

INQUEST INTO THE DEATH OF MULRUNJI

Coroner's Court (Deputy Chief Magistrate Hine)
14 May 2010
COR 2857/04(9)

Death in custody – order for inquest to be re-opened – s 45(2)(b) of *Coroners Act 2003* (Qld) – inquest as fact-finding process – whether definitive determination can be made upon re-examination of all evidence – recommendation for impartiality and independent representation for police witnesses

Facts:

A post-mortem examination revealed Cameron Doomadgee (otherwise known by his tribal name of Mulrunji) to have a cut above his right eye, four broken ribs, his liver almost split in two, and his portal vein ruptured. Evidence suggested that the injuries occurred within the short space of time in which Mulrunji was taken by Senior Sergeant Hurley from a police van to his cell in the police watch house on Palm Island, Queensland.

The State Coroner directed that the inquest into Murunji's death in custody be re-opened. This was in accordance with orders made by the Court of Appeal in *Hurley v Clements & Ors* [2009] QCA 167 that the Deputy State Coroner ('DSC') had erred in her finding under s 45(2)(b) of the *Coroners Act 2003* (Qld) ('the *Act*'). The Court of Appeal found that the DSC had confused the meanings of s 45(2)(b) and s 45(2)(e), which refers to the cause of the death, as distinct from 'how the person died'. Thus the inquest was re-opened to re-examine the findings of the DSC in respect of s 45(2)(b) of the *Act*.

The issue that arose for the Coroner in this inquest was the scope of his jurisdiction in relation to the direction to re-examine the particular findings made in respect of s 45(2)(b) of the *Act*. The question to ultimately be determined was whether it was possible to ascertain definitively, upon the evidence, that Sergeant Hurley had either accidentally or deliberately caused the deceased's fatal injuries.

Held, per Chief Deputy Magistrate Hine:

1. The Coroner is at liberty to make a determination under s 45(2)(b) of the *Act* with full regard to the whole of the evidence before the inquest: [46].
2. While Hurley's own evidence can be construed as denying an accidental cause and supporting an inference that a second application of force caused the fatal injury, it is not possible to definitively make a positive finding that the death was caused deliberately: [194], [366]; Finding Pursuant to Section 45(2)(b) 150.
3. Under s 45(2), the Coroner is only to make a finding as to how the person died, if possible on the evidence. Thus, as in the present case, circumstantial evidence which is largely suspect and conflicting, or highly qualified (in this case medical evidence) does not satisfy the Briginshaw test and make it possible to make a positive finding. The fact-finding process was substantially compromised and rendered more difficult by the unsatisfactory state of the investigation, and fabricated evidence given by the main witnesses: [334], [366], [367].
4. Since it is not possible to make a definite finding, an open finding is more appropriate. If the two main witnesses had not repeatedly changed their story and fabricated evidence, a proper judgement would have been possible: [366].
5. As per the discretionary power to comment under s 46 (and ancillary power to s 45, in respect of issues of public

health and safety), it is recommended that the Crime and Misconduct Commission ('CMC') be the sole body responsible for future investigation of deaths in police custody, which exhibit indicia of unnatural causes, or have occurred in the context of police actions or operations: *Comments Pursuant to Section 46* at [31].

6. The CMC is recommended in future cases to give closer consideration to insisting upon separate legal representation for police witnesses in such serious contentious matters, where there is the possibility that evidence may conflict. Extensive evidence in this case indicates that there were flaws (on the part of the QPS investigation) in terms of transparency, independence and thoroughness: *Comments Pursuant to Section 46* at [33].