CITATION: *Inquest into the death of Kumanjai Marshall* [2011] NTMC 025

TITLE OF COURT:	Coroner's Court
JURISDICTION:	Alice Springs
FILE NO(s):	A0062/2010
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DELIVERED AT:	Darwin
HEARING DATE(s):	8 July 2011
FINDING OF:	Mr Greg Cavanagh SM

CATCHWORDS:

Death in custody; natural cause death

REPRESENTATION:

Counsel:

Assisting:	Jodi Truman
Family:	Ted Sinoch

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

No. A0062/2010

In the matter of an Inquest into the death of
KUMANJAI MARSHALL
ON 15 OCTOBER 2010
AT ALICE SPRINGS HOSPITAL

FINDINGS

Mr Greg Cavanagh SM:

INTRODUCTION

1. Kumanjai Marshall ("the deceased") was a 51-year-old Aboriginal man who was born on 6 March 1959 in Papunya in the Northern Territory of Australia. Mr Marshall died at approximately 1.55pm on 15 October 2010 at the Alice Springs Hospital ("ASH"). At the time of his death the deceased was a serving prisoner incarcerated at the Alice Springs Correctional Centre ("ASCC"). Prior to his incarceration he was unemployed and living at House 2, Little Sisters Camp, Alice Springs in the Northern Territory of Australia.

2. For reasons which will appear below, this death was reportable to me pursuant to s.12 of the *Coroners Act* ("the Act") because it was a death of a person who immediately before his death was a "person held in custody". Person held in custody is defined under s.12 of the Act to include a person detained in prison. In addition, as a result of being a person held in custody immediately prior to his death, this inquest is mandatory pursuant to s.15(1) of the Act.

3. Pursuant to section 34 of the Act I am required to find if possible:

"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 registered the death under the Births, Deaths and Marriages Registration Act;

v. Any relevant circumstances concerning the death"

4. This inquest was held on 8 July 2011. Ms Jodi Truman appeared as Counsel assisting. Mr Sinoch appeared on behalf of the family. I thank both counsel for their assistance.

5. Three (3) witnesses were called to give evidence at this inquest, namely:

a. The Officer In Charge of the coronial investigation, namely Detective Senior Constable Deanne Ward;

b. Dr Stephen Brady, Head of the Department of Medicine at the ASH and treating doctor to the deceased; and

c. Deputy Superintendent William Yan of the Alice Springs Correctional Centre.

6. A brief of evidence containing various statements, together with numerous other reports, and police and documentation was tendered at the inquest (exhibit 1). The deceased's medical file was also tendered in evidence (exhibit 2). Public confidence in Coronial investigations demands that when police (who act on behalf of the Coroner) investigate deaths that they do so to the highest standard. I thank Detective Senior Constable Ward for her investigation.

Formal Findings

7. On the basis of the tendered material and oral evidence given at this inquest, I am able to make the following formal findings in relation to the death of Mr Kumanjai Marshall, as required by the Act:

   i. The identity of the deceased was Kumanjai Marshall who was born on 6 March 1959 in Papunya in the Northern Territory of Australia.

   ii. The time and place of death was at approximately 1.55pm on Friday 15 October 2010 at the Alice Springs Hospital.

   iii. The cause of death was pneumonia secondary to hepatocellular carcinoma and chronic liver disease.

   iv. Particulars required to register the death:

      a. The deceased was male.

      b. The deceased's name was Kumanjai Marshall.

      c. The deceased was of Aboriginal descent.

      d. The cause of death was reported to the Coroner.

      e. The cause of death was confirmed by the deceased's treating doctor, Dr Stephen John Brady after an autopsy was deemed unnecessary.

      f. The deceased's mother was Judy Nungari and his father was Wabeta Tangala (both since deceased).

      g. The deceased lived at House 2, Little Sisters Camp, Alice Springs in the Northern Territory of Australia;

      h. The deceased was unemployed.

Circumstances surrounding the death

<u>Background</u>

8. Kumanjai Marshall was born in Papunya in the Northern Territory to Judy Nungari and Wabeta Tangala. He had 4 siblings, namely Jeannie Ross, Molly Peterson, Tiger Marshall and Peter Marshall (deceased). He lived and did his schooling at Papunya and when he was about 17 or 18 years of age he moved to Indulkana, which is a community south of Alice Springs. At Indulkana he had a promised wife and sometime after he married another woman named Daisy.

9. The deceased and Daisy had 2 daughters, namely Dianne and Kerryanne Robertson who are now both over 18 years of age. The family lived at Indulkana for some time together. Thereafter Daisy married another man from Mimili community when their 2 daughters were still young. After that the deceased moved to Alice Springs and lived the rest of his life there.

10. According to the evidence provided by the deceased's next of kin, namely his sister Molly Nambajimba Peterson, the deceased did not work for most of his life and instead received money from Tangentyere Council. The deceased also painted and received money for his paintings. He was described as a good painter. It appears however that the deceased was also a very heavy drinker. Indeed his sister openly and honestly described him as an alcoholic who "drank all the time". From the evidence of Ms Peterson it appears most unfortunately that his drinking started when he moved to Alice Springs.

11. In or about the year 2000, the deceased married a woman by the name of Milly Douglas. They lived together at Little Sisters Camp but they did not have any children together. Ms Douglas had 2 daughters from a previous relationship who lived at Amata community. In or about early 2010, Ms Douglas returned to Amata to live with her daughters. The deceased therefore lived on his own at the Little Sisters Camp.

12. According to the statement received from Ms Peterson, the deceased "used to get sick from drinking and would fall over a lot when he was drunk".

Although this was the case, Ms Peterson stated that it was not until "just before" the deceased went to gaol that she considered that he actually started to "look sick". Ms Peterson described the deceased as having "yellow eyes". I note from the evidence of Dr Brady that yellow eyes are in fact one of the symptoms of liver disease.

13. Ms Peterson sets out in her statement that she told the deceased to go the hospital "and get a man's check-up", but he would not listen to her and would simply tell her to go to the hospital herself. Ms Peterson stated that she thought that perhaps the deceased did not go to the hospital because he would then start drinking again and "forget".

14. Whilst I accept this evidence from Ms Peterson, I do note that in fact from 26 May 2010 until his arrest on 24 August 2010, the deceased did attend at the ASH Accident and Emergency on 8 separate occasions. These occasions were all for complaints of abdominal pain. Again I pause to note that from the evidence of Dr Brady, abdominal pain is another symptom of liver disease.

15. On his first attendance at the ASH on 26 May 2010, the deceased was seen by the team supervised by Dr Brady and an ultrasound was conducted which, according to Dr Brady's evidence "showed a large cystic lesion", which was about 10cms in diameter located on his liver. The initial diagnosis at that time was a primary hepatocellular carcinoma, being liver cancer. It was decided that further testing was required to be scheduled, however each time attempts were made to do such testing or make such arrangements, the deceased would abscond from the hospital.

<u>Circumstances surrounding his incarceration</u>

16. The deceased's criminal history was tendered in evidence before me as part of exhibit 1. It is extensive, dating back to April 1975 and a number appear to relate to alcohol use. It is clear also that in relation to a number of them,

the deceased was in fact sentenced to periods of imprisonment. According to the evidence, the deceased was arrested on 23 June 2009 for an aggravated assault upon his wife, Milly Douglas, committed on 22 June 2009. The deceased received bail but then failed to appear in court and a warrant was issued for his arrest. It was not until 24 August 2010 that the deceased was finally arrested on the warrant. The following day he appeared in court and was sentenced to four (4) months imprisonment for the aggravated assault upon his wife.

Events prior to hospitalisation

17. Upon his incarceration to the ASCC, the deceased was required, as are all prisoners, to undertake an "Initial Risk/Needs Assessment" which is conducted by Corrections staff. This assessment addresses the following areas:

17.1 Institutional risk/needs;

17.2 Individual risk factors;

17.3 Suicide/self-harm;

17.4 Drugs and alcohol;

17.5 Psychiatric/psychological;

17.6 Intellectual disability;

17.7 Medical history; and

17.8 Physical disability.

18. During the course of his assessment, the deceased indicated to Corrections staff that he was "sore around the kidney area". This information was then provided by Corrections staff to their contracted health provider. All

prisoners are also required to be seen by a doctor within 24 hours of admission into custody and this is what occurred in relation to the deceased.

19. On 26 August 2010, the deceased was reviewed by Dr Ahmed Abdelsalam. I had tendered into evidence before me as part of exhibit 1 a statutory declaration from Dr Abdelsalam. In his statement, Dr Abdelsalam describes the deceased as appearing on that first occasion as "unwell, very confused, tremulous and on examination of his abdomen he had a tender mass, the cause of which was not clear".

20. As a result Dr Abdelsalam referred the deceased immediately to the ASH Emergency Department for assessment and management. This was appropriately facilitated by the ASCC. The deceased stayed at the ASH for a few days and then on 3 September 2010 he was transferred to the Royal Darwin Hospital ("RDH") for further investigations. He remained at the RDH until 10 September 2010. According to the evidence of Dr Brady, whilst at the RDH the deceased underwent an MRI scan which confirmed that the mass in his abdomen was "a multifocal hepatocellular carcinoma".

21. Dr Brady gave evidence that a biopsy was discussed at the RDH but it was considered not to be safe as one of the risks of such a procedure is that the cancer is spread. The deceased was found not to be suitable for surgery because there were multiple lesions and it was so advanced. The deceased was also not suitable for any other available treatments because of the extent of his liver disease. There was therefore no curative therapy that could be offered to him. He was transferred from the RDH to the Darwin Correctional Centre on 10 September 2010, and eventually transferred back to ASCC on 21 September 2010.

22. Dr Abdelsalam set out in his statement that when he received the discharge summary from RDH it stated that the deceased had "an advanced cancer of the liver associated with a severe organic mental impairment; both were felt to be due to a history of excessive alcohol abuse". In addition Dr

Abdelsalam stated that "unfortunately his cancer was not amenable to any form of intervention (such as surgery, chemotherapy or radiotherapy) and his future management was to be palliative only". The deceased's condition was expected to deteriorate over time, at which point he would then be transferred to ASH.

23. On his return to ASCC, the deceased was given analgesics to control his pain. It is clear from the evidence of Deputy Superintendent William Yan that changes were made at the ASCC around their usual routines for prisoners to attempt to accommodate the deceased's needs as much as possible. I note that because of his medical condition the deceased was housed in the Reception Unit of the ASCC so that a high level of supervision could be maintained by staff, and that staff made allowances for him when allocating him tasks in the block. I also note that wherever possible the deceased was housed in dormitory accommodation with other family members and known countrymen that he identified with.

24. Following his return, arrangements were made by ASCC, Dr Abdelsalam and the Aboriginal Liaison Officers ("ALO") to contact the family of the deceased. A meeting took place on 25 September 2010 with the deceased's sister, namely Ms Peterson, and a niece. Dr Abdelsalam explained at that meeting the deceased's diagnosis and condition. Thereafter a further meeting was held on 28 September 2010 with a number of family members where they were all advised of the deceased's condition, his poor prognosis and his likely deterioration.

25. Dr Abdelsalam set out in his statement that at the same time he put in a report to ASCC about the condition of the deceased and recommended that consideration be given for a compassionate release. Deputy Superintendent Yan gave evidence that he commenced documentation to apply for the release of the deceased by the Administrator in the exercise of his

prerogative of mercy. However because of the deceased's advanced state of illness, time did not permit this option.

26. As stated by Dr Abdelsalam in his statement, "as expected, the general condition of (the deceased) was one of progressive wasting, debilitation and increasing confusion".

Attendance at Hospital

27. At approximately 7.30am on 5 October 2010 the deceased complained of chest and abdominal pain. As a result he was taken by ambulance to ASH and was admitted. At that time, both the medical and palliative care team were involved in his management. Dr Brady gave evidence that whilst he was admitted, the deceased's "cognitive state was not good". It appears from the records that he was conscious but was repeating himself. Dr Brady gave evidence that this made it difficult to engage with the deceased about what was happening to him medically but he was able to talk about his pain and symptoms. It was Dr Brady's opinion that because the deceased had chronic liver disease that it was possible that the reduction in his cognitive state was a "likely progression of liver failure" called hepatic encephalopathy, or a "pre-existing cognitive impairment" previous heavy alcohol consumption.

28. Initially upon his admission the deceased was walking around a minimal amount but after a short period most of his time was spent in bed. On 8 October 2010 it was agreed that a Prison Officer was no longer required to guard the deceased at the ASH and his lawful custody was transferred to the General Manager of the ASH pursuant to s.74(1) of the *Prisons (Correctional Services) Act.*

29. According to the evidence of Dr Brady, the deceased's condition worsened and during his final days he developed pneumonia as a complication of his liver failure and encephalopathy and as a result he died at ASH on 15 October 2010 "as expected". Dr Brady gave evidence that it was his opinion

that "the underlying cause for the hepatocellular carcinoma was cirrhosis of the liver and its likely cause was long term alcohol consumption".

Findings and Recommendations

30. As stated at the commencement of these reasons, this inquest is mandatory because the deceased was a person held in custody immediately prior to his death. This mandatory requirement is to ensure that those persons who have their liberty taken away and are at the mercy of others are not mistreated in such a way that it brings about their death and there is no mechanism within which to investigate the circumstances of their death. It is an important, clear and absolute protection for such persons.

31. In this case however it is my finding that there is no evidence whatsoever to suggest any suspicious circumstances surrounding the death of the deceased. There are no reports of any assaults against the deceased during his incarceration at the ASCC. It is clear that upon his incarceration the deceased was in such a serious condition that I find that it was already too late for him to have a reasonable prospect of survival. His liver cancer clearly had developed very quickly from its first diagnosis on 26 May 2010 when he went to the ASH Emergency Department whilst he was still at liberty.

32. Instead however of following the recommendations of the medical professionals that further testing was required in order to make decisions as to the appropriate management of his condition, the deceased absconded each and every time. By the time he could be made to have such testing, i.e. because of his incarceration, the cancer was so large and numerous nothing could be done except palliative care.

33. I find that the actions taken by both the staff at ASCC and ASH were appropriate, without criticism and done with the clear intent of attempting to make the deceased's final months as comfortable as possible in the context

of his rapidly deteriorating condition. In my view, his care, supervision and treatment whilst in custody was exemplary and without criticism.

34. It is in light of all of the evidence that I am able to find that the deceased died of pneumonia which he developed as a complication to hepatocellular carcinoma and chronic liver disease.

35. I have no recommendations to make arising from this Inquest.

Dated this 6th day of July 2011

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GREG CAVANAGH
TERRITORY CORONER