



OFFICE OF THE STATE CORONER

FINDINGS OF INQUEST

CITATION: **Inquest into the death of Amit KUMAR**

TITLE OF COURT: Coroners Court

JURISDICTION: Brisbane

FILE NO: 2012/3417

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FINDINGS OF: Mr John Hutton, Brisbane Coroner

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REPRESENTATION:

Counsel Assisting: Mr Peter De Waard
(Office of the State Coroner)

Mrs Anita Kumar: Mr Michael McMillan
(McMillan Criminal Law)

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Introduction

Mr Amit Kumar was 34 years of age when he died in the early hours of Sunday morning 23 September 2012 at a car park on Parkyn Parade, Mooloolaba, after being physically restrained by five men and one woman for a period of about 10 minutes.

These findings address the following issues:

- the identity of the deceased person, when, where and how he died and what caused his death;
- whether the actions of the people who restrained the deceased contributed to his death;
- whether the actions of the people who restrained the deceased were reasonable; and
- whether any recommendations can be made to reduce the likelihood of deaths occurring in similar circumstances or otherwise contribute to public health and safety or the administration of justice.

Findings required by s. 45

I make the following findings pursuant to s. 45(2) of the *Coroners Act 2003* (Qld):

Identity of the deceased – The deceased person was Amit Kumar.

How he died – As per the circumstances outlined below.

Place of death – Mr Kumar died at Parkyn Parade, Mooloolaba, Queensland.

Date of death – Mr Kumar died on 23 September 2012.

Cause of death – Mr Kumar died from the combined effects of restraint, coronary artery atherosclerosis and centripetal obesity.

Findings on the issues

Whether the actions of the people who restrained the deceased contributed to his death

I find that the actions of the people who restrained Mr Kumar contributed to his death. However, I am unable to quantify the level of contribution their actions had to Mr Kumar's death.

The expert forensic pathologist who reviewed this matter, Dr Linda Iles, concluded that the way in which Mr Kumar was restrained in the prone position; the possibility of pressure to Mr Kumar's head and neck compromising his airway; and the physiological stress associated with a prolonged period of struggle were significant elements, which contributed to Mr Kumar's death. I accept Dr Iles' assessment.

I also accept Dr Iles' assessment that Mr Kumar had significant coronary artery narrowing and centripetal obesity. These were also significant elements, which contributed to his death.

Whether the actions of the people who restrained the deceased were reasonable

I find that the initial decision by the group to restrain Mr Kumar after he had assaulted two people was reasonable (based on Queensland legislative powers of citizen's arrest).

I find that the people who restrained Mr Kumar had released pressure on him once or twice in the first five minutes of their restraint of Mr Kumar, in response to his pleas that he could not breathe.

However, I find that they did not release pressure on Mr Kumar again during the last five minutes of his restraint. It is clear that Mr Kumar continued to plead with them that he could not breathe for the duration of his restraint. The two '000' recordings taken at the beginning of the restraint, shows that Mr Kumar's pleas were becoming more urgent and in quicker bursts. It is likely that this pattern continued. Unfortunately, the people who restrained Mr Kumar no longer believed his pleas for help; based on flawed reasoning that if he could still talk, he was still able to draw breath. They failed to recognise the danger to Mr Kumar's life, to continue to restrain him in circumstances where he was clearly displaying severe difficulties breathing.

I find that their failure to release pressure on Mr Kumar, in the last five minutes of their restraint of him, despite Mr Kumar's continual pleading with them that he could not breathe, fell well short of any standard of reasonableness. The force they used to continue to restrain Mr Kumar in the circumstances was excessive.

I find that one of the persons who restrained Mr Kumar, Dr Mark Yates, should have had a higher level of awareness of the dangers of continuing to restrain Mr Kumar in such circumstances, because he was a medical practitioner. It

was unacceptable for Dr Yates to put aside his medical training and experience on the basis that he was given just one job to do – to restrain Mr Kumar’s right arm. Dr Yates did take control of the situation once CPR was required, but he should have taken more control over Mr Kumar’s wellbeing earlier, before it was too late. I find that his failure to do so was unreasonable.

Evidence, discussion and general circumstances of death

Social history and health

Mr Kumar was 34 years of age at the time of his death. He was born in Fiji to Indian parents, Mr Raj Kumar and Mrs Anita Kumar, before moving to Australia. In 2003, he married Mrs Reshma Kumar, who is also of Fijian Indian descent. They resided in Brisbane together with their three daughters aged three, seven and eight. Mr Kumar had a close connection with his parents and three younger brothers and their families, who reside in Sydney. I have received separate correspondence from Mr Kumar’s sister-in-law, Ms Lindsay Keating, about the loss their family has suffered. It is clear to me that Mr Kumar’s passing was a very sad event in the lives of his family. I offer my condolences to Mr Kumar’s immediate and extended family for their loss.

Mr Kumar was a self-employed truck driver by occupation but in his spare time, he was a fishing enthusiast and loved taking his family out on their newly acquired fishing boat. His youngest daughter would always ask him to bring her home a ‘rainbow fish’ before going out on a fishing charter trip. He was known by a number of fishing charter owners on the Sunshine Coast, due to the frequency of his fishing charter trips with them and his cheerful and excited demeanour.

Mr Kumar had been a heroin user since he was 21 years of age. However, he had taken steps to regain control of his life. He was considered by his medical practitioner to have been stable on a methadone program for at least two years prior to his death. He had also ceased consuming alcohol and was in the process of quitting smoking.

Mr Kumar’s wife stated that he used to regularly exercise, lift weights and punch a boxing bag. However, leading up to his death, he had become unfit due to his occupation and he had put on weight around his stomach. At autopsy, it was noted that Mr Kumar was 184cm tall and he weighed 113.2kg. He had centripetal obesity and advanced coronary artery atherosclerosis.

Mr Kumar had prior criminal convictions for various drug related offences. He had also served two and a half years in prison in the late 90’s for armed robbery causing wounding and assault occasioning bodily harm. In two isolated incidents in 2006, Mr Kumar had allegedly assaulted his wife and one of his daughters. However, his wife put this down to his drug problem at that time and insisted that there had been no further issues since he had rehabilitated himself. Mr Kumar’s wife stated that he was not a violent man. He was known as ‘smiley’ to people who knew him. He was a Christian and a good family man.

I accept that Mr Kumar's actions on 23 September 2012, leading up to his restraint were out of character.

Mr Kumar's booking for 23 September 2012

On 13 September 2012, Mr Kumar booked a full day fishing charter trip for Sunday 23 September 2012 with a company by the name of 'Offshore Reef and Game Fishing', located at Parkyn Parade, Mooloolaba. He had never been out with them before but there were no vacancies with the usual charter boats that he frequented.

Ms Jodie Cassar, the co-owner and manager of the company took Mr Kumar's booking over the phone. The company's booking records confirm that Mr Kumar booked under a false name of 'Adam Jones' and had informed Ms Cassar that he did not have an e-mail address, nor did he have a credit card, and he was on holidays. It would appear that the only correct information that Mr Kumar provided was his mobile telephone number. Mr Kumar undertook to pay for the trip by cash on the day.

Previous cancellation by Mr Kumar

Ms Cassar explained in oral evidence that she had recognized 'Mr Jones' accent, voice, and style of questioning from a previous booking, which had been cancelled in unusual circumstances earlier in the year.

Mr 'Jay Kumar' had booked to attend a charter trip with them on 3 March 2012 and had cancelled the night before when he was unhappy with the number of people that would be taken on the boat. He had informed Ms Cassar that he had provided her with a false credit card number. He called her a 'stupid bitch' and hung up.

A cross match of the booking records revealed that the mobile telephone numbers for the bookings in March and September 2012 were identical for 'Mr Jay Kumar' and 'Mr Adam Jones'.

In oral evidence, Mr Kumar's wife advised that her husband often used the nickname 'Jay' as it was easier for people to say than 'Amit', however, he had never used the name 'Adam' or 'Jones', to her knowledge.

I accept that Mr Kumar had made a booking for the 23 September fishing trip, using false particulars. It would appear to me that this was probably because Mr Kumar was not familiar with this fishing charter company and he wanted to leave his options open to cancel the fishing trip at the last minute, without financial consequences.

The night of 22 September 2012

As she did for all of her customers, Ms Cassar stated that she attempted to phone 'Mr Jones' the night before the fishing charter trip. He did not answer and she was put through to the answering machine of 'Jay Kumar'.

Ms Cassar later phoned the skipper of the boat, Mr Mark Gartner, and one of the deckhands, Mr Mark Dempster to discuss the next day's trip. In oral

evidence, Ms Cassar denied mentioning the situation with Mr Kumar. However, both men said that she did. She warned them that there might be a problem the next day. Mr Gartner said in oral evidence that he thought it was all an over-reaction by Ms Cassar and he was not concerned. He had suggested to Ms Cassar that she involve the police.

In oral evidence, Ms Cassar said that she did not have a plan as to how she would handle Mr Kumar if he attended the next day and was just going to see what happened. I find this difficult to believe. It would appear to me that Ms Cassar was an intelligent person and knew very well what she was doing. She attempted to lure Mr Kumar in so that she could recover the money that her business had previously lost from him, without ever intending to allow him on the boat that day. It is concerning to me that Ms Cassar sought to handle the situation this way, rather than simply notifying the police upfront or taking the matter up with the Queensland Civil Administrative Tribunal or the like.

The morning of 23 September 2012

On the morning of 23 September 2012, Mr Kumar was farewelled by his wife when he departed their residence in Brisbane by vehicle at about 3:30am. He was considering not going but decided to go and was very excited about the day ahead. She administered him his methadone before he left. There was nothing unusual in his mood.

Mr Kumar's bank receipts show that he stopped off at a 7' Eleven store at Strathpine to fill his vehicle with some petrol and withdrew \$180 in cash. He later stopped at McDonalds at Burpengary at about 4:00am and purchased a meal. It appears that he arrived at the Parkyn Parade Marina in Mooloolaba at about 5:00am.

Ms Cassar said that she met Mr Kumar at the grassed meeting area at about 5:00am, as arranged, and collected \$190 in cash from him. She asked him his name and he acted confused and stumbled over his words, mentioning 'Kumar', 'Jones' and 'Adam', in no particular order. She undertook to return and set off on foot for the bait shop, where she deposited the money into the cash register and dealt with payments by other customers.

Whilst at the bait shop, Ms Cassar says that she discussed the situation with the skipper, Mr Mark Gartner. She advised him that she did not want Mr Kumar to go on the charter and requested that he accompany her when she returned to speak with Mr Kumar.

Ms Cassar then requested the other customers to attend the meeting point, before returning to speak with Mr Kumar at about 5:20am. A 17 year old deckhand, Mr Ethen Daraz, accompanied Ms Kumar to the meeting area. Mr Gartner and the other deckhand, Mr Shaymus Dempster, met Ms Cassar and Mr Kumar there after they had attended to preparations on the boat.

Argument between Mr Kumar and Ms Cassar (between 5:20 - 5:34am)

Between 5:20am and 5:34am, Ms Cassar had a heated argument at the meeting area with Mr Kumar in the presence of Mr Gartner, Mr Dempster, Mr Daraz and other customers. She informed Mr Kumar that he would not be permitted to board the charter boat due to the false information he had provided them. Mr Gartner also informed Mr Kumar that he would not be taking a person of unknown identity on his boat. In oral evidence, Mr Gartner mentioned for the first time that he had requested Mr Kumar to provide ID but he refused. Evidence obtained from the scene by police reveals that Mr Kumar did in fact have his driver's license in his wallet, which was in the pocket of a jacket he was carrying.

Mr Kumar insisted on his money back but Ms Cassar refused to refund his money on the basis that she had reason to believe that he had cancelled a previous trip with them in March 2012, without giving them a minimum of 48 hours notice, as per their booking terms and conditions. Mr Kumar denied that he had made the previous booking. Although the argument was heated and Mr Kumar was seen standing very close to Ms Cassar, she did not feel threatened at the time and there was no yelling or aggression displayed by Mr Kumar.

Witnesses heard Mr Kumar say that he would call the police and they heard Ms Cassar agree that would be a good idea. She says that she offered to stay with him until the police arrived. She then witnessed Mr Kumar step away and make a phone call on his mobile. She says she heard a voice on the other end of the phone and assumed it was the police. Yet, she said in oral evidence that she did not hear Mr Kumar speaking in Hindi on the phone. Her reasoning was that she kept a distance to give Mr Kumar privacy. I find it difficult to understand how Ms Cassar could have heard a voice on the other end of the telephone but not hear Mr Kumar's voice, unless he had walked further away from her or she had walked further away from him at the time he started talking. It is therefore unclear, in my view, whether Ms Cassar genuinely thought that the police were on their way at that point in time.

Mr Kumar's phone call to his wife (at 5:34am)

It has since been ascertained that the phone call Mr Kumar made at the time was not to the police, but to his wife and it was in Hindi. Mr Kumar's wife did not pick up, as she was asleep after having been up all night working on a university assignment. Phone records obtained by police revealed that Mr Kumar left the phone message at 5:34am. The message was in Hindi and was translated, as follows:

'Call me ba (slang for 'babe'), there's been a problem, call me quickly'.

Mrs Kumar said in oral evidence that the tone of her husband's voice suggested to her that he was calm at the time.

Mr Kumar's assault on Ms Cassar (at about 5:35am)

Ms Cassar stated that at the time Mr Kumar was making his phone call, she had begun to walk towards the boat with her back to Mr Kumar. She was within line of sight to the boat and observing what she thought was a safety briefing being conducted. When she turned around to look in Mr Kumar's direction, he was standing only a few feet away from her. He stepped back into a fighting position and clenched his right fist. She did not have any time to defend herself but attempted to turn her face away as he punched her, connecting with the left side of her cheek.

Mr Daraz was close by and heard the sound of Mr Kumar's fist connecting with Ms Cassar's face. He described the noise as a 'big hit'. A number of people on the boat (which was about 90 metres away) heard Ms Cassar screaming for help. Ms Cassar was witnessed to be stumbling to get away. Someone on the boat also yelled out words to the effect: 'he's just laid into her'. Mr Daraz stated that after Mr Kumar punched Ms Cassar, he was verbally abusive and threatened to hit her again.

Mr Kumar's sister-in-law raised with me via correspondence handed up to me at the conclusion of the inquest that no one directly witnessed Mr Kumar hit Ms Cassar. Whilst that may be the case, it is very clear to me from the witnesses who heard and observed the immediate aftermath of the incident and from the police photos taken of Ms Cassar's injuries, that she was indeed assaulted by Mr Kumar in the way she described. Although Ms Cassar may have always intended to take Mr Kumar's money without letting him board the boat, nothing can justify what Mr Kumar did. It is completely unacceptable to assault a woman, or anyone for that matter, in such circumstances. Just as Ms Cassar should have sought recourse elsewhere, so should have Mr Kumar.

Ms Cassar said in oral evidence that she was shocked and had a number of periods from then on where she was 'blacking out'. Her recollection of events from then on was vague.

Whilst I accept that Ms Cassar was in a degree of shock after being assaulted by Mr Kumar, I did find her memory when giving oral evidence about her part in the restraint of Mr Kumar to be conveniently selective. She sought to distance herself from the actions of people who restrained Mr Kumar but she clearly also played a part in the restraint. Ms Cassar is heard in the first '000' audio recording to be yelling at Mr Kumar about what he had done. She was clearly angry and she was encouraging the others to take action. Ms Cassar was also close enough to Mr Kumar to be in a position to hear him pleading that he could not breathe throughout the restraint and played a pivotal part in zip tying him towards the end (see further below).

Mr Kumar's assault on Mr Daraz (at about 5:36am)

Mr Daraz stated that after Mr Kumar's assault on Ms Cassar, he was standing in front of Mr Kumar when Mr Kumar said to him words to the effect: 'Come on, do you wanna go?', in an aggressive tone.

Mr Daraz then went to grab Mr Kumar to stop him from leaving the Marina but did not actually touch him at that point. As he approached Mr Kumar, Mr Kumar picked up a plastic chair and struck Mr Daraz's rear shoulders and side, as he turned to try and avoid the blow. Mr Kumar then threw the chair at Mr Daraz, which missed him. Mr Daraz stated that he said to Mr Kumar words to the effect: 'Come on brother, there's no need for that, don't make it worse'.

Mr Daraz then observed Mr Kumar pick up his fishing rod and belongings and run towards his car at the car park (about 20 metres away from the meeting area).

Confrontation with Mr Kumar at the car park (at about 5:36am)

Mr Dempster and Mr Gartner reacted to Ms Cassar's scream for help by running from the boat to confront Mr Kumar at his vehicle in the car park area. Mr Daraz also followed Mr Kumar towards his car. They observed that Mr Kumar was panicking to get into the car and was having difficulty unlocking the driver's door with his keys.

Mr Daraz heard one of them say to Mr Kumar words to the effect: 'Come here you gutless bastard for hitting women'. Mr Kumar was then observed to drop his fishing rod and bag, turned to face them, and took up a fighting stance. Mr Dempster stated that Mr Kumar said words to the effect: 'come on cunt, what have you got cunt' but that is not what provoked him. He said in oral evidence that he had already decided he was going to attempt to restrain Mr Kumar to prevent him from escaping.

Mr Dempster ran straight towards Mr Kumar, who was positioned in a confined space between his car and the car parked beside it. Mr Dempster put his left arm out to grab Mr Kumar by the shirt. In response, Mr Kumar punched Mr Dempster's arm, which caused it to deflect to the side, and connected with his mouth. Mr Kumar then punched Mr Dempster with a closed fist to his right ear. Mr Dempster then took hold of Mr Kumar's front shirt area near the scruff of his neck and punched Mr Kumar twice with a closed fist to the top of his right eye / forehead area.

Physical restraint of Mr Kumar by staff and customers (at about 5:37am)

Mr Dempster stated that he then grabbed Mr Kumar around the back of his shirt in an attempt to pull him down to the ground and away from his car. At that time, Mr Gartner said that he came over the top and grabbed both of Mr Kumar's arms and pinned them to his sides to prevent him from punching.

It would appear that they both then forced Mr Kumar out from between the two cars and forced him to the ground. Mr Gartner denied in oral evidence playing any part in forcing Mr Kumar to the ground or in holding him down at any point in time. I find his attempts to distance himself from the restraint of Mr Kumar to be disturbing. It is clear from the evidence of other witnesses that Mr Gartner was very much a part of the initial restraint.

Mr Kumar fell forward, face and stomach down onto the bitumen, with his left arm under his body and his right arm behind his back.

The two men teamed up to restrain Mr Kumar as follows:

- Mr Dempster had his shin across the right side of Mr Kumar's face, to fix his head to the ground and held his left arm behind his back; and
- Mr Gartner knelt on the ground next to Mr Kumar and held his right arm behind his back.

At this time, two customers from the charter boat had run from the boat to the car park area to assist. They were Dr Mark Yates, who was a medical practitioner from Victoria (a fact that was unknown to the other men at the time); and Mr Brenden Roser, who was a local business owner. Mr Roser heard someone say to Mr Kumar words to the effect: 'You aren't going anywhere, the police will take care of you'.

Dr Yates said in oral evidence that he asked if there was anything he could do to assist, and Mr Gartner requested that he take over from him by restraining Mr Kumar's right arm, which he did. Mr Gartner then attempted to phone '000'.

The totality of the documentary and oral evidence supports a conclusion that the four remaining men had Mr Kumar restrained on the ground as follows:

- Mr Dempster had the weight of his right knee on the right side of Mr Kumar's head, whilst the left side of Mr Kumar's face was against the bitumen;
- Dr Yates held Mr Kumar's right arm along side his back and had his knee on the crux of Mr Kumar's elbow, which sometimes dug into Mr Kumar's loin due to him struggling;
- Mr Roser knelt beside Mr Kumar and held his left arm up behind his back; and
- Mr Daraz held both of Mr Kumar's legs.

Mr Gartner consistently claimed at the time of the incident and in oral evidence that Mr Dempster never had his knee on Mr Kumar's head and in fact, he only ever had his hands cradled underneath his head, to protect his head from hitting the bitumen, as Mr Kumar moved his head side to side in the struggle. This is at complete odds with the evidence given by all of the other witnesses on the day of the incident. Not even Mr Dempster claimed that he did this at the time. In oral evidence, Mr Dempster said that he was certain he had his shin across the side of Mr Kumar's face. He could not recall whether he cradled Mr Kumar's head but thought that he may have done this at one point in time but not for the duration of the restraint.

However, given that this so called ‘cradling of the head’ was not mentioned by Mr Dempster on the day of the incident when the police discussed with him in detail his actions, I find that it is unlikely that he cradled Mr Kumar’s head at any stage during the restraint.

First (failed) phone call to police by Mr Gartner (at 5:37am)

Police obtained the audio recording of Mr Gartner’s phone call to ‘000’ at 5:37:16. The police were unable to dispatch a response team in relation to this phone call because they were not given any address details.

It is clear that Mr Gartner was unaware that there was someone on the other end of the phone. He did not respond to the call taker’s questions and he is heard to continually say ‘hello’. He stated to the police afterwards that he thought the phone had lost signal.

In oral evidence, he said that he was standing about four metres from Mr Kumar at the time he made the call and he had one hand to his ear, trying to listen in to the phone due to what he thought was poor reception. He also said he was looking towards Mr Kumar but also changed direction to try and get better reception.

Despite this, the background noise can be heard loud and clear. The following words are heard:

- A male voice: “You’re not going nowhere pal”;
- Mr Kumar: “Oh my brother, I can’t breathe”;
- A male voice: “Not our problem bud”;
- Ms Cassar: We’re do you get out of hitting women huh? ”;
- A male voice: “You fucking piece of shit”;
- Ms Cassar: “It’s because you know I can’t fight ya, that’s why”; and
- A male voice: “Are they on the line?”.

All witnesses denied that it was their voice saying: “Not our problem bud” in response to Mr Kumar’s plea that he could not breathe and “You fucking piece of shit”. Mr Gartner initially said that it was him who said “Not our problem bud”. However, in oral evidence, when it was becoming more clear to Mr Gartner what he was owning up to, he distanced himself from it and denied that it was his voice in the recording saying, “not our problem bud”. I believed Mr Gartner the first time. Having listened to the tape, on balance, I find that it was most likely Mr Gartner who is heard in the tape saying “not our problem bud”.

Interestingly, all of the relevant witnesses stated how Mr Kumar was angry, aggressive, swearing, kicking and yelling whilst they were restraining him. None

of them had mentioned anything about anyone being verbally abusive towards Mr Kumar. However, it can be clearly heard in the first '000' audio recording, which none of the witnesses were aware existed, that a male called him a "fucking piece of shit" and Ms Cassar was yelling at him in anger. Mr Dempster also conceded to saying words to the effect, "come here you gutless bastard for hitting women". This tape captures the mood at that moment. The anger and aggression was going both ways. It is questionable the degree to which the people who restrained Mr Kumar would have been able to have any genuine concern for his safety in circumstances where they were so angry.

Mr Gartner's phone call to his wife (at 5:37am)

After thinking that he could not get through to the police, Mr Gartner phoned his wife at home for assistance in contacting the police. His wife was employed as an administrative officer at the Maroochydore police station. Phone records obtained by the police reveal that Mr Gartner phoned his wife at 5:37:47am¹.

Mr Gartner's wife stated that her husband was speaking very fast, which was unusual for him. He informed her that Ms Cassar had been hit and he needed the police, as he could not get through to them. He requested his wife to call the Maroochydore police and he informed her that he had the person who hit Ms Cassar. Their conversation went for 46 seconds.

Second phone call to police by Mr Daraz (at about 5:40am)

It would appear from the police emergency incident log, that Mr Daraz then phoned '000' and spoke with the police at 5:40am. Police obtained the audio recording.

In the background of the recording, Mr Kumar is heard to be saying at least three times in what appears to be a very panicked tone and in very short bursts: "I can't breathe".

Other background words are unintelligible.

Mr Daraz informed the call taker at the police communications centre: "...this man he's hit a lady and we've...grabbed him now, we've got him, and he's being very violent". Address details are given and the call taker informed Mr Daraz that the police would be there as soon as possible.

The police incident log shows that as a result of Mr Daraz's call, a police team was dispatched at 5:43:37am. The police then arrived at the scene at 5:46am, according to the police incident log.

A number of witnesses commented that they believed the police should have been there earlier. However, this appears to have been based on their mistaken belief that either Mr Kumar or Mr Gartner had called the police much earlier. I find that the police response time of six minutes from the time the second '000' phone call (in which the police were first provided with address details) was adequate.

¹ Exhibit E5 – Phone Outgoing Call List

The use of zip ties to restrain Mr Kumar (between about 5:40am – 5:44am)

After what felt to Dr Yates as a good 15 minutes and to Mr Roser as 2-3 minutes, the men restraining Mr Kumar were fatigued. From all accounts, Mr Kumar was a very strong man and he had continued to struggle. Mr Roser stated that he asked if anyone had something to restrain Mr Kumar with. Mr Daraz stated that he was directed by Mr Gartner to retrieve zip ties from the boat. Mr Daraz sprinted to and from the boat (a total distance of about 240 metres) and returned with a packet of short white zip ties which were normally used to tag fish as well as one longer black zip tie.

Mr Gartner stated to police that he wanted to use zip ties so that Mr Kumar could be placed in a more comfortable position but when questioned at the inquest, he admitted that it was also to obtain greater control over Mr Kumar. The primary intention appears to have been to provide respite to the men and to enable them to eventually sit Mr Kumar up, whilst they awaited the arrival of the police.

Mr Daraz estimated that he returned with the zip ties within about a minute. Dr Yates estimated that it took them about two minutes to affix the zip ties on Mr Kumar. The task of placing the zip ties on Mr Kumar's wrists and ankles was done simultaneously.

Mr Daraz stated that when he returned from the boat, Ms Cassar was holding Mr Kumar's legs and she instructed him to take over holding his legs, which he did. He said Ms Cassar linked the zip ties together and placed them around each ankle and connected them together. In oral evidence, Ms Cassar denied playing any part in holding down Mr Kumar's legs and zip tying his legs. Ms Cassar was very selective in the evidence she provided, and whilst she would have been affected by a degree of shock at the time, I find that her evidence in this regard was dishonest. She clearly took part in restraining Mr Kumar at this time.

Mr Daraz stated that once Mr Kumar's legs were fixed together, he let go of Mr Kumar's legs. Mr Gartner stated that he linked two zip ties together and placed one on Mr Kumar's right wrist (the wrist that Dr Yates was holding) and pulled it tight.

Mr Roser said that Mr Gartner took over from him in relation to the left arm he was holding, and Mr Roser then got up and started walking towards the boat to retrieve his gear, thinking that everything was now under control. Although, he says that Mr Kumar was still yelling and swearing at that point. (He said he only got about 30 metres when he turned around and observed Dr Yates striking Mr Kumar's chest (conducting a sternum thump), so he returned).

Mr Gartner stated that the zip tie on the left wrist was not pulled tight, nor were the zip ties on Mr Kumar's wrists joined together. He said that they did not do achieve this because before they could do so, Mr Kumar had gone quiet and still and that is when they realized he was in trouble.

However, Mr Roser, Mr Dempster and Dr Yates all stated that Mr Kumar's wrists were eventually fixed together by zip ties. Dr Yates said in oral evidence that they were only able to achieve this when Mr Kumar had stopped moving. Both Mr Dempster and Dr Yates specifically recalled that Mr Kumar's wrists were fixed by zip ties behind his back because it later impeded them from rolling him onto his back and commencing compressions.

Again, I find that Mr Gartner was trying to distance himself from his part in the restraint of Mr Kumar and particularly at the time that he lost consciousness. I find that Mr Gartner was being dishonest and I prefer the evidence of the other witnesses to Mr Gartner's evidence in this regard.

Realisation that Mr Kumar was unconscious (at about 5:44am)

Mr Dempster said in oral evidence that he still had his knee on Mr Kumar's head at that time when he felt and observed what he initially thought was sweat but soon realized was urine. As soon as Mr Dempster realised that Mr Kumar had urinated on himself, he said that he raised the alarm for everyone to get off Mr Kumar and he rolled him into the recovery position on his left side.

Whereas, Dr Yates stated they all stood up and had let go of Mr Kumar when about 30 seconds later, he realized that Mr Kumar had stopped moving. He heard someone say: "he is probably playing doggo", and thought to himself that Mr Kumar was 'playing possum'.

Mr Dempster says that when he realized that Mr Kumar was in trouble, he yelled out for someone to get some scissors to cut the zip ties. Mr Daraz stated that he sprinted to the boat and retrieved some fishing scissors. He estimates that he got back within about a minute.

In the meantime, Dr Yates said that he was down on his knees and rolled Mr Kumar towards him onto his side in the recovery position. Dr Yates said that he conducted what is known as a sternum thump on Mr Kumar, whilst he was in the recovery position. Dr Yates then checked whether Mr Kumar's airway was clear. Dr Yates observed what he described as a small posit (of vomit) in Mr Kumar's mouth but did not put his fingers in his mouth to clear it. The failure of Dr Yates to clear Mr Kumar's mouth at that point is concerning to me given his medical training. However, it would appear that Mr Dempster must have done this soon afterwards anyway, so there would have been no impact on the outcome.

Mr Dempster said that he was the person who rolled Mr Kumar into the recovery position. He placed his fingers into Mr Kumar's mouth and cleared it.

At some point, Dr Yates checked for a pulse on his neck and then on his groin. In oral evidence, he thought that he may have obtained a faint pulse at some point, but this would appear inconsistent with the evidence of other witnesses who stated that Dr Yates said that he could not find a pulse. I find that Dr Yates had recreated the incident in his own mind, often recalling the incident inaccurately. I do not accept that Mr Kumar ever had a pulse after the group realized that he was in trouble.

Commencement of CPR (at about 5:46am)

Dr Yates stated that he had looked to the skipper to assume control over the restraint situation and was of the view that his job was simply to hold down Mr Kumar's right arm. As I have already indicated, I find that Dr Yates should have had a higher degree of awareness in relation to Mr Kumar's safety than that, given his medical training.

In any event, Dr Yates did assume control over the group in relation to Mr Kumar's medical situation once they realised he was in trouble. Dr Yates and/or Mr Dempster rolled Mr Kumar over onto his left side. Dr Yates observed his pale tongue hanging from his mouth and could see he was not breathing. Dr Yates said he located some vomit inside and smelt a strong smell of alcohol when he did this. Dr Yates then gave Mr Kumar a sternum rub and shook him with no response. He then gave Mr Kumar a closed fist whack to the centre of the chest (a 'sternum thump') with no response.

It is noted that Dr Yates' sternum thump methodology was probably unorthodox based on the current CPR training, however, is unlikely to have had any impact on the outcome.

Dr Yates and/or Mr Dempster then instructed Mr Daraz to cut the zip ties, which he did. They then commenced CPR. Dr Yates stated that from the time Mr Kumar went limp (and they realised he was in trouble) until the time they commenced CPR was about two minutes.

At the time Dr Yates commenced CPR, he called for Mr Daraz to tell him the time. Mr Daraz had looked at his mobile phone and stated that the time was 5:46am.

Dr Yates initially performed the chest compressions and Mr Dempster gave mouth to mouth resuscitation with two breaths to 30 compressions. Mr Dempster vomited as a result of air he was breathing into Mr Kumar's mouth coming back out into his mouth. He stated that he smelt what he thought was a 'spewy alcohol smell'.

Dr Yates stated that he and Mr Dempster had difficulty getting breaths into Mr Kumar because of the thickness and narrowness of his neck and the difficulty of maintaining a clear airway.

Arrival of police (at 5:46am)

Within 6 minutes of the police receiving the second '000' call (which finally resulted in address details being given), the first police car arrived at the scene. Senior Constables Grant and Hoffman were first to arrive at 5:46:09am. They stated that they witnessed that CPR had already commenced. Mr Dempster and Dr Yates indicated that breaths had already commenced and they were about half way through the first round of compressions, when the police arrived.

Mr Daraz asked the police for a resuscitation face-mask and they provided one to Dr Yates, to continue the breaths. The police officers then assisted with compressions until the ambulance arrived.

As I indicated earlier, I find that the police response time was adequate.

Arrival of Mr Ian Peel (at about 5:46am)

Mr Ian Peel, a contractor who worked for the charter boat company, had been staying with Mr Gartner and his wife at the time. When Mr Gartner's wife had earlier received a phone call from her husband about the incident, she informed Mr Peel and he immediately travelled to the scene. He arrived just after the police and assisted with CPR, before the ambulance arrived.

Third phone call to police by Mr Gartner's wife (at 5:46am)

After having received a phone call from Mr Gartner at 5:37am, Mrs Gartner phoned the Duty Sergeant at the Maroochydore Police Station and was transferred to the police emergency centre. According to their emergency incident log, the police emergency centre received Mrs Gartner's phone call at 5:46:25am. The incident log shows that the call taker eventually realises that the police had already been dispatched to the location and the 'incident' that was raised in relation to Mrs Gartner's phone call was closed.

Ms Cassar's phone call to ambulance (at 5:47am)

According to ambulance incident log records obtained by police, Ms Cassar phoned '000' and spoke to the ambulance service at 5:47am. An ambulance was dispatched immediately upon receiving the address.

(Mr Daraz also thought he phoned the ambulance but there is no record of this).

Ms Cassar informed the call taker that they had commenced CPR, and she gave the approximate age of Mr Kumar as 33 to 34. She informed the call taker that Mr Kumar was not breathing, and that he did not have a pulse. Ms Cassar can be heard encouraging Mr Kumar to breathe.

At one stage during the recording, Ms Cassar is heard to say to someone in the background; "He hit me, do I have a mark on my face?".

The call taker stayed with Ms Cassar on the phone until the ambulance arrived at the scene.

Urgent request by police for ambulance (at about 5:47am)

It would appear that at around the same time Ms Cassar was on the phone to the ambulance, one of the attending police officers also made an urgent request for ambulance attendance, via police radio. The time in the police incident log for this call was 5:47:50am.

Arrival of ambulance (at about 5:54am)

Within six minutes of receiving the '000' call for ambulance assistance, the ambulance arrived at the scene (at 5:54am). Mr Roser guided them into the car park. They took over CPR, established IV access, and administered saline, sodium bicarbonate and adrenaline, to nil effect.

They continued CPR until 6:28am, when Mr Kumar was declared life extinct.

As I indicated earlier, I find the ambulance response time to have been adequate.

Autopsy results

Report of Dr Phillip Storey

A forensic pathologist, Dr Phillip Storey, attended the scene on the morning of the incident on 23 September 2012 at about 10:50am and performed an initial external examination of Mr Kumar *in situ*.

On 25 September 2012, Dr Storey performed a full external and internal examination. Toxicology testing was conducted and a certificate of analysis produced on 29 October 2012. Dr Storey concluded his autopsy report dated 2 August 2013.

The toxicology testing identified a presence of methadone and cannabis. There was also a presence of antihistamine diphenhydramine, which is likely to have been from the sea-sickness tablets taken by Mr Kumar prior to his expected fishing trip.

Dr Storey found:

- No significant life threatening injuries;
- No internal injuries;
- No evidence of significant neck compression (no bruising to the midline neck structures);
- Minor resuscitation injuries;
- Abrasions and bruising to Mr Kumar's face, head and body;
- Bruising to the muscles of the undersurface of the right side of the chin;
- Patchy, non-confluent bruising beneath the scalp bilaterally;
- Subcutaneous bruising to the knuckles and about the wrists;
- The presence of centripetal obesity; and
- Significant coronary artery atherosclerosis involving the right coronary artery and left anterior descending coronary artery. The degree of narrowing was estimated to have been between 70 – 75%.

Dr Storey noted that the injuries to Mr Kumar were consistent with the application of a mild to moderate degree of force. The distribution and severity

of those injuries were consistent with the history that Mr Kumar had been involved in a struggle involving physical restraint against a hard surface.

Dr Storey ruled out the possibility that Mr Kumar's death was caused by 'excited delirium syndrome', noting that a number of the published checklist of features for the syndrome did not apply to this case.

Dr Storey noted that Mr Kumar's coronary atherosclerosis was of a sufficient degree to potentially result in sudden death. In this context, the potential for sudden abnormality in heart rhythm may have been heightened in circumstances of agitation, when circulating stress hormones were increased.

Dr Storey was unable to pinpoint a singular cause of death. He was of the opinion that the medical cause of death was a complex interplay involving a number of factors such as the elements of agitation, restraint, obesity, prone position, and coronary atherosclerosis.

Dr Storey found that the medical cause of death was:

1(a). Undetermined.

Report of Dr Linda Iles

In an effort to gain more clarity surrounding the medical cause of death, I referred the matter to an expert forensic pathologist from the Victorian Institute of Forensic Medicine, Dr Linda Iles. Dr Iles produced a detailed report dated 23 January 2015.

Dr Iles noted in oral evidence that Dr Storey's autopsy report was detailed and comprehensive and she agreed with his findings in substance.

Dr Iles was not of the opinion that the presence of methadone or cannabis was of any significance.

Dr Iles was of the opinion that the presence of antihistamine diphenhydramine (from sea-sickness tablets) may have been of marginal significance. She noted that this medication has an anticholinergic effect, and in the setting of stress and physical exertion, this may have had a marginal effect on Mr Kumar's heart rate, for example.

Dr Iles made the following comments with respect to the circumstances surrounding Mr Kumar's death:

- The minor injuries identified on the skin and subcutis were consistent with the circumstances surrounding Mr Kumar's death as described in the police report;
- The significance of the pathological findings identified at autopsy must be interpreted in the context of the circumstances surrounding Mr Kumar's death, and thus coronary artery atherosclerosis was not the isolated cause for Mr Kumar's death;

- There was no indication of excited delirium in this case; and
- The following elements were significant and have contributed to Mr Kumar's death (noting that it is not possible to ascribe *specific weight* to any one or more of these elements with regards to contribution to death):
 - The presence of prone restraint;
 - The possibility of pressure on the back of the head and neck compromising Mr Kumar's airway;
 - The contribution of centripetal obesity in the setting of prone positioning splinting the diaphragm and limiting the deceased's ability to breathe; and
 - The physiological stress associated with a prolonged period of struggle. This combined with significant coronary artery narrowing and possible/probable hypoxia from upper airway compromised and prone restraint has likely precipitated Mr Kumar's cardiac arrest.

Dr Iles noted that the effects of restraint in the prone position have been studied physiologically. Studies in healthy volunteers have demonstrated that restraint produces reduction in ventilatory capacity. Whilst there were no findings to indicate that the prone restraint position resulted in hypoxia or a significant decrease in cardiac output, it needed to be remembered that such studies are performed on healthy volunteers. Therefore, they do not account for variables that are encountered in documented cases of deaths associated with prone restraint.

Dr Iles noted that one such variable is obesity. In particular, centripetal obesity, as observed in Mr Kumar, limiting diaphragmatic movement in the prone position, thus further limiting lung expansion. She explained that restraint associated deaths most frequently occur in the setting of marked physical exertion, as in this case. This increases oxygen demand and circulating catecholamine levels, which in combination with limited ventilator capacity from prone positioning in an obese and agitated man with significant coronary artery narrowing, may well precipitate a fatal cardiac arrhythmia.

Dr Iles noted that Mr Kumar was reportedly stating that he could not breathe on at least one occasion. Another factor that may have contributed to restraint asphyxia, in addition to Mr Kumar's prone position and abdominal obesity, was a possible element of external airway obstruction as a result of pressure on the back of his head and neck.

Dr Iles also noted that it was not possible to know from post mortem findings whether an element of smothering, i.e. partial obstruction of the nose and/or mouth, contributed to other asphyxia elements, which in her opinion had contributed to Mr Kumar's death.

Dr Iles' opinion was that a reasonable medical cause of death would be:

- 1(a). The combined effects of restraint and coronary artery atherosclerosis in a man with centripetal obesity.

I accept Dr Iles' opinions and recommendation.

Police investigation

Soon after the incident, police established a crime scene and cordoned off the area. The men involved in restraining Mr Kumar were separated and further witnesses were identified and separated. The woman involved in restraining Mr Kumar was treated by ambulance personnel for shock and transported to hospital.

Detective Sergeant Kim Cavell co-ordinated the police investigation. On the day of the incident, a number of detectives from the Sunshine Coast Criminal Investigation Branch were utilised to conduct field interviews of all persons involved in the restraint. They also conducted formal records of interview at the Maroochydore Station, took the witnesses back to the scene individually for visually recorded re-enactments; and took written statements. Detective Sergeant Cavell concluded her investigation report on 15 August 2013. The delay was caused by the time taken to obtain the autopsy report.

Detective Sergeant Cavell did not recommend charges against any of the individuals involved due to insufficient evidence to establish that their actions *substantially or significantly* caused Mr Kumar's death. She recommended that an inquest be held.

I find that the police investigation report was to a very high standard. Detective Sergeant Cavell and her team carried out the investigation in a professional and thorough manner. They should be commended for their efforts.

Comments and recommendations

Section 46 of the *Coroners Act 2003* (Qld) provides that a coroner may comment on anything connected with a death that relates to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.

This case highlights the dangers of positional and restraint asphyxia associated with untrained members of the public restraining a person with medical issues.

I recommend that:

- first aid training providers consider including a component in their training to raise awareness about the dangers of positional and restraint asphyxia.

John Hutton
Brisbane Coroner
Brisbane
11 March 2015