

CITATION: *Inquest into the death of Stuart Morris* [2011] NTMC 037

TITLE OF COURT: Coroners Court

JURISDICTION: Daly River

FILE NO(s): D0043/2010

DELIVERED ON: 2 September 2011

DELIVERED AT: Darwin

HEARING DATE(s): 10 and 11 August 2011

FINDING OF: Mr Greg Cavanagh SM

CATCHWORDS: Death in custody, attempted apprehension by police, drowning

REPRESENTATION:

Counsel Assisting: Ms Elisabeth Armitage
Family of the Deceased: Mr James Stoller, NAAJA

Judgment category classification: A
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IN THE CORONERS COURT
AT DALY RIVER (NAUIYU) IN THE
NORTHERN TERRITORY OF AUSTRALIA

No. D0043/2010

In the matter of an Inquest into the death of

STUART MORRIS
ON 9 MARCH 2010
AT NAUIYU (DALY RIVER) COMMUNITY

FINDINGS

(2 September 2011)

Mr Greg Cavanagh SM:

Introduction

1. The Deceased, Mr Stuart Morris, was 26 years old when he died on 9 March 2010. He drowned while attempting to swim across the Daly River.
2. The Deceased arrived in the Nauiyu (Daly River) Community shortly before his death. He was intoxicated and driving a stolen car. A local resident reported her concerns about his manner of driving to police. The police responded and located the stolen car. Residents informed the police that the driver and two passengers had run away when the police approached. The police were naturally concerned to find the three men because they wanted to question them about the stolen car and the drink-driving allegation.
3. Community residents told the police that two of the men had run to the river. When the police approached the river bank the Deceased and a second man, Mr Richard Moongi, were already in the water. Although residents and the police encouraged both men to return to the bank, they struck out across the river and were swept downstream by the current.
4. The police responded swiftly and appropriately to the unfolding events. With the assistance of a local resident, they secured the use of a boat and set

out after the Deceased and Mr Moongi. They found them under paper bark trees on the opposite bank. The Deceased was unconscious. Mr Moongi was wailing and pounding the Deceased's chest. They were both lying in the water and were in real danger from crocodile attack. Sergeant Steven Bott and Senior Constable Mark Pettit entered the water to recover both men into the boat.

5. I find that the police conduct throughout the incident was proper and lawful. The attending police exercised their best endeavours to prevent and then respond to this tragedy. There was nothing about the police conduct which contributed to this death. To the contrary, when Sergeant Bott and Senior Constable Pettit entered the water to recover the men, they did so in full knowledge of the real and present danger of crocodile attack. I commend their brave and selfless actions to the Commissioner of Police.
6. I have considered the extended definition of 'custody' in the *Coroners Act*, which includes a person fleeing or attempting to flee from police. I find that the Deceased was attempting to flee from the police when he entered the river and drowned. He therefore died whilst in custody and accordingly, an inquest into his death was mandatory.
7. The decision of the Deceased to enter and swim across a notoriously crocodile infested and flooded river was his own. Tragically, the Deceased was responsible for his own death.
8. Ms Elisabeth Armitage appeared as Counsel Assisting. The death was investigated by Detective Senior Sergeant Scott Pollock. I received into evidence his thorough and detailed investigation brief. I also heard evidence from Detective Senior Sergeant Scott Pollock, Mr Gabriel Mardigan, Mr Gabriel Martin, Mr Jason Binsaris, Sergeant Steven Bott, Senior Constable Mark Pettit, Aboriginal Community Police Officer Mark Casey, Mr Mark Mullins, Mr Richard Parry, and Mr Edward Weekend. Mr Richard Moongi was served with a summons to attend and give evidence at the Inquest but

failed to appear. Police were unable to locate him although he was suspected of being in the community. The Inquest proceeded without his oral evidence and I relied on his statement.

9. 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*;

10. 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.”

11. 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.”

12. Section 26 of the Act provides as follows:

“(1) Where a Coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody, the Coroner –

- a. Shall investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody; and
- b. May investigate and report on the matter connected with public health or safety or the administration of justice that is relevant to the death.

(2) A Coroner who holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody shall make such recommendations with respect to the prevention of future deaths in similar circumstances as the Coroner considers to be relevant”

Background

13. The Deceased, an Aboriginal male, was born in Darwin on 23 January 1984. His birth certificate lists his name as Stuart Neville Dougall (Jnr) but throughout his life he used his mother’s surname, Morris. His mother, Mrs Camilla Mary Morris, separated from his father, Mr Neville John Dougall, when the Deceased was young. Mr Dougall did not maintain contact with his son and presently lives in Kununurra. Mrs Morris lived in Wadeye until her death on 29 August 2008. The Deceased is survived by two step-sisters, Ms Rasheeda Malgil and Ms Anthea Malgil. He never married and had no known dependents. He was unemployed.

14. The Deceased lived at Knuckey’s Lagoon Camp, Berrimah and members of his extended family from Knuckey’s Lagoon attended the Inquest. I appreciated their keen interest in the proceedings and their concern for the Deceased.

15. Sadly, the Deceased's life was marred by alcohol abuse. He started offending at the age of 12 and at the time of his death he had 35 criminal convictions recorded against his name. Alcohol appears to have played a part in most of his offending. At the time of his death, he was on bail for an aggravated unlawful entry.

Relevant circumstances surrounding the death

16. Sometime during the late evening of Monday 8 March 2010, the Deceased and Mr Richard Moongi stole a Toyota tray back utility, NT Registered '4 BOAT' from Casuarina.
17. The next day the Deceased and Mr Moongi collected Mr Gabriel Mardigan and Mr Adam Bunda from a residence in Malak. They decided to travel to Port Keats. Mr Bunda was dropped off in Palmerston but the others continued south to Adelaide River. The evidence indicates that both the Deceased and Mr Moongi took turns driving the vehicle.
18. They stopped at Adelaide River and purchased alcohol before continuing on to Daly River. The Deceased drank the alcohol *en route* to Daly River and became intoxicated. When they arrived at the Daly River crossing, they discovered that the river was impassable due to flooding. The three men then decided to visit relatives at nearby Nauiyu Community.
19. Once in the community the vehicle was driven at a speed and in a manner that caused a community resident, Mrs Miriam Baumann, to be concerned. Mrs Baumann rang the local police at about 3.00 pm. She reported that there were three 'Port Keats' males driving 'drunk' around the Nauiyu Community. It was clear to police that Mrs Baumann expected them to respond to her concerns and they promptly and appropriately did so.
20. Brevet Sergeant Steven Bott and Senior Constable Mark Pettit attended Nauiyu Community in a marked police car. As they drove into the community they saw a car parked at House 32 which matched the

description provided by Mrs Baumann. The police made enquiries and were told that the three men from the car had run away when the police car approached.

21. Sergeant Bott contacted Senior Aboriginal Community Police Officer Mark Casey at the Daly River Police Station. They made enquiries about the car and discovered that it was stolen. Sergeant Bott directed ACPO Casey to attend and secure the stolen vehicle.
22. As ACPO Casey drove his marked police vehicle into the community, he saw two males near the river bank in an area known as the 'quarry' or 'sandpit'. ACPO Casey said that the men looked at the police car and then disappeared down the river bank. Around the same time, community residents told Sergeant Bott and Constable Pettit that two men had run 'down to the river' and that the third, Mr Mardigan, had ran away behind houses.
23. In his evidence at the Inquest, Mr Richard Parry told me that he saw the Deceased and Mr Moongi run to the river. He told me that one of the men made a swimming motion to the other as they ran by. I can only conclude that the two men were beginning to form a plan to swim away from the police.
24. Community members gathered at the river bank and saw the Deceased and Mr Moongi enter the water. Sergeant Bott sent Mr Parry over to the bank and requested that he attempt to talk the men back. Sergeant Bott reasoned that a local person might have a better chance of convincing the men to come back to shore than would two uniformed police officers. However, both men refused to return and community members saw them swim out into the water. The residents called out for them to return to the bank.
25. The police immediately responded to the alarm and approached the bank. They saw the Deceased and Mr Moongi in the water metres from the bank.

The Deceased was clinging to a submerged tree and Mr Moongi was a few metres further out in the river. Mr Moongi was urging the Deceased to follow him out. Community members and police continued to call for both men to get out of the water. Mr Moongi continued swimming away and the Deceased soon let go of the tree and followed Mr Moongi out into the river. With the river in flood, the distance to the other shore was about 250 metres.

26. Both men became caught in the current and were swept downstream. To those standing on the bank, the Deceased appeared to be the weaker swimmer of the two. The Deceased was clearly struggling and went under the water, but he was pulled up and assisted by Mr Moongi.
27. Sergeant Bott promptly arranged for a community member to provide a boat to aid in the rescue of the two men. Sergeant Bott, Senior Constable Pettit and the boat owner, Mr Gabriel Martin, entered the swollen river to carry out the rescue. They found Mr Moongi on the far bank at a position approximately opposite the Nauiyu Community Presbytery. Mr Moongi was partially in the water and was cradling the Deceased's head in his lap. The Deceased's body was almost fully submerged. Mr Moongi was wailing and pounding the Deceased's chest.
28. Mr Martin manoeuvred his boat through the trees and got close to the bank. Sergeant Bott and Senior Constable Pettit entered the water in order to recover the Deceased and Mr Moongi into the boat.
29. Resuscitation efforts with the Deceased commenced as soon as all were on the boat and continued during the return trip. Sergeant Bott contacted the clinic to ensure medical assistance would be waiting their arrival. Soon after the boat landed, clinic staff took over the resuscitation attempts. First aid was continued for about 15 minutes. A defibrillator was attached to the Deceased but did not activate a charge as no pulse was detected. At no stage did the Deceased regain consciousness and no signs of life were detected. Clinic Manager Mark Mullins declared his death at 3.40 pm.

30. The time between the initial police call out and the declaration of death was 40 minutes.
31. Police members returned to the police station with Mr Moongi and Mr Mardigan. Both were charged with unlawfully using a motor vehicle.
32. An autopsy was conducted by Dr Nigel Buxton on 11 March 2010. The Deceased was found to have a blood alcohol reading of 0.199%. There was no evidence that any person played any role in his death. The cause of death was found to be drowning.

Findings

33. This matter was properly investigated as a 'Reportable Death' as defined by section 12 of the *Coroner's Act* (NT). I find that police members intended to take the Deceased into custody and that the Deceased died whilst attempting to flee from the police. Accordingly, this Inquest was mandatory.
34. The police conduct throughout the incident was both proper and lawful. Their conduct did not contribute to this death. Indeed the police responded bravely and selflessly to the unfolding drama. They made fitting and timely decisions and did all that could be done to rescue and save the Deceased's life. Sergeant Bott and Senior Constable Pettit acted courageously when they entered the crocodile infested waters of the Daly River to rescue the Deceased and Mr Moongi. Their actions are to be commended. I pause to note that when a viewing was conducted during this Inquest on 9 August 2011 a large crocodile could be seen just off the bank where the Deceased entered the water.
35. The Deceased's actions were witnessed by many community residents. At the time he entered the river, he was apparently encouraged to do so by Mr Moongi. At the same time, contrary instructions were shouted from the river bank. I note that when he entered the river the Deceased was intoxicated. Ultimately, taking into account all of the circumstances, I find that the

Deceased's decision to enter and swim across the flooded Daly River was his own. I have no criticism to make of the police and only praise for them. I make no report pursuant to section 26 of the *Coroners Act* as the deceased was never actually in their care.

36. There are no recommendations arising from this Inquest.

Formal Findings

37. Pursuant to section 34 of the *Coroner's Act* ("the Act"), I find, as a result of evidence adduced at the public inquest, as follows:

- (i) The identity of the Deceased was Stuart Neville Dougall, also known as Stuart Neville Morris, born 23 January 1984. The Deceased resided at Knuckey's Lagoon Community, in the Northern Territory of Australia.
- (ii) The time and place of death was 3.40 pm on 9 March 2010 at Nauiyu Community, Northern Territory.
- (iii) The cause of death was drowning.
- (iv) Particulars required to register the death:
 - 1. The Deceased was Stuart Neville Dougall also known as Stuart Neville Morris.
 - 2. The Deceased was of Aboriginal descent.
 - 3. The Deceased was unemployed.
 - 4. The cause of death was reported to the coroner.
 - 5. The cause of death was confirmed by post mortem examination carried out by Dr Buxton.

6. The Deceased's parents are Camilla Mary Morris (deceased) and Neville John Dougall also known as Neville John Bidwee.

Dated this 2nd day of September 2011.

GREG CAVANAGH
TERRITORY CORONER