL, HERMANNSBURG**

FINDINGS

12 May 2008

Mr Greg Cavanagh SM:

1. Kenny Malthouse (“the deceased”) was an Aboriginal male born on 6 June 1994 in Darwin. He died between 11 pm on 13 April 2007 and 2 am on 14 April 2007 at Bunnyhill, Hermannsburg when he suffocated after sniffing Opal fuel.
2. His death was unexpected and thus reportable to the Coroner pursuant to s12 of the *Coroner’s Act*. The holding of a public inquest is not mandatory but was held as a matter of my discretion pursuant to s15 of that Act.
3. Pursuant to section 34 of the *Coroners Act*, I am required to make the following findings:

“(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.”

4. 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.”

5. Additionally, I may make recommendations pursuant to section 35(1), (2) & (3):

“(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 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. This inquest was held first on December 10 and 11 2007 in the Alice Springs Court and then again on 3 March 2008 in Alice Springs and then 4 March 2008 in Hermannsburg. Dr Celia Kemp was Counsel Assisting the Coroner. Lawyers for BP Australia attended the first day of evidence and Mr Patrick McIntyre sought, and was granted, leave to appear on their behalf at the start of the second day of evidence, that is 11 December 2007. I heard evidence from the Officer in Charge, Acting Sergeant Keith Wilbert Bridgeman (by phone from Hermannsburg), Sergeant Gert Vincent Turch Johnsson, Glenda Booth, Leisha Armstrong, Dr Terrence John Sinton and Mr Chris Kostakis

(by video link from Adelaide). I have before me the medical records of the deceased and a complete brief of evidence.

7. I would like to particularly thank Acting Sergeant Bridgeman for the quality of his investigation. I am told this was his first coronial brief and it was of a particularly high standard.
8. On the first occasion of the inquest the deceased's family did not attend as two days before the inquest a close relative was tragically killed in a car crash. When the inquest travelled to Hermannsburg, Sherlene Malthouse, an aunt of the deceased, and three younger cousins of the deceased came to the inquest. I thank them for their attendance and their assistance with the inquest.

FORMAL FINDINGS

9. 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 Kenny Burns, also known as Kenny Malthouse, born on 6 June 1994 at Darwin in the Northern Territory of Australia.
 - (ii) The place of death was on Bunnyhill, Hermannsburg. The date and time of death were between 11 pm on 13 April 2007 and 2 am on 14 April 2007.
 - (iii) The cause of death was accidental suffocation secondary to the inhalation of vapour from Opal fuel.
 - (iv) Particulars required to register death:
 1. The deceased was male.
 2. The deceased's name was Kenny Burns, also known as Kenny Malthouse.

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 toxicological and post-mortem examination and was suffocation secondary to the inhalation of vapour from Opal petrol.
6. The pathologist was Dr Terence John Sinton of Royal Darwin Hospital.
7. The deceased's mother was Mareen Nampitjinpa Burns. The deceased's father is Terrance Malthouse.
8. The deceased lived at House 19, Sandhill Camp, Hermannsburg Community.
9. The deceased was a school student at the time of his death.

CIRCUMSTANCES SURROUNDING THE DEATH

10. Hermannsburg (Ntaria) is a Western Arrente Community located approximately 120 km west of Alice Springs. It was originally set up as a Lutheran Mission. Ipolera Outstation is an outstation of that community.
11. The deceased was only 12 at the time of his death. He finished grade 5 at Gillen Primary in Hermannsburg and then went to Yirarra College in Alice Springs. He was known to be a petrol sniffer by the local community. Marlene Malthouse, his grandmother, says he came back to live with her at House 19, Hermannsburg Community at the end of the school year in 2005. She thinks he started sniffing petrol at the end of 2005. Another grandmother, Mavis Malbunka, says that Terrance Malthouse, the father of the deceased, came to her sometime in 2005 to ask for help to stop the deceased sniffing petrol. The deceased's medical notes contain notations from early 2006 indicating he was known as a petrol sniffer.

12. Some time in late 2005 or early 2006 the deceased went to stay with his father in Ipolera, an outstation about 50 km out of Hermannsburg. There was no fuel to sniff out there and no petrol sniffing. However on 24 January 2006, after coming back to Hermannsburg for shopping, he refused to go back with his father and Mavis because he wanted to spend time with his friends in Hermannsburg and he became violent towards his father. Terrance and Mavis asked for police assistance to take him back to Ipolera so that he could not sniff. This was provided by Sergeant Johnsson. He stayed there for about two weeks. His father says he did not sniff at all during that time. He then returned to Hermannsburg and lived with Marlene again. She says he stopped sniffing for a while because the shop was now selling Opal Fuel.
13. The deceased attended Yirara College on a 'reasonably regular' basis in 2006. I have a report from the school stating that he was a willing participant in the College's programs which were designed to keep students away from petrol sniffing and other anti-social behaviours. Staff at the school said that he was petrol sniffing in the second half of 2006 when he wasn't attending school.
14. Multiple witnesses give statements saying that the deceased was sniffing after his father went to jail in December 2006. His father got out of jail on 8 April 2007 and had a strict talk to his son about sniffing, his son promised he would not do it again. Marlene thinks he stopped for a short while in response to this but then started again.
15. CAYLUS (the Central Australian Youth Link-up Service) ran a four week school holiday program in January 2007 for at risk youth. The deceased participated strongly in the program: workers remember him as one of the first there and the last to leave. CAYLUS state there were up to 120 young people participating a day and they are of the opinion that there was no petrol sniffing in the community while the program was running.

16. Mildred Inkamala states that she saw the deceased sniffing petrol every day since about 2 months before he passed away. There is evidence from fellow sniffers that the deceased was sniffing regularly with a group of young people in the weeks leading up to his death.
17. On Friday 13 April 2007 there was a disco at the Youth Centre in Hermansburg organised by Wayne Brant, the Sports and Recreation Officer. It ran from 7:30 pm to 10:30 pm that night.
18. The deceased arrived some time after he started. Michael Coulthead, a friend, spoke to him there and said the deceased seemed fine and he could not smell any petrol on him. Michael says the deceased left before the end. Michael stayed until the end and walked home with Percy Tucker. They saw the deceased sitting near the football scoreboard with some other kids, they were smoking. Percy says he doesn't think the deceased had been sniffing petrol at that stage.
19. The deceased ran into Glenda Booth, his 15 year old cousin, and Leisha Armstrong, aged 12, shortly after that. The three decided to get some petrol to sniff. Glenda said that the deceased told her he had already sniffed some petrol. The deceased suggested going to a broken down red car parked in front of 19 Sandhill Camp, saying he had petrol there to sniff.
20. The three walked there. Glenda states that deceased got a 1.25 L coke bottle containing petrol from inside the glove box of the car. She hid it under her jumper and they went to Bunnyhill.
21. The group procured two 600 ml plastic bottles that were cut in half and the petrol was poured into the two smaller bottles. Leisha left the other two on top of Bunnyhill and went home.
22. Glenda and the deceased sniffed the petrol. Glenda gave evidence that it was Opal that they were sniffing that night. She said *I think it was opal. It was yellow* (p 17 transcript). She said she had sniffed opal before *a couple of*

times (p 17 transcript). She described the difference between sniffing unleaded petrol and opal; *sniffing unleaded petrol makes you freak out and see things... and sniffing opal doesn't make you see things; it's a bit different* (p 18 transcript). She was asked why you would want to sniff opal and she said *because we was boring and we felt like sniffing it* (p 18 transcript).

23. Glenda said that the deceased held the container with his teeth so it was over his nose and he was sniffing. She said he wasn't talking at all, just sniffing. This lasted for about 10 minutes and then he fell backwards and landed on his back. He was having trouble breathing and he had *spit* coming from his mouth. Glenda rubbed his chest and then set off to find help. She ran into her aunty and told her that the deceased was sleeping, and says her aunty was talking to her a lot and she forgot and she went home and had a rest. She said she didn't know that her cousin was going to die. She said she has stopped sniffing since this happened, because she doesn't want to pass away.
24. I found Glenda to be very honest and articulate in her evidence before me. I accept what she says. I am convinced that she is able to distinguish between opal fuel and unleaded petrol, and find that the substance they were sniffing that night was Opal fuel.
25. The deceased's body was found on Bunnyhill the next morning. Sergeant Johnsson was the first person at the scene at about 10:20 am and he saw the deceased lying on his side. Downhill from his body was a cut down 600 ml container containing fuel. This was seized but not analysed as at the time it was assumed that it was petrol.

FORENSIC EVIDENCE

26. The medical records of the deceased are exhibited before me. In 2006 he had chronic ear infections in both ears which were causing some hearing loss as well as an enlarged tonsil. In September 2006 he had an operation to

remove his tonsils and to fix up his right ear. This went well. In recent years he had no other significant medical problems, he presented relatively often with minor injuries or sores. There is nothing in his file that was likely to have caused sudden death. In addition the forensic pathologist, Dr Sinton, found nothing on his examination that would have caused sudden death.

27. Mr Chris Kostakis is a senior forensic scientist at Forensic Science South Australia and the acting manager of the Toxicology Division. He analysed body cavity fluid and liver samples of the deceased. He found volatile aliphatic hydrocarbons consistent with 'OPAL' fuel in the headspace above the body cavity fluid and in the headspace above the liver.
28. I have on the brief detailed documents from Mr Kostakis explaining his methodology. He used gas chromatography and mass spectrometry to analyse the headspace above the two samples. He used the same techniques to analyse reference samples of OPAL fuel, of 100% 'typical' Unleaded petrol, of 100% Unleaded Petrol (Mobil brand), of 100% Unleaded Petrol (Fox brand), of 100% Unleaded Petrol (Woolworths brand) as well as samples of 50% of each of the above three brands. He also analysed a sample of Avgas using the same methodology.
29. He compared the analysis of the headspace from the two samples from the deceased to each of the analyses of the reference samples. He is of the opinion that the headspace from the two samples from the deceased contained Opal Fuel. He said there was a small percentage of unleaded petrol also present. Mr Garry Whitfield, the Fuels Technical Manager of BP Australia also did some testing and came to similar conclusions. He noted that the small percentage of unleaded petrol would not have provided aromatics at a sufficient level to cause a 'high'. I rely on the evidence of Mr Kostakis that there was in the order of either 2% premium unleaded

petrol or in the order of 6% BP Ultimate unleaded fuel mixed with the opal fuel.

30. I do not consider it particularly surprising that this small amount of unleaded petrol present. It could have come from the tank which the fuel was originally taken, or could have been present in the container into which the fuel was originally poured.
31. Dr Terence Sinton was the pathologist who conducted the autopsy. He took samples of body cavity fluid, and of the liver, from the deceased and sent them off for toxicological analysis, and received the report of Chris Kostakis. He concluded that the cause of death was suffocation as a result of the inhalation of volatile vapour.
32. He said that given the scenario described by Glenda Booth, the deceased was going into acute heart failure, and suffering from pulmonary oedema. He said that the vapour in the lungs would have been displacing the oxygen, which leads to hypoxic organ failure. He said that anything volatile, if sniffed, in theory could cause such a death. He said that Opal Fuel, as an automotive fuel, was 'sniffable' by its nature.
33. I rely on the combined expertise of Dr Sinton and Mr Kostakis to find that the deceased died as a result of sniffing Opal fuel.

PROMOTION OF OPAL FUEL

34. This inquest did not seek to look at the actions of Territory or the Commonwealth Government in relation to petrol sniffing, nor did it seek to evaluate the Opal Fuel Roll out itself, which I understand has been very effective in reducing petrol sniffing.
35. I note Opal fuel has been widely referred to as being 'non-sniffable' and there is information on file indicating it is promoted as 'Opal non-sniffable fuel' on the website of BP Australia. I note in this particular case there is

no evidence that any of the promotional material for Opal fuel had any influence on the decision by the deceased to sniff it on the night he died.

36. I have some evidence from BP Australia that the term was chosen because it means ‘non-intoxicating’ to indigenous Australians. This is not an issue I chose to call additional evidence on. However in so far as the term ‘non-sniffable’ suggests that Opal fuel cannot be sniffed it is clearly wrong. I consider that the promotion of opal fuel as non-sniffable, per say, without warnings that it can still harm and indeed kill you if a person insists on sniffing it, may be misleading. I note that BP is currently reviewing its internet and other publicly available materials regarding opal to determine whether an increased emphasis on warnings relating to the danger of sniffing opal fuel is required.
37. I recommend that the Northern Territory Government, the Commonwealth Government and BP Australia ensure that any promotion in relation to Opal does not give the impression that it is a harmless substance or that it cannot cause death if ingested or sniffed.

RECOMMENDATION

38. That the Northern Territory Government, the Commonwealth Government and BP Australia ensure that any promotion in relation to Opal does not give the impression that it is a harmless substance or that it cannot cause death if ingested or sniffed.

Dated this 12th day of May 2008.

GREG CAVANAGH
TERRITORY CORONER