



SOUTHPORT CORONER

FINDING OF INQUEST

CITATION: Inquest into the death of **BEVERLEY ANN TIERNEY**

TITLE OF COURT: Coroner's Court

JURISDICTION: Southport

FILE NO(s): COR 326/03

DELIVERED ON: 27 November 2006

DELIVERED AT: Brisbane

HEARING DATE(s): 13 June 2006 and 23 August 2006

FINDINGS OF: O Rinaudo Coroner

CATCHWORDS: CORONERS: Inquest, Drowning, Wet drowning, Dry Drowning.

REPRESENTATION:

Appearances:

Assisting:

For Mr Tierney

Sergeant E J Engwirda
Southport Police Prosecutions
Mr G Cranny Solicitor
Gilshenan & Luton Lawyers

Judgment Category Classification:

Judgment ID Number:

Number of Paragraphs:

Number of Pages:

CORONERS FINDINGS

This is the inquest into the death and circumstances of death of **Beverley Ann Tierney**.

As the deceased died on 15 October 2004, I must deliver my findings pursuant to the provisions of the *Coroners Act 2003*, which came into force on 1 December 2003 and applies to all reportable deaths¹ after that date. I do so, reserving the right to revise these reasons should the need or if the necessity arises.

The purpose of this inquest, is to establish, as far as practicable² –

Who the deceased person is; and
How the person died; and
When the person died; and
Where the person died; and
What caused the person to die.

A coroner must not include in the findings any statement that a person is or may be guilty of an offence or civilly liable for something³.

A coroner may comment on anything connected with a death investigated that relates to public safety or the administration of justice or ways to prevent deaths from happening in similar circumstances in the future⁴

A coroner is not bound by the rules of evidence but may inform him/herself in any way considered appropriate⁵. However, the coroner must have regard to the rules of Natural Justice and Procedural Fairness. The Coroner may direct a

¹ Coroners Act 2003, section 7, as to duty to report, and section 8, as to definition of reportable death.

² Coroners Act 2003, section 45(2)

³ Coroners Act 2003, section 45(5); See also R V Shan Eve Tennent; Ex parte Jager – BC200003284

⁴ Coroners Act 2003, section 46

person to answer questions even though the answer may tend to incriminate the person, but Derivative evidence is not admissible against the witness⁶

History of investigation after death.

About 7.45pm (02/10/2004), Mark Tierney and Jim Pilgrim have walked down to Tierney's 7m Whitley Cruise Master 700 cabin cruiser, Qld reg QK452Q, moored to a nearby pontoon, at the said resort, to give his wife (deceased) a meal. Upon arrival at the boat, Tierney and Pilgrim are unable to locate the deceased and, after a short search, allegedly attended the security office to report her missing.

They have then returned and, after a further search, Jim Pilgrim sees a red object floating in the water near the boat. The object is seen to be a body floating face down in the water and is immediately identified as the deceased, whereupon she was dragged from the water.

CPR was immediately commenced and assistance was rendered by a medical practitioner who was a guest of the resort, along with QAS staff that attended, but attempts to resuscitate the victim failed and she was pronounced dead⁷.

At the outset, police were satisfied that the deceased had drowned and that there were no suspicious circumstances surrounding the death.

However, at autopsy, the forensic pathologist could not determine the cause of death. In particular, the pathologist was not able to find that the deceased died as a result of drowning and noted, *Furthermore, I cannot exclude a homicidal act to explain this lady's death (such as smothering with a soft implement); someone*

⁵ Coroners Act 2003, section 37

⁶ Coroners Act 2003, section 39

⁷ Report of Police officer Plain Clothes Senior Constable Dwyer dated 16 February 2005, exhibit 1

who was so affected by drugs may have offered little or no resistance to such an action⁸.

The pathologist, in broad terms, did not consider that the deceased had drowned as there was not sufficient water in the lungs saying; *Typically, the lungs of drowning victims are heavy (filled with aspirated fluid), and the airways contain abundant frothy fluid. This lady's airways were clear, and her lungs were only mildly to moderately increased in weight. The condition of the lungs and airways may have been affected by the extensive resuscitation efforts performed by trained personnel who happened to be present at the marina. Her drug affected state (see below) would also promote drowning as a possible cause of death⁹.*

Although the pathologist commented that, *If my 'hand were forced' at this time, I would favour that this lady had drowned, and that this had been contributed to by her drug affected state¹⁰.*

This report, together with a letter written by the deceased¹¹, which concluded, *If my death appears to be an accident it should be thoroughly investigated as he has told me he can obtain a tablet for \$500 which would cause my death and no one would detect*, further raised police suspicions and a full investigation was undertaken. Initially, a person became the focus of police suspicion. However, by the time of the Inquest, after further in depth police investigations, these suspicions had all but been completely discounted.

It was suggested that the death may have been drowning but “Dry Drowning” as opposed to “Wet Drowning” and, to a large extent, this became the focus of the Inquest when evidence was heard from Dr Lampe, the forensic pathologist who carried out the autopsy and Dr Christopher Hamilton Lawrence, Director of Statewide Forensic Medical Services in Tasmania. Their evidence will be considered in detail.

⁸ Autopsy report paragraph numbered 6 on page 8 of 9

⁹ Autopsy report paragraph numbered 1 on page 7 of 9

¹⁰ Autopsy report, summary paragraph at the bottom of page 8 of 9

Summary of the evidence.

A number of statements were admitted by the Court. 17 Exhibits were also tendered and admitted. A list of the statements and the exhibits is contained on the file.

The toxicology report revealed;

Alcohol (blood)	-	206 mg/100ml
Diazepam	-	0.1 mg/kg
Nordiazepam	-	0.3 mg/kg
Oxazepam	-	<0.02 mg/kg
Temazepam	-	<0.02 mg/kg
Paracetamol	-	<20 mg/kg
Propoxyphene	-	1.2 mg/kg
Norpropoxyphene	-	2.0 mg/kg
Tramadol	-	1.8 mg/kg

A number of witnesses were called, but much of the evidence given by them related to the possibility of foul play. Having regard to all of the evidence, it is clear that no one else played a part in the death and so, much of the evidence is irrelevant having regard to my obligations.

Evidence relied on by me in reaching my conclusion that the deceased drowned is as follows:

Dr Guy Lampe - the forensic pathologist who carried out the autopsy. Dr Lampe gave substantial evidence about why he considered that the deceased had not drowned. When he was asked if the drowning could be a "Dry Drowning", he replied after giving a general description of wet and dry drowning, *Now, wet drownings are really accepted in the forensic literature as opposed to dry drownings which tend to be a sort of slightly more controversial area. Some people believe that the concept and the entity of dry drowning doesn't actually exist. Some water, which might, explain why no fluid is actually taken into the lungs. So, I'm just pointing out it is a sort of slightly controversial area. I prefer to keep an open mind on it. I certainly experience*

¹¹ exhibit 7

*laryngospasm from a variety of causes. So, it's quite possible that dry drowning is, in and of itself, a real entity*¹².

Dr Lampe also explained the toxicology report. He explained the type and level of the different types of drugs and alcohol in the blood of the deceased¹³. Dr Lampe acknowledged that some of the drugs in combination would have a general depressive effect on the system¹⁴.

Dr Lampe conceded in examination by Mr Cranny that he had listed a number of possible causes of death but that there was *nothing that you can point to which would have you prefer any suggestion that this was a sinister death as opposed to an accidental death or a suicide*¹⁵.

Dr Lampe commented to the Court that, given the findings at autopsy, he thought it better that an Inquest be held to, *clarify matters from a medical perspective*¹⁶.

Mr James Edward Paul Pilgrim gave evidence that, after he and Mr Tierney removed the deceased from the water, a noticeable volume of water issued from the deceased's mouth. He said *I'm not a doctor. I don't know the capacity of her lungs. She wasn't a big person....There weren't copious quantities but, yes, there was definitely water, and it was splashing out. It was ...spluttering out, yep.* He gave evidence that this occurred when Mr Tierney was doing CPR.¹⁷

Ms Edna Miller gave evidence that the deceased had said to her words to the effect of *I may as well throw myself in and drown.* She said, *Yes, that's after she fell off the boat. She fell off the back of the boat onto the transfer platform, she sort of slipped. She sat – she went to sit on it and she slipped back, her satin nightdress on the vinyl and she slipped back and we helped her up and I said to her, "you ought to be careful" because the boat had no rails around it. I said, "You want to be careful, you could fall in*

¹² Line 35-47, transcript of first day's evidence, page 6

¹³ Line 20 and following of first day's evidence, page 11

¹⁴ Line 52-54, transcript of first day's evidence, page 18

¹⁵ Line 35-45 of transcript of first day's evidence, page 19

¹⁶ Line 1-4 of transcript of first day's evidence, page 22

¹⁷ Lines 10-28, of transcript of first days evidence, page 53

and drown”, because she was so weak. And she said, “I might as well throw myself in and drown”, and I said “You don’t want to do that.” She just seemed quite fraught¹⁸.

Dr Christopher Hamilton Lawrence, Director of Statewide forensic medical Services in Tasmania, gave evidence about “Dry Drowning”. In essence, he said that this was not a “Dry Drowning”. He said, *It is said in most drownings water is taken into the lungs and, as a consequence of that, the lungs become heavy and oedematis and overexpanded. It is said that in around 10 percent you get a concept of a thing called dry drowning where there is no apparent water in the lungs and the theory goes this is caused by spasm of the larynx. Now, the concept of dry drowning is more common in fresh water than in salt water and, indeed, there is some debate as to the existence of dry drowning. I have never seen a case of it in my 16 years of doing autopsies. The other person who I would regard as a relative expert in Australia is a Dr Carl Edmonds who is a diving physician who also questions the existence of this concept. Now, in this particular instance, it’s salt water so I don’t – one other theories goes that, in, fact, dry drowning is, in fact, fresh water drowning where the water is adsorbed so quickly that you don’t see it. Now, it’s a possibility, but in this case it’s salt water so that would not hold. The other thing is that a lot of cases of dry drowning have occurred in cold water where the cold water provides a massive stimulus to the diving reflex which is a reflex in humans which alters blood pressure when the face is exposed to water. Now, the theory goes here that if you’re exposed to cold water, the stimulation causes the heart to stop temporarily and could cause drowning by that fashion. Now, in this case, I don’t believe that water would have been cold enough to provide a sort of stimulus to that so, all in all, I think dry drowning is unlikely¹⁹.*

When asked how cold the water would have to be, Dr Lawrence said that it would have to be very cold, *possibly Tasmanian water, but certainly not Queensland water²⁰.*

Dr Lawrence then speculated that a combination of factors may have contributed to the lack of water in the deceased’s lungs. He said, *...Having looked at the case overall with the drugs and the myocarditis and the subdural and so forth, the other possible explanation is that it’s, in fact, a combination of a multitude of these things and, in fact, the reason why her lungs do not look so bad is that she’s tired faster than most*

¹⁸ Line 50 -60 on page 63 and 1-3 on page 64 of first days transcript

¹⁹ Line 44-60 on page 84 and 1-13 page 85 of second days transcript

²⁰ Line 19-20 page 85 of second days transcript

people would because of other factors. ...To throw a person in water who's already got a [indistinct] heart because of a myocarditis and quite a lot of drugs on board I would suggest that they might die faster than somebody who was totally compos mentis. ...She may have inhaled less water and therefore not have heavy lungs simply because of the amount – amount she inhaled lessened²¹.

Mr Cranny asked Dr Lawrence the following question, *All right. So, it could well be in this case, for example, that it wasn't a dry drowning, but, nonetheless, a combination of the deceased dying quickly due to other factors and the regurgitation of some water during the recitation efforts could have given the appearance of what now looks to be lungs with little fluid in them?* Dr Lawrence replied, *Yes, in fairness, you'd probably properly be better putting this to Guy Lampe rather than me, But – because I didn't see what was there, but, yeah, that's a possible explanation for what was observed²².*

Submissions

Sergeant Engwirda did not make any submission with respect to the evidence.

Much of the submission of Mr Cranny was directed at the possible involvement of his client in the death. I was urged to make a positive finding that there was *no involvement of the second party, particularly being my client, and he's entitled to that, given what he's been through over the last year or so²³.*

Mr Cranny also submitted that it open to me to make a finding that the deceased died by drowning following a slip and fall.

Discussion and Conclusion

I am satisfied that after an exhaustive investigation by police and, based on the evidence presented to the Inquest, that this death is not suspicious.

The real issue for me is the cause of death.

²¹ Lines 30-58 page 85 of second days transcript

²² Line 46-55 on page 86 of the second days transcript

²³ Line 9-13 on page 88 of second days transcript

The forensic pathologist who conducted the autopsy was unable to determine the cause of death. Based on the evidence of Dr Lawrence, I am satisfied that the deceased did not die as a result of “dry drowning”.

It should be remembered that Dr Lampe said that, if pushed, he would favour drowning as cause of death.

There is no doubt that the deceased was intoxicated and affected by drugs. She was in a morose mood. She had made some comment about suicide. She was desperately unhappy about her life situation. She spoke about this to one of the witnesses without prompting and to a person who she did not know well. She was obsessed with the fear that something was going to happen to her. She was very unwell.

She was seen to slip and fall earlier in the day. She was left on the boat alone for a period.

I am satisfied, on the evidence presented at the hearing, that the deceased drowned as a result of a slip and fall into the waters of Curran Cove. Finding herself in the water, given her state of health and intoxication and drug intake, she was unable to save herself and she drowned quickly, thereby not taking a lot of water into her lungs.

Some of the limited water taken into her lungs was expelled during resuscitation attempts and the remainder was less than might usually be seen in drowning deaths thereby raising concerns in the Pathologist at autopsy.

However, all the evidence particularly from the Doctors, points to a drowning death.

There was some speculation that the death may have been intentional, however, there is simply no evidence which would suggest this death was other than a tragic accident.

I make the following findings –

- (a) The identity of the deceased was **Beverley Ann Tierney**.
- (b) Her dated of birth was **29 August 1938**
- (c) Her last known address was **1622 Riverdale Drive QLD 4212**.
- (d) At the time of death her occupation was **Real Estate Salesperson**.
- (e) The date of death was **2 October 2004**.
- (f) The place of death was
**Cooran Cove Resort, South Stradbroke Island,
QLD 4214**
- (g) The formal cause of death was **Drowning**.

RECOMMENDATIONS:

Pursuant to section 46 of the Act, the following comments about *anything connected with a death investigated at an inquest that relates to, public health or safety; or the administration of justice; or ways to prevent deaths from happening in similar circumstances in the future..*

COMMENTS:

1 Nil

Although the family of the deceased (I am aware that the deceased was survived by three daughters) have not taken any part in the Inquest, I am aware that they have been most interested in the outcome. My condolences go to them, as well as Mr Tierney. It is always a tragedy to lose a mother and I feel for them.

Thank you to the police officer appearing and assisting in this inquest. The inquest is now closed.

O Rinaudo
Coroner Southport