



# OFFICE OF THE STATE CORONER

## FINDING OF INQUEST

CITATION: **Inquest into the death of Mulrunji**

TITLE OF COURT: Coroner's Court

JURISDICTION: Palm Island & Townsville & Brisbane

FILE NO(s): COR 2857/04(9)

DELIVERED ON: 14 May 2010

DELIVERED AT: Townsville

HEARING DATE(s): 20 November 2009, 21 December 2009, 05 February 2010, 19 February 2010, 26 February 2010, 03 March 2010, 8-12 March 2010 & 08 April 2010

FINDINGS OF: Mr Brian Hine, Deputy Chief Magistrate

### REPRESENTATION:

Council Assisting: Mr Ralph Devlin, SC and Mr Mark LeGrand

Ms Tracey Twaddle,  
Jane Doomadgee,  
Elizabeth Doomadgee  
and Valmai Aplin  
(Sisters of Mulrunji) Mr Andrew Boe and Ms Paula Morreau  
(instructed by Boe Williams Lawyers)

Attorney-General: Mr Peter Davis SC and Mr David Kent  
(instructed by Crown Law)

Senior Sergeant Christopher  
Hurley: Mr Steve Zillman (instructed by Gilshenan and  
Lutton Lawyers)

Commissioner of Queensland Police  
Service: Mr Alan MacSporran SC and Mr Michael Nicolson  
(instructed by Queensland Police Service Solicitor)

Queensland Police Commissioned  
Officers' Union: Mr Neil Lawler (Bell Miller Solicitors)

## Background

1. Cameron Doomadgee (who was also known by his tribal name of Mulrunji) was a resident of Palm Island. On 19 November 2004 he was found dead in a cell in the police station on Palm Island. A post-mortem examination showed that he had a cut above his right eye, four broken ribs, his portal vein had been ruptured and his liver had been almost cleaved in two.

## Deputy State Coroners Inquest

2. Between February 2005 and August 2006 the Deputy State Coroner (DSC) Ms Christine Clements, as the Acting State Coroner, conducted an inquest into the death of the deceased under the Coroners Act 2003 (Qld) ("the Act") after the State Coroner, Mr Michael Barnes, stood down to avoid a perception of bias. On 27 September 2006 the DSC published her findings. She found that the deceased died *"from intra-abdominal haemorrhage due to, or as a consequence of, the rupture of his liver and portal vein"*.<sup>1</sup> She concluded that Senior Sergeant Hurley, the senior police officer on Palm Island at the time of the death of the deceased, caused these injuries to the deceased.
3. The DSC found that Senior Sergeant Hurley and the deceased fell through the doorway of the police station onto the floor and then Mr Hurley, angered by the unruly behaviour of the deceased, hit the deceased *"whilst he was on the floor a number of times in a direct response to himself having been hit in the jaw and then falling to the floor"*.<sup>2</sup> The DSC concluded that the fatal injuries suffered by the deceased were not caused in, or as a result of, the fall, but by Senior Sergeant Hurley punching the deceased after the fall.<sup>3</sup>

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<sup>1</sup> Findings of Inquest DSC 27 September 2006 at page 28.

<sup>2</sup> Ibid page 30

<sup>3</sup> Findings of Inquest DSC 27 September 2006 at page 30.

## **The Charging of Senior Sergeant Hurley**

4. Subsequent to the findings of the DSC, the then Queensland Attorney-General, the Hon. Kerry Shine MP, initiated criminal proceedings against Senior Sergeant Hurley for the manslaughter and the assault of Mulrunji, following the receipt by him of legal advice from former NSW Chief Justice, the Hon. Sir Laurence Street QC. The trial was conducted in the Supreme Court in Townsville in June 2007 and the jury acquitted Senior Sergeant Hurley of both charges.

## **The Decision of the Court of Appeal**

5. On 16 June 2009 the Court of Appeal [McMurdo P, Keane JA and Fraser JA] delivered a unanimous decision on an appeal by leave from a decision of the District Court (Pack DCJ) under section 50 of the Act and section 118(3) of the District Court of Queensland Act 1967 (Qld) [*Hurley v Clements & Ors* [2009] QCA 167]. The Court concluded “*that the finding of the Coroner that punching by Mr Hurley caused the fatal injuries sustained by the deceased was not reasonably open on the evidence*” [paragraph 48]. Accordingly, it found that the decision of the District Court that this finding of the Coroner should be set aside was correct although the process of reasoning whereby his Honour Judge Pack arrived at that decision was flawed.
6. Consequent upon this finding, the Court of Appeal made the following orders:

### *Orders*

*[55] For these reasons we consider that the appeal must be allowed and the whole of the finding of the Coroner as to how the deceased died which is*

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*excerpted at paragraph [22] should be set aside. That is the order which the District Court judge should have made. We so order.*

*[56] Section 50(7) of the Act allowed the District Court to order the reopening of the inquest to re-examine a finding which is set aside. It is appropriate that the inquest be reopened. We so order.*

*[57] It was open to the learned District Court judge, and it is open to this Court, to direct the State Coroner that another Coroner should be appointed to re-examine the finding which has been set aside. We so order.*

*[58] Further, we direct that that other Coroner should not be the Coroner below. In this regard, we consider that it is open to the District Court under s 50(7) of the Act (and to this Court on appeal from the District Court) to order that the State Coroner direct "another coroner", being a coroner other than the State Coroner who is also not the Coroner who conducted the original inquest, to re-open the inquest to re-examine the finding.*

### **My Appointment as Coroner**

7. In compliance with the orders of the Court of Appeal, the State Coroner, Mr Michael Barnes, by letter dated the 8 October 2009 to me, confirmed that on 1 October 2009 the Governor in Council approved my appointment as a Coroner [hereafter "the Coroner"] to re-open the inquest into the death of the deceased.

### **The State Coroner's Direction**

8. In directing me to re-open the inquest, the State Coroner expressed that direction in the following terms:

*As you are also aware the Court of Appeal affirmed a decision of the District Court (albeit on different grounds) to set aside part of the findings made by Deputy State Coroner Clements and ordered that I direct another coroner to re-open the inquest to re-examine the finding that the court held could not reasonably be supported by the evidence.*

*In accordance with that decision I direct you to re-open the inquest into Mulrunji's death and re-examine the finding overturned by the Court of Appeal.*

### **The Coroner's role**

9. The primary focus of coronial investigations is not on whether someone should face criminal or disciplinary charges in connection with the death, although that may be an eventual outcome in some cases. Rather, the focus is on identifying the root cause of the incident that precipitated the death with a view to uncovering systemic failures that contributed to the death and designing remedial responses.<sup>4</sup>
10. This focus is made clear in section 3 of the Act:

*The object of this Act is to—*

.....

*(d help to prevent deaths from similar causes happening in the future by allowing coroners at inquests to comment on matters connected with deaths, including matters related to--*

- (i) public health or safety; or*
- (ii) the administration of justice.*

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<sup>4</sup> See Coroners Guidelines page 1.1

11. However, by section 48(2) of the Act, if, from information obtained while investigating a death, a Coroner ‘reasonably suspects’ a person has committed an offence, the Coroner **must** give the information to:
  - (a) for an indictable offence- the Director of Public Prosecutions; or
  - (b) for any other offence- the Chief Executive of the Department in which the legislation creating the offence is administered.
  
12. The term “reasonably suspects” is not defined in the Act. The High Court [Gleeson CJ, Gummow, Hayne and Heydon JJ] in *Ruddock v Taylor* [2005] HCA 48 considered the term in relation to the detention of the respondent under s 189(1) of the Migration Act 1958 (Cth), in particular, whether officers of the Commonwealth knew or ‘reasonably suspected’ that the respondent was an unlawful non-citizen. In dealing with the concept of ‘reasonable suspicion’, the Court emphasized that “*Its primary reference is to the officer's subjective state of mind*” and that the “*belief professed by the officer was reasonably based*”.<sup>5</sup>

### **The requirement to hold an inquest**

13. Because the incident was a “death in custody” within the terms of the Act it was reported to the State Coroner for investigation and inquest. Section 8(3) defines “reportable death” to include “deaths in custody” and section 7(2) requires that such deaths be reported to the State Coroner or Deputy State Coroner. Section 27 requires an inquest be held in relation to all “deaths in custody”.
  
14. Deaths in custody warrant particular attention because of the responsibility of the State to protect and care for people it incarcerates, the vulnerability of people deprived of the ability to care for themselves, the need to ensure the natural suspicion of the deceased’s family is allayed, and to ensure public confidence in

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<sup>5</sup> *Ruddock v Taylor* par [27]

state institutions is maintained. Further, a thorough and impartial investigation is in the best interests of the custodial officers.

15. Mr. Elliot Johnson QC observed in the National Report of the Royal Commission into Aboriginal Deaths in Custody [RCADIC]:-

*A death in custody is a public matter. Police and prison officers perform their services on behalf of the community. They must be accountable for the proper performance of the duties. Justice requires that both the individual interest of the deceased's family and the general interest of the community be served by the conduct of thorough, competent and impartial investigations into all deaths in custody.*<sup>6</sup>

16. In the Commission's Interim Report, Commissioner Muirhead noted:-

*The situation demands the most thorough investigation of facts and circumstances by skilled investigators who hopefully may be regarded as impartial, autopsies performed by expert pathologists followed by thorough coronial inquires conducted by legally trained Coroners under modern legislation which enables such Coroners to make remedial recommendations.*<sup>7</sup>

17. The Coroners Guidelines provide that all deaths in police custody or that occur during a police operation will be undertaken by officers from the State Homicide Investigation Group and overviewed by officers from the Crime and Misconduct Commission or the Ethical Standards Command of the QPS. The Guidelines maintain, perhaps too optimistically given the history of the initial police investigation in this case and my observations below, that "If the investigation is conducted in accordance with the policies of those agencies relating to such deaths it will be consistent with the recommendations of the RCADIC and these guidelines."<sup>8</sup>

### **The mandated findings under section 45**

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<sup>6</sup> E. Johnson, National Report, AGPS, Canberra, 1991, vol.1, p.109

<sup>7</sup> J. H. Muirhead, Interim Report, AGPS, Canberra, 1988, p.58

<sup>8</sup> Coroners Guidelines page 7.6

18. For present purposes, Section 45 of the Act relevantly provides:

*Section 45 Coroner's findings*

.....  
(2) A Coroner who is investigating a death or suspected death must, if possible, find –  
(a) who the deceased person is; and  
(b) how the person died; and  
(c) when the person died; and  
(d) where the person died; and  
(e) what caused the person to die?  
.....

19. “How the person died” in section 45(2)(b) means by what means or in what circumstances the person died, for example, in a single vehicle accident or by self inflicted asphyxiation. “What caused the person to die” in section 45(2)(e) refers to the medical cause of death, for example, subdural haemorrhage or carbon monoxide toxicity.<sup>9</sup>
20. A coroner **must**, if possible, find how the person died. By operation of section 32CA(2) of the *Acts Interpretation Act 1954(Qld)*, the word ‘must’, when used in relation to a power, indicates that the power is required to be exercised.

**The discretionary findings under section 46**

21. The Coroner is given a power to make comments concerning matters connected with a death arising from the examination of evidence at an inquest. Section 46(1) provides:

*46 Coroner's comments*

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<sup>9</sup> Coroners Guidelines page 8.13

*(1) A coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to—*  
*(a) public health or safety; or*  
*(b) the administration of justice; or*  
*(c) ways to prevent deaths from happening in similar circumstances in the future.*

.....

22. The making of such comments or ‘riders’ has long been a function of Coroners. The 2003 Act gives greater emphasis to this role by mentioning such comments in the objects clause (section 3 above) and by providing in section 46(1) that a Coroner “may, when ever appropriate, comment on anything connected with a death investigated at an inquest” provided the comments relate to the matters stipulated in paragraphs (a), (b) or (c) of that subsection as set out above.<sup>10</sup>
23. On 3 March 2010, I sought submissions from the parties granted leave to appear as to whether I had the power to make comments pursuant to section 46 of the Act.
24. The issue arose due to the limited nature of the direction given to me as Coroner by the State Coroner to re-open the inquest consequent upon the decision of the Court of Appeal in *Hurley v Clements & Ors* [2009] QCA 167, namely, “*I direct you to re-open the inquest into Mulrunji’s death and re-examine the finding overturned by the Court of Appeal.*”

At one stage it was suggested the parties undertake to make submissions on the relationship between section 45 and 46 and the Court of Appeal decision to re-open the inquest in a limited way, in their final submissions so that I could include my ruling on the point in any judgment and findings that were ultimately given. I felt that the course of action proposed may not allow the parties to cross-examine

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<sup>10</sup> Coroners Guidelines page 8.13

on matters that relate to that power. Counsel for the Attorney-General and Counsel assisting made very helpful submissions.

25. On 8 March 2010, at the start of the re-opening of the inquest, I handed down my decision that the Court has power to make comment in accordance with section 46 of the Act, and that this power is ancillary to the power to make a finding under section 45(2)(b). I noted that the power may be exercised by the Court in this Inquest if the appropriate circumstances arose.
26. I have determined to exercise this power in the comments which appear below.

## **LEGAL ISSUES**

### **The scope of the Re-opened Inquest**

27. My first task was to determine the limits of my jurisdiction, given that the Court of Appeal set aside and re-opened the Inquest in respect to the findings of the DSC on section 45(2)(b) only.

### **What findings were set aside**

28. As noted above, the Court of Appeal ordered that:
- The whole of the finding of the Coroner as to how the deceased died which was excerpted at paragraph [22] of the Court's judgment should be set aside<sup>11</sup>; and
  - The Inquest should be re-opened to re-examine the finding which was set aside.<sup>12</sup>.

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<sup>11</sup> *Hurley v Clements & Ors* [2009] QCA 167 at para [55]

<sup>12</sup> *Hurley v Clements & Ors* [2009] QCA 167 at para [56]

29. The Court of Appeal found that the DSC was mistaken in finding under section 45(2)(b) “how the person died” that:

*b) The Deceased died from intra-abdominal haemorrhage due to, or as a consequence of, the rupture of his liver and portal vein. He had also sustained four broken ribs.<sup>13</sup>*

30. The Court of Appeal found that this was in reality the finding required by section 45(2)(e) (“what caused the person to die”). The Court determined that, in fact, the finding by the DSC under section 45(2)(b) was the whole of the material it had extracted from her Findings of Inquest and set forth in paragraph [22] of its judgment, namely, from the sentence headed “(d) The Deceased died in the police watch house on Palm Island, Queensland” on page 25, to the line ending above the heading “Comments pursuant to Section 46 Coroners Act 2003” on page 27.

31. The Court of Appeal said:

*[22] It is convenient to set out here what appears to be the statement of the Coroner's ultimate findings for the purposes of s 45(2) of the Act. We speak in this qualified way because the Coroner did not give the precise statement of her ultimate conclusions required by s.45(2) but rather jumbled those conclusions together with the reasons which led her to reach them including her views on the credibility of witnesses.*

*[23] It is apparent that the Coroner intended that what followed her finding in sub-paragraphs (a) to (d) in this passage were to be understood as her "finding" for the purposes of s 45(2)(e) of the Act. In our respectful opinion these conclusions by the Coroner were related to the requirement in s 45(2)(b) of the Act rather than the requirement in s 45(2)(e).*

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<sup>13</sup> Page 25 of Deputy State Coroner’s findings.

32. The three paragraphs of the DSC's findings [out of the material extracted in paragraph [22] of the judgment of the Court of Appeal] which represent the essence of her finding for the purposes of section 45(2)(b) are, in my assessment, the following passages on page 27:

*I find that Senior Sergeant Hurley hit Mulrunji whilst he was on the floor a number of times in a direct response to himself having been hit in the jaw and then falling to the floor.*

*I do not necessarily conclude that this force was to Mulrunji's head as stated by Mr Bramwell. He could not have been in a position to see Mulrunji's head from where he was seated. Mulrunji's feet and part of his legs was all he could see. It is open on Bramwell's evidence that the force was applied to Mulrunji's body rather than his head. This is also consistent with the medical evidence of the injuries that caused Mulrunji's death. It is also most likely that it was at this time that Mulrunji suffered the injury to his right eye.*

*After this occurred, I find there was no further resistance or indeed any speech or response from Mulrunji. I conclude that these actions of Senior Sergeant Hurley caused the fatal injuries.*

33. These findings, purportedly made under section 45(2)(e), amounted to a finding that the deceased's fatal injuries were caused by Hurley punching the deceased in the abdomen after the two men had fallen into the watchhouse.

### **What findings were left undisturbed**

34. The DSC found at page 25 of her report in respect to the section 45 requirements:

*Conclusions from the evidence*

*a) The Deceased is Cameron Francis Doomadgee, known by his tribal name Mulrunji.*

*b) The Deceased died from intra-abdominal haemorrhage due to, or as a consequence of, the rupture of his liver and portal vein. He had also sustained four broken ribs.*

*c) The Deceased died at approximately 11.00a.m. on 19 November 2004.*

*d) The Deceased died in the police watch house on Palm Island, Queensland.*

35. As noted above, the Court of Appeal determined that the finding of the DCS for section 45(2)(b) was in fact her finding for section 45(2)(e). Consequently, the findings mandated by sub-sections 45(2)(a), 45(2)(c), 45(2)(d) and 45(2)(e) were left undisturbed, were not set aside and, for the purposes of the re-opened inquest, have been finalized, namely:

**a)** The deceased person is **Cameron Francis Doomadgee**, known by his tribal name Mulrunji.

**c)** The deceased person **died at approximately 11.00a.m. on 19 November 2004.**

**d)** The deceased person **died in the police watch house on Palm Island, Queensland.**

**e)** The deceased person **died from intra-abdominal haemorrhage due to, or as a consequence of, the rupture of his liver and portal vein. He had also sustained four broken ribs.**

36. In other words, the findings made by the first coroner under section 45(2)(a), (c), (d) and (e) all stand and are not the subject of the current inquest.

### **What findings I can now make**

37. The Court of Appeal ordered the re-opening of the inquest, but only to re-examine the impugned finding. It follows then that when the Court of Appeal set aside the “finding” of “how [Mulrunji] died”, and ordered the reopening of the inquest on

- that point, the current inquest was vested with the jurisdiction, and burdened by the obligation, of finding, if possible “how [Mulrunji] died”. The Coroner is, therefore, not bound by the “finding” as to “how [Mulrunji] died” made by the first Coroner and is not bound by any conclusions of fact made by the first Coroner as to “how [Mulrunji] died”, or on any other matter, except those “findings” that the DSC has made which have not been disturbed, namely, those made under section 45(2)(a), (c), (d), and (e).
38. However, when conducting the current inquest, the Coroner may inform himself in any way he considers appropriate and may “accept evidence given or findings made” by the first Coroner, although it would be impossible here for the Coroner to accept the first Coroner’s “finding” as to “how [Mulrunji] died” as being correct, as that “finding” was found not to be “reasonably supported by the evidence”.
39. The term “how the person died” encompasses more than just the cause of death or the means or mechanism by which the death was occasioned, and extends to circumstances surrounding the death. In *Re State Coroner ex parte Minister for Health*<sup>14</sup>, the Court of Appeal of Western Australia considered s.25(1)(b) of the Coroners Act 1996 (WA) (“the WA Act”). Section 25 of the WA Act is equivalent to s.45 of the Act. Section 25(1) of the WA Act provides that a Coroner must find if possible “how death occurred”. There appears to be no material distinction between that term and the term used in the Queensland legislation:
40. Guidance as to what is expected of a Coroner in these circumstances is obtained from the decision of the Queensland Court of Appeal in *Hurley v Clements & Ors*<sup>15</sup>. At paragraph 20 the Court said:

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<sup>14</sup> (2009) 261 ALR 152

<sup>15</sup> *Hurley v Clements & Ors* [2009] QCA 167

*There can, we think, be little doubt that the reference in s 45(4) and (5) to "findings" are to the matters required to be "found" in s 45(2) of the Act. It is clear from the text of the Act that these "findings" are the ultimate findings which a coroner is required to make by s 45(2). In Keown v Khan & Anor, Callaway JA, with whom Ormiston and Batt JJA agreed, said of s 19(1) and s 59 of the Coroners Act 1985 (Vic) which are broadly analogous to the provisions of s 45 and s 50 of the Act respectively:*

*"the 'findings' referred to in s 59 are the same as the findings referred to in s 19(1) ... those findings are ultimate findings, that is to say decisions as to the identity of the deceased, how death occurred, the cause of death ... That is why it is appropriate to treat them ... as entities that are capable of being declared 'void' [under s 59(1) and (2)]. A coroner may make many findings in the sense that he or she takes a view of the evidence or particular aspects of it, but they are not the 'findings' referred to in ss 19(1) and 59. The latter are restricted to ultimate findings as to the identity of the deceased, how death occurred and so on."*

*[21] Of course, under the Act, a finding for the purposes of s 45(2) is not an entity "capable of being declared 'void'", but it is capable of being "set aside" under s 50. While the analogy between the Victorian provisions discussed by Callaway JA in Keown v Khan and s 45 and s 50 of the Act is not perfect, the view taken by Callaway JA of the nature of the "findings" referred to in the Victorian provisions accurately describes the nature of the findings contemplated by s 45(2) and s 50 of the Act.*

41. Later, at paragraph [23], the Court added these observations:

*A finding that a death was not caused by a particular agent is, by definition, not a finding as to what caused the person to die. That was the view that Callaway JA took in Keown v Khan & Anor. As to the issue posed for a coroner by s 45(2)(b) of the Act, however, it may not be possible to make a finding that a person died in a particular way without, at the same time, making a finding that the person did not die in a different way. Callaway JA recognised that this was so, saying "it will often be necessary for a coroner to make more than one finding in order to discharge his or her obligations under para (b) [of s 19(1)]", ie the Victorian analogue of s 45(2)(b) of the Act.*

.....

*[29] We are in no doubt that the reference in s 50 to "a finding at an inquest" is a reference to a finding of the kind required by s 45(2) of the Act. No other kind of finding is referred to in the Act; and it is inconceivable that the reference to "a finding" in s 50 could encompass every conclusion on every issue of fact made by a Coroner on the way to making a finding of the kind referred to in s 45(2) of the*

*Act. Counsel for Mr Hurley urged us to adopt that view, but we are unable to attribute such caprice to the legislature.*

42. Later in the judgment, the Court of Appeal returned to, and further emphasized that, a state of satisfaction on the probabilities appropriate to the gravity of the consequences of a finding does not involve the need to exclude competing possibilities:

*[34] The approach applied by the learned primary judge does not conform to s 50(5)(d) of the Act. Rather, his Honour's approach was akin to that to be applied to determine criminal responsibility upon a trial for an offence or on an appeal from a conviction of a criminal offence. In a criminal trial, an accused must be acquitted if the evidence supports a reasonable hypothesis consistent with innocence. The inquest was not a criminal trial in which Mr Hurley was accused of the unlawful killing of the deceased, and the Coroner was not concerned with whether or not Mr Hurley was criminally responsible for the death of the deceased. Section 45(5) of the Act makes it expressly clear that the Coroner's task of making findings as to the circumstances of a death was not concerned with questions of criminal responsibility.*

43. In setting aside the finding that the deceased's injuries had been caused by punching by Mr Hurley, the Court of Appeal in *Hurley v Clements & Ors* rejected the submission made on behalf of the Attorney-General and the appellants, that it must inevitably be found as a consequence, that the fatal injuries were suffered as a result of the deliberate application of force by Mr Hurley after the fall, eg, by him dropping a knee into the torso or upper abdomen of the deceased. The Court, in specifically rejecting such a finding, suggested that Mr Bramwell's evidence, for example, might stand in the way of such a conclusion.
44. However, in the initial submissions delivered by senior counsel on behalf of the Attorney-General at the first pre-inquest conference held on 20 November 2009, at paragraphs 22 to 28 under the heading "The Real Factual Issues", reference was made to the dichotomy between the deceased suffering fatal injuries accidentally in the fall, and the deceased suffering those injuries as a result of the deliberate application of force.

45. At paragraphs 27 and 28 of those submissions, whilst stating that the Attorney would take the opportunity of making full submissions once the evidence had all been heard, it was asserted on behalf of the Attorney-General that, on the present state of the evidence, a finding of accident was not open, and that the appropriate finding was one that deliberate force was applied. It was further submitted that, if deliberate force could not be found, a finding that injury was sustained after Mr Hurley and the deceased crossed the threshold of the door of the watchhouse and before Sergeant Leafe came back into the corridor, but that the actual force (which caused the fatal injury) could not be ascertained could be reached.
46. Given that no evidence had been taken or incorporated by the re-opened inquest at that stage, I considered that it was not possible to rule out accident at that early stage of the inquest until all the evidence was finalised. Further, as it was a formal written submission filed by senior counsel on behalf of the Attorney-General, it is important in rendering my decision that I record in my reasons that I have not considered myself constrained in the way submitted.. Subject only to the strictures placed upon this Court by the decision of the Court of Appeal (which I have canvassed in detail in these reasons), I have considered myself at liberty to make a determination under section 45(2)(b) with full regard to the whole of the evidence before this inquest.

### **What findings I cannot make**

47. It is not possible to make a finding that the punching by Senior Sergeant Hurley caused the fatal injuries because, as the Court of Appeal said at paragraph [39] “...even if Mr Bramwell's evidence inculpatory of Mr Hurley were to be accepted, the conclusion that the punches of which Mr Bramwell gave evidence

caused the rupture of the portal vein and the near-severing of the deceased's liver, was a conclusion which was not reasonably open to the Coroner.”

48. In dealing with this issue, the Court of Appeal observed:

*The Coroner said that "[t]he consensus of medical opinion was that severe compressive force applied to the upper abdomen, or possibly the lower chest, or both together, was required to have caused [the] injury" to the deceased's liver and portal vein.*

*But none of the medical evidence supported the further finding that the punches spoken of by Mr Bramwell were likely to have supplied the compressive force said to be necessary to cause the rupture of the deceased's liver and portal vein. Indeed, the uncontroverted medical evidence was to the contrary, yet this evidence was not adverted to by the Coroner. It will be necessary to refer to the Coroner's reasons at some length to demonstrate that this is so. But before we refer to the relevant passage in the Coroner's reasons, it is necessary to refer to the uncontroverted medical evidence which was before the Coroner.<sup>16</sup>*

*In this regard Dr Ranson expressed the opinion in his report that three "jab-like punches" described by Mr Bramwell would not have been able to generate sufficient force to rupture the deceased's liver and portal vein. His opinion was not disputed by any party at the inquest. None of the other doctors who gave evidence offered a contrary opinion. The other medical evidence was to the effect that, whatever the nature of the contact between Mr Hurley's body and the body of the deceased, it was necessary that the full weight of Mr Hurley's body needed to be behind the blow in order to cause internal injuries of the kind suffered by the deceased. Dr Lampe thought that a blow with a knee or a torso with the weight of Mr Hurley's body behind it might have carried sufficient force to inflict the fatal injuries suffered by the deceased; and Dr Lynch was of a similar view.<sup>17</sup>*

.....

*We conclude that the finding of the Coroner that punching by Mr Hurley caused the fatal injuries sustained by the deceased was not reasonably open on the evidence. Accordingly, the decision of the District Court that this finding of the Coroner should be set aside was correct even though the process of reasoning whereby his Honour arrived at that decision was flawed.<sup>18</sup>*

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<sup>16</sup> *Hurley v Clements & Ors [2009] QCA 167 para [40]*

<sup>17</sup> *Hurley v Clements & Ors [2009] QCA 167 para [44]*

<sup>18</sup> *Hurley v Clements & Ors [2009] QCA 167 para [48]*

I might add at this stage that no further medical evidence has been given at the current inquest and I rely on the medical evidence adduced at the inquest before the DSC

### **The Rules of Natural Justice**

49. The Coroners Guidelines provide that “Although not bound by the rules of evidence, Coroners are obliged to ensure that the principles of procedural fairness are applied. One consequence of this is that if evidence adverse to any party is led, that party must be given an opportunity to respond.”<sup>19</sup>
50. The High Court in *Annetts v McCann* (1990) 170 C. L. R. 596, and on several occasions since, has recognised that questions of procedural fairness arise in relation to any person who could be adversely affected by a decision of a Coroner or like inquisitor.
51. When a statute confers powers upon a public official to destroy, defeat or prejudice a persons rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intendment (*Annetts v McCann* (1990) 170 C. L. R. 596 at 598). There is nothing in the Queensland Coroners Act 2003 which suggests that the rules of natural justice have been excluded.
52. Although there are no parties as such appearing before a Coroner, he/she has the power to admit the representation by counsel of "interested persons". No issues as defined by pleadings are "triable", but there are clear contested contentions as to facts, upon which findings and possibly further comment or reports may be made. Although there is no decision as such, the Coroner must report to the Director of Public Prosecutions if it is believed indictable offences have occurred and this means Coroners must define those offences. Further reports of findings may also be made, for example, under section 47(2) to the Attorney-General, the

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<sup>19</sup> See Coroners Guidelines page 8.8

appropriate Chief Executive, or the appropriate Minister, or under section 48(2), to the Chief Executive of the relevant department, or under section 48(3), to the Crime and Misconduct Commission [CMC]. Therefore conclusions with almost certain juridical consequences are commonly made.

53. In *Annetts v McCann*, the High Court considered whether the rules of natural justice had been excluded by the Coroners Act 1920 (WA). Pursuant to Section 43(1) of the WA Act, the Coroner had the power to express opinions outside the necessary findings in a "rider" to his principal findings in a manner similar to that which the Coroner in these proceedings can make comment. Although there was some disagreement as to whether it was appropriate for the High Court to make any order in relation to the Inquest there under consideration, each member of the Court agreed that the rules of natural justice applied. No distinction was drawn between matters which might be the subject of the necessary findings, or those which might find their way into a "rider". Justice Brennan said:<sup>20</sup>

*"The nature of the power to make findings that are unfavourable (whether such findings are incorporated into the written inquisition or into a rider) is such as to import the requirement to accord natural justice as a condition governing the exercise of that power. Prima facie, before a finding is made, it is incumbent on a Coroner to accord natural justice to any person upon whose conduct the Coroner's finding may reflect unfavourably.*

*Personal reputation has now been established as an interest which should not be damaged by an official finding after a statutory inquiry unless the person whose reputation is likely to be affected has had a full and fair opportunity to show why the finding should not be made. In Mahon v Air New Zealand (1984) A. C. 808 at p 820, Lord Diplock said in delivering the judgment of the Privy Council that the repository of a power to inquire and make findings and who contemplates making an unfavourable finding "must listen fairly to any relevant evidence conflicting*

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<sup>20</sup> At page 608.7

*with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made".*

### **Coroners Court is not bound by the rules of evidence**

54. Proceedings in a Coroner's Court are not as constrained as courts exercising criminal or civil jurisdiction are because section 37 of the Act provides that "(T)he Coroners Court is not bound by the rules of evidence, but may inform itself in any way it considers appropriate." This flexibility of approach has been explained as a consequence of an inquest being a fact-finding exercise rather than a means of apportioning guilt, that is, an inquiry rather than a trial.<sup>21</sup>

### **The Standard of Proof**

55. The Court of Appeal<sup>22</sup>, in noting the advice contained in the Coroner's Guidelines that findings were to be made on the balance of probabilities in conformity with the sliding standard of satisfaction explained by Dixon J. in the High Court in *Briginshaw v Briginshaw*<sup>23</sup>, issued two qualifications to the statement in the Guidelines:

- (i) an inquest is a fact finding exercise and not a method of apportioning guilt ... In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts<sup>24</sup>; and

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<sup>21</sup> *R v South London Coroner*; ex parte Thompson per Lord Lane CJ, (1982) 126 S.J. 625

<sup>22</sup> *Hurley v Clements & Ors* [2009] QCA 167 para [25]

<sup>23</sup> (1938) 60 CLR 336.

<sup>24</sup> *Hurley v Clements & Ors* [2009] QCA 167 para [26]

- (ii) the application of the sliding scale of satisfaction test explained in *Briginshaw v Briginshaw* does not require a tribunal of fact to treat hypotheses that are reasonably available on the evidence as precluding it from reaching the conclusion that a particular fact is more probable than not.<sup>25</sup>

56. In paragraph [32], the Court of Appeal reiterated and emphasized that a state of satisfaction on the probabilities appropriate to the gravity of the consequences of a finding does not involve the need to exclude competing possibilities.

### **Propensity Evidence**

57. Evidence had been led at the DSC inquest (after a favourable ruling by Muir J in *Doomadgee & Anor v Deputy State Coroner Clements & Ors* [2005] QSC 357) from which it was maintained by the family of the deceased and the Palm Island Aboriginal Council that the Court could conclude that Senior Sergeant Hurley had assaulted other persons in the course of or after arresting them on Palm Island and placing them in the watch house, thereby assisting the Court in determining what happened when Mulrunji was arrested and placed into custody. This evidence became known as the ‘propensity evidence’.

58. On 14 January 2010, the persons granted leave to appear in the re-opened inquest [which I will refer to as ‘the parties’ for the sake of convenience] were forwarded a letter from the Office of the State Coroner advising that, subject to the consideration of submissions to the contrary, Counsel Assisting would request the Court to accept the evidence given at the original Inquests in respect to the “propensity evidence” complaints of Noel Cannon, Barbara Pilot, Douglas Clay and Alfred Bonner pursuant to section 50(8) of the Act.

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<sup>25</sup> *Hurley v Clements & Ors* [2009] QCA 167 para [27]

59. To facilitate the parties' consideration of this issue, the Court arranged for all relevant QPS and CMC holdings to be available for inspection by the legal representatives of the parties. To assist the parties in their consideration of this material, the letter attached a copy of a 'Schedule of Complaints against Senior Sergeant Hurley' (Exhibit B22 at the original Inquest) and a Complaints List which identified the complainants referred to in the CMC's alphabetical code of its material.
60. Parties who sought to widen the ambit of the "propensity evidence" canvassed at the DSC inquest, were requested to file written submissions with the Court identifying those additional issues, the material relevant thereto, and to nominate any witnesses proposed for viva voce examination on those issues.

#### **Additional Prior Complaint Material**

61. In the event, there was no dissent to the Court accepting the evidence given in the DSC Inquest regarding the complaints of Cannon, Pilot, Clay and Bonner pursuant to the provisions of section 50(8) of the Act. However, Counsel for the family of the deceased, Mr Boe and Ms Morreau, submitted that the further prior complaints as summarised in the 'Schedule of Complaints against Senior Sergeant Hurley' (Exhibit B22 at the original Inquest) were relevant and admissible for the reasons provided at paras 13 to 15 of their prior submissions of 18 December 2009 and ought to be made available so that the Coroner may inform himself in any way he considers appropriate.
62. At paragraph 4 of their submission, Mr Boe and Ms Morreau opined that there was no proper basis to distinguish these materials from the previously mentioned complaints. They submitted that those complaints went directly to the issue of Mr Hurley's character and credibility. Finally, they noted in paragraph 5 that they did not seek at that stage that any witnesses in respect of those other prior complaints be made available for viva voce evidence.

63. The Court obtained some assistance about how it should proceed from the decision of Wilson J in *Commissioner of Police v Clements & Ors* [2005] QSC 203. This was a decision upon an application by the Commissioner of Police to review two decisions of the DSC made in April 2005 during the course of the original Inquest, inter alia, to grant access to Counsel for the family of the deceased and to Counsel for the Palm Island Aboriginal Council to inspect the complaint history of Senior Sergeant Hurley from both the Queensland Police Service files and the Crime and Misconduct Commission files.

64. Wilson J referred to the judgment of Pincus JA in the Queensland Court of Appeal decision of *R v Spizzirri* [2000] 2 Qd R 686; [2000] QCA 469 which reviewed the authorities on the right of defence counsel to inspect subpoenaed documents. There Pincus JA drew a clear distinction between the inspection of subpoenaed documents and what use should be allowed to be made of the documents or the information contained in them. At para 24 Pincus JA said:

*“It appears to me to emerge from the authorities that inspection of subpoenaed documents by the defence should be permitted, where that is required for some legitimate forensic purpose, which purpose must be sufficiently disclosed. The purpose may be or include the obtaining of information, in particular for use in cross-examination as to credit. Further, courts should be careful not to deprive the defence of documents which could be of assistance to the accused.”*

65. Wilson J observed that the test is that of a legitimate forensic purpose, and not forensic relevance or admissibility. Until a document is inspected, it will often be impossible to assess its relevance or admissibility; a document which is inadmissible may nevertheless contain information which is admissible in another form or which may lead to other evidence which is admissible.<sup>26</sup>

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<sup>26</sup> At para [13]

66. In light of the observations of both Pincus JA and Wilson J, this Court determined to engage in a three stage process:
1. Is there a legitimate forensic purpose to permit inspection of the documents?
  2. Should the material so inspected and identified, be admitted into evidence?
  3. Has the person whose reputation is likely to be affected by this material had a full and fair opportunity to show why an adverse finding should not be made based upon it?
67. In *Spizzirri* the Court of Appeal determined that the obtaining of information for use in cross-examination as to credit could be a legitimate forensic purpose for seeking access to subpoenaed documents. Thus access to the whole of the material was granted and inspection allowed.
68. Wilson J observed<sup>27</sup> that while the Coroners Court is not bound by the rules of evidence, the touchstone of the evidence and submissions it may receive must be relevant to the matters the Coroner is empowered to investigate, the questions on which he or she must make findings, and the matters on which he or she may comment. The primary function of a Coroner is to investigate a particular death, in this case that of Mulrunji. The findings which must be made under s 45 all relate to a particular death. The comments a Coroner may make under s 46 must be connected with the particular death under investigation but are necessarily directed at wider issues – public health or safety, the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future.
69. In the light of these observations of both Pincus JA and Wilson J, the Court determined that it was not sufficient for Counsel for the Doomadgee family to assert that the material listed on the ‘Schedule of Complaints against Senior

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<sup>27</sup> At para [15]

Sergeant Hurley' should be received into evidence as a whole merely upon inspection, but to make submissions about the relevance of particular matters to the inquiry being conducted so that the Court could be satisfied as to that relevance. Then, if the Court was satisfied as to relevance, it may have been necessary to call witnesses to provide Mr Hurley with procedural fairness.

70. Further, the onus is upon parties arguing that additional propensity evidence should be received over and above the material received during the course of the original inquest, to satisfy the Court by submission that the additional material is both relevant and probative. In this regard I note the observations of Muir J in paragraphs [50] and [52] of his judgment in *Doomadgee & Anor v Clements & Ors* [2005] QSC 357; [2006] 2 Qd R 352:

*“It may well be the case that when the totality of the evidence available to the Coroner is considered she will find the Propensity Evidence of little or no weight in comparison with the eyewitness accounts and other more direct evidence...”*<sup>28</sup>

*“.....Even though some potential evidence might be regarded by a coroner as relevant, he or she is not bound to attempt to procure it regardless of its probative value or of the cost of or time spent in obtaining it. The resources of all tribunals are finite and the public interest often will be better served by the expeditious and economical dispatch of business than by the indiscriminating pursuit of evidence which the tribunal regards as having no reasonable likelihood of influencing the outcome of the hearing. The Reasons reveal that the Coroner has concluded that, in view of the direct evidence available to her of the events at the watch house, and what is described in paragraph 19 of the Reasons as the “additional evidence”, the probative value of the Propensity Evidence is marginal, at best. Nothing drawn to my attention casts doubt on the correctness of that view.”*<sup>29</sup>

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<sup>28</sup> At para [50]

<sup>29</sup> At para [52]

71. Counsel for the family did not press the point. They did not seek a larger number of witnesses for oral examination, beyond the seven persons identified by Counsel Assisting and agreed to by the other parties, namely, Hurley, Leafe, Steadman, Bengaroo, Roy Bramwell, Sibley and Bonner. The Court was content for Counsel to use the inspected material, when relevant and probative, in the course of cross-examination.

**The use of interviews given by police officers under direction**

72. The issue of what use could be made of interviews given by police officers under direction was raised by the Court in the context of section 52(1)(d) of the Act.

Section 52(1)(d) provides:

*Section 52 Documents that can not be accessed*

*(1) A coroner must not give a person access to an investigation document to the extent that the document--*

.....

*(d) contains information that was obtained from a person under a requirement in another Act that compelled the person to give the information; .....*

73. The issue arose in the context that the CMC had provided recordings and a report reproducing, directly or by way of summaries or references, interviews conducted with Senior Sergeant Hurley by Detective Inspector Webster during the course of the investigation of various complaints made against Senior Sergeant Hurley. The statements made by Senior Sergeant Hurley in those interviews resulted from directions given to him by Inspector Webster to answer questions. Those directions were based upon formal directions given by the Commissioner of Police pursuant to section 4.9 of the *Police Service Administration Act 1990*. In view of section 52(1)(d), could the Court grant access to those interviews without breaching this section as they appeared to contain information that was obtained from a person under a requirement in another Act that compelled the person to give the information?

74. The Court sought and obtained considered written submissions from the parties on this issue, and received further oral argument on 26 February 2010. On that date I ruled that section 4.9 of the Police Service Administration Act provides that the Commissioner **may** give directions. This is the grant of a discretion to the Commissioner to impose a “*requirement that [compels a] person [ie a police officer] to give information*”. The section itself does not contain a relevant “*requirement*”. The requirement is contained not “*in [The Police Service Administration Act]*” but in the Commissioner’s direction made pursuant to the discretionary power given to him.
75. Accordingly I found that the requirement given to Senior Sergeant Hurley by Detective Inspector Ken Webster was not a requirement ‘in’ an Act that compelled Senior Sergeant Hurley to give the information. Therefore, there was no restriction under section 52 to the Coroner giving access to the documents.

### **The CMC material**

76. A copy of the (then) current draft of the evidentiary aspects only of the CMC’s report (without any recommendations) reviewing the QPS examination of the initial QPS investigation of Mulrunji’s death was forwarded to the Coroner by the CMC. That draft report was released with the CMC’s agreement to all parties on the basis that it was to remain confidential to the parties and used solely for the purposes of the Inquest. The parties were required to sign written undertakings to abide by these terms. This report was not received into evidence.

The purpose of releasing this draft report to the parties was to enable them to be apprised of the factual matters found in the CMC investigation (as opposed to proposed recommendations which were not received) and consequently any new evidence that had arisen. I wanted to be sure that the parties had the benefit of all investigations and enquiries to date to enable them to make submissions on

calling any new evidence they considered may be relevant to the exercise of my function.

## **THE CONDUCT OF THE INQUEST**

77. The State Coroners Guidelines made under the Act observe that the emphasis of the Act is for Coroners to seek to contribute proactively to a safer and more just community through a transparent coronial system in which the rights of the family to be involved in decisions concerning the deceased are respected. Thus a Coronial Inquest is a public inquiry dealing with issues of substantial public interest, in particular, how to prevent deaths from similar causes happening in the future.<sup>30</sup>

### **Leave to Appear**

78. Section 36 of the Act deals with the right to appear before an inquest. It provides:

*(1) The following persons may appear, examine witnesses, and make submissions, at an inquest--*

*(a) a police officer, lawyer or other person assisting the Coroners Court;*

*(b) the Attorney-General;*

*(c) a person who the Coroners Court considers has a sufficient interest in the inquest.*

79. The Court determined that the following persons should be granted leave to appear through Counsel:

- Counsel Assisting;
- Counsel for the Attorney-General (as of right);
- Counsel for the Doomadgee family and Ms Tracey Twaddle, the deceased's de facto wife;
- Counsel for the Commissioner of Police;

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<sup>30</sup> See Coroners Guidelines page 1.1

- Counsel for the Police Union of Employees; and
- Counsel for Senior Sergeant Hurley.
- Counsel for the Commissioned Officers

### **Pre-Inquest Conferences**

80. A total of six pre-inquest conferences were called to define the issues and the procedures of the re-opened inquest, namely, on:

- 20 November 2009;
- 21 December 2009;
- 5 February 2010;
- 19 February 2010;
- 26 February 2010; and
- 3 March 2010.

81. All persons granted leave to appear had full opportunity to argue their positions at these pre-inquest conferences.

### **The re-calling of some witnesses**

82. The Court considered that the recalling of some witnesses was desirable for the following reasons:

- Issues of credit loomed large in these proceedings with conflicting and/or inconsistent accounts given by many of the witnesses during the original inquest and at pre-inquest interviews. In those circumstances, first hand observations of the demeanour of witnesses may have provided assistance to the Court in determining where the truth lay.
- The versions of the testimony given by witnesses at the trial of Senior Sergeant Hurley had not been subjected to testing by cross-examination by

all parties granted leave to appear, in particular, where that evidence varied from the evidence previously given at the original inquest.

83. All persons granted leave to appear had full opportunity to argue their positions at the pre-inquest conferences. In the event, the Court decided that the following witnesses should be re-called and re-examined:

- Senior Sergeant Hurley
- Sergeant Michael Leafe
- Constable Kristopher Steadman
- Police Liaison Officer Lloyd Bengaroo
- Mr Roy Bramwell
- Mrs Florence ‘Penny’ Sibley
- Mr Alfred Bonner

84. None of the parties disputed this determination.

### **Hearings at Palm Island and Townsville**

85. Hearings were held on Palm Island and later in Townsville between 8 March and 12 March 2010. The abovementioned witnesses, together with Messrs Lance Poynter and Vincent Thimble in respect of the alleged presence of a mirror in the Day Room of the Pam Island Police Station, and Mr G. Cranny in respect to the CMC interviewing of police witnesses, were the only witnesses called to give oral evidence.

### **The Incorporation of Evidence**

86. In order to reduce the cost of, and time spent in obtaining, evidence that had already been received during the original inquest, and in recognition of the fact that the resources of all tribunals are finite and the public interest is often better

served by the expeditious and economical dispatch of business, the re-opened inquest made extensive use of the provisions of section 50(8) of the Act which provides:

*A coroner who has reopened an inquest, or is holding a new inquest, under this section may accept any of the evidence given, or findings made, at the earlier inquest as being correct.*

87. In the event, the Coroner decided to accept the whole of the evidence, both transcript and exhibits, of the original inquest pursuant to this provision; thus the re-opened inquest continued on from the previous inquest. Consequently, the evidence before the original inquest taken before the DSC was available to the parties and to the Coroner in these proceedings.

#### **Support to Indigenous Witnesses**

88. In view of the long recognized difficulties that may be experienced in communication between Aboriginal and non-Aboriginal people, the Court made arrangements for an indigenous support person, Ms Lisa Watson to be available on Palm Island to assist Aboriginal witnesses giving evidence to the Inquest.
89. The Court notes with gratitude that Ms Watson made herself available to perform this important task at considerable personal inconvenience.

#### **The assistance of the CMC**

90. From the date that the CMC became involved directly in the investigation of this matter, namely 24 November 2004, the CMC and, in particular, Detective Inspector Webster, have provided full and ongoing assistance to all Coroners who investigated the death of Mulrunji, and to all Counsel Assisting each Coroner. I wish to place on record my gratitude for this assistance.

## THE FACTUAL MATRIX

91. As this inquest is concerned only with a finding under Section 45(2)(b) of the Act, the inquest has concentrated on the incidents from the time the police van arrived at the police station with Mulrunji and Patrick Nugent on board until the time that Mulrunji was placed in the cell.
92. In determining my ultimate finding under Section 45(2)(b), I am conscious that I will be required to draw a series of conclusions along the way based upon my view of the direction and weight of the evidence. These interim ‘findings’ are not to be confused with my ultimate finding under section 45(2)(b). I note that this process is in accordance with the observations made by the Court of Appeal in *Hurley v Clements & Ors*<sup>31</sup> in this regard:

*There can, we think, be little doubt that the reference in s 45(4) and (5) to "findings" are to the matters required to be "found" in s 45(2) of the Act. It is clear from the text of the Act that these "findings" are the ultimate findings which a coroner is required to make by s 45(2). In Keown v Khan & Anor,[6] Callaway JA, with whom Ormiston and Batt JJA agreed, said of s 19(1) and s 59 of the Coroners Act 1985 (Vic) which are broadly analogous to the provisions of s 45 and s 50 of the Act respectively:*

*"the 'findings' referred to in s 59 are the same as the findings referred to in s 19(1) ... those findings are ultimate findings, that is to say decisions as to the identity of the deceased, how death occurred, the cause of death ... That is why it is appropriate to treat them ... as entities that are capable of being declared 'void' [under s 59(1) and (2)]. A coroner may make many findings in the sense that he or she takes a view of the evidence or particular aspects of it, but they are not the 'findings' referred to in ss 19(1) and 59. The latter are restricted to ultimate findings as to the identity of the deceased, how death occurred and so on." [emphasis added]*

93. I have concentrated, wherever possible, on the first or initial responses of witnesses as likely to be the most accurate and most uncontaminated accounts of what has occurred, in particular, given the effluxion of so much time and the unsatisfactory history of the investigation of this matter.

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<sup>31</sup> At para [20]

### **The Crucial Time**

94. The crucial time from when Mulrunji was extracted from the back of the police van to the time that he was dragged away from inside the doorway of the police station to the cells was only a matter of tens of seconds. The evidence establishes that there was a backhanded punch thrown by Mulrunji which struck Hurley upon Mulrunji exiting the police van. This was followed by a fairly violent struggle during the number of steps it took to proceed the length of the police van in the confined area, estimated by Sgt Leafe to be one to one and a half meters wide between the police van and the wall of the police station. This struggle culminated in a sudden stumbling fall into the police station. Whilst I recognise that these actions were fast and confusing for the witnesses, my fact finding task has been made more difficult by the fact that not one of the witnesses has maintained a consistent version when interviewed or when giving evidence over the intervening years.

### **No injuries when Mulrunji arrived at Police Station**

95. The evidence, both from the medical experts and from the eye witnesses, is conclusive that Mulrunji was not suffering from any injury when the police van arrived at the police station.
96. This was a vital baseline for the conduct of the re-opened inquest as it meant that the window of opportunity for the fatal injuries to be inflicted upon Mulrunji was very narrow in both space and time, that is, from the back of the police van to the corridor of the police station - a matter of a few metres in distance and a matter of tens of seconds in time
97. Hurley acknowledged when first interviewed on 19 November 2004 that Mulrunji was uninjured when he arrived at the police station.

98. Ms Edna Coolburra lived in Dee Street, Palm Island. She knew Mulrunji. At about 9am on the morning of Friday, 19 November, 2004 she saw him and chatted to him. He was happy and joking and appeared to be drunk. At about 11.00am she saw Mulrunji walking along the road. She saw the police van pull up and the tall police officer arrest Mulrunji. She could hear the conversation but not the details. She saw PLO Bengaroo open the back door of the van and the police officer put Mulrunji in the van despite his resistance. Mulrunji was asking why he was being arrested and the police officer answered him.

Ms Edna Coolburra did not see any injuries on Mulrunji when she was speaking to him that morning. She did not observe any particularly rough handling in his arrest.<sup>32</sup>

99. Mr. Gerald Kidner saw Mulrunji on the morning of 19 November at his house at Palmer Crescent, Palm Island. Mulrunji was very drunk but uninjured.<sup>33</sup>

100. Ms. Verna Snyder also saw Mulrunji at Palmer Crescent, Palm Island that morning. He was drinking and was drunk. He did not have any injuries.<sup>34</sup>

101. Associate Professor Stephen Lynch, who is a specialist general surgeon practising in the field of liver transplant surgery and treatment, gave evidence at the original inquest. He discounted any physical possibility of Mulrunji having sustained the

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<sup>32</sup> Ms Coolburra's evidence can be found at:

- (a) Inquest transcript DSC – day 2, 28 February 2005, pages 84-91; day 8, 1 August 2005, pages 336-352.
- (b) Exhibits D10.1-D10.3 comprising various statements and records of interview by Ms Coolburra.
- (c) Transcript of R v Hurley trial – day 1, 12 June 2007, pages 66-77.

<sup>33</sup> Mr Kidner's evidence can be found at:

- (a) Inquest transcript DSC – day 2, 28 February 2005, pages 102-108; day 8, 1 August 2005, pages 309-326 and 334.
- (b) Exhibits D24.1 and D24.2 comprising a statement and record of interview by Mr Kidner.
- (c) Transcript of R v Hurley trial – day 1, 12 June 2007, pages 78-89.

<sup>34</sup> Ms Snyder's evidence can be found at:

- (a) Inquest transcript DSC – day 2, 28 February 2005, page 109; day 8, 1 August 2005, page 329.
- (b) Exhibit D34.1 being a record of interview by Ms Snyder.
- (c) Transcript of R v Hurley trial – day 1, 12 June 2007, pages 90-95.

liver injury prior to the point of being removed from the police vehicle at the back of the police station. He said Mulrunji would not have been able to struggle, as the evidence suggests, if he had blood in his abdominal cavity at that time.

102. Dr Lampe noted that the reported changes in Mulrunji's behaviour, from aggressive prior to the fall to passive after the fall, suggests that the events surrounding the fall are crucial.
103. The medical evidence as to the incapacitating nature of Mulrunji's major injuries is very significant because of the evidence that after the fall, and after Sergeant Leafe had returned from opening the cell door, Mulrunji was no longer resisting, indeed, was a "dead weight", and needed to be dragged to the cell.

### **Seriously intoxicated**

104. Although Mulrunji was physically well and suffered no serious or apparent injury upon arrival at the police station, his blood alcohol content indicated that he would have been seriously intoxicated. (The deceased on the evidence had been drinking alcohol including methyl and water). The blood alcohol level established by the autopsy was 292 mg/100mL (0.292). The medical evidence indicated that his coordination would have been affected and he would have had less capacity to protect himself from injury in any altercation or fall. He was six times over the legal limit to drive a car and had twice the blood alcohol level where a person is deemed to be so influenced by alcohol as to be incapable of controlling a vehicle. There is no doubt his co-ordination would have been affected to a large extent and therefore he was less able to protect himself in a fall.

### **The medical evidence**

105. There were two main witnesses as to what caused the injuries to Mulrunji in the corridor which resulted in Mulrunji's death. One of those witnesses was the

deceased; the other is Senior Sergeant Hurley. Mr. Hurley maintains that he does not know how these massive injuries occurred, although he accepts that he was the only person in contact with the deceased at the relevant time. The medical evidence is therefore a central element to the resolution of what happened in the corridor of the police station to cause Mulrunji's death, that is, 'how Mulrunji died'.

106. The medical evidence was regarded by the DSC, the District Court and the Court of Appeal, as settled and uncontroverted.

107. The DSC found<sup>35</sup>:

*Both autopsies concluded that the cause of death was intra-abdominal haemorrhage, due to the ruptured liver and portal vein.*

*The consensus of medical opinion was that severe compressive force applied to the upper abdomen, or possibly the lower chest, or both together, was required to have caused this injury.*

*I accept that evidence and rely upon it in considering the evidence in this inquest to explain how this injury was caused to [the deceased].*

108. The Court of Appeal referred to "the uncontroverted medical evidence which was before the Coroner"<sup>36</sup>. One of the central reasons which the Court of Appeal gave for setting aside the DSC's findings as to how the deceased died appears at paragraph [47] of the Court's reasons:

*None of the medical witnesses nor any of the parties sought to dispute Dr Ranson's unequivocal rejection of the possibility that the punches described by*

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<sup>35</sup> DSC's Findings, page 7.

<sup>36</sup> *Hurley v Clements & Ors [2009] QCA 167* at para [42]

*Mr. Bramwell could have caused the fatal injuries. But the Coroner did not refer to the unequivocal evidence of Dr Ranson or to the circumstance that his opinion was undisputed.*

109. The Court of Appeal reviewed the medical evidence at some length. The Court extracted what it regarded as the pertinent statements of the medical experts. In the circumstances it is appropriate to set forth what the Court of Appeal found at paragraphs [41] to [48] of its judgment, as being relevant to the determination I am required to make:

*.....it is necessary to refer to the uncontroverted medical evidence which was before the Coroner.*

*[41] A report into the death of the deceased was prepared by Dr David Ranson, who conducted a second autopsy on the deceased on 30 November 2004. He summarised the circumstances of death as follows:*

*"In my opinion the death occurred from blood loss as a result of the liver being torn. I believe the liver injury was the result of forceful pressure being applied to the front of the upper abdomen or stomach area. This force squeezed the liver by pushing it up against the front of the spine so that it was nearly split in half.*

*In a person with some degree of blockage of the arteries that supply blood to the heart muscle, significant loss of blood can cause a drop in the supply of blood to the heart muscle causing it to fail to work properly. This natural disease process of the coronary arteries may have acted so as to quicken his death from the liver injury but in my opinion does not supplant the liver injury as being the medical cause of his death.*

#### *Immediate Cause of Death*

*In my opinion the immediate cause of the death was the blood loss as a result of bleeding from the liver into the abdominal cavity.*

#### *Underlying Cause of Death*

*In my opinion the underlying cause of the death was due to rupture of the liver consequent upon blunt compressive force injury to the upper abdomen.*

#### *Other Contributing Factors*

*The presence of focal coronary artery atheroma may have contributed to him dying more quickly from this injury."*

[42] *Dr Ranson made the following pertinent statements in his report:*

*"The compressive forces capable of causing this type of injury usually require the body to be fixed against a hard surface such as a wall or firm ground when the pressure is applied to the upper abdomen. The application of the crushing force in these circumstances needs to occur over a relatively small area if the liver alone is lacerated. Force being applied over a large area might be expected to cause other internal lacerations, for example tears to the bowel mesentery. To cause this type of liver laceration, an extremely high degree of force would be required to be applied over the whole of the front of the body whereas a lesser degree of force would be required to cause this injury if the force was applied over a small area in the midline of the upper abdomen.*

*A simple fall on to a flat surface from a standing position in my opinion would not cause the liver laceration seen in this man.*

*A complicated fall where two individuals fall together from a standing position would not usually cause the liver laceration seen in this man unless during the process of the fall a small area of direct crushing pressure was applied to the front of the upper abdomen with the back or posterior lateral aspect of the body fixed against a hard surface. The circumstances in which this might happen are extremely variable but if a large person were to fall in an accelerated or uncontrolled fashion on top of an individual who was lying on their back on the ground, such that a small part of their body, for example, a knee applied a crushing type force to the upper abdomen, it is possible that such a liver laceration might be caused.*

*An alternative explanation for the mechanism in which this injury could occur would be if a person was lying face down on the ground on top of a small hard object which was positioned beneath their body in the vicinity of their upper abdomen and then force was applied across the back of the trunk of the individual. This would result in an opposing localised crushing force being applied to the front of the upper abdomen by the object on which the individual lay.*

*If the force causing the liver laceration was applied over a larger area that included the area over the rib fractures (perhaps some*

*10 cm to 20 cm away depending on the position of the trunk) the same crushing force application could have caused both injuries."*

[43] *Dr Ranson then referred to the findings of forensic pathologist, Dr Greg Lampe, who carried out two autopsies on the body of the deceased:*

*"I note that Dr Lampe states that:*

*'I can find no evidence to suggest the use of direct force (such as punching or stomping) to have caused the injuries; this does not exclude that either (or both) of those two possibilities may have occurred at some time prior to death.'*

*I would agree with this statement. However, whilst the autopsy revealed no bruising or abrasion over the front of the upper abdomen, which might be one source of evidence for direct force being applied in this area, the internal damage to the liver is evidence that there was direct force applied in this area. The absence of skin surface injuries or subcutaneous tissue and muscle bruising over the front of the upper abdomen suggests that the force was applied by or through a softer surfaced object and not applied by a hard edged irregular object making direct forceful contact with the skin.*

***The injuries to the right side of the front of the face could certainly occur in a fall on to the right side of the body but they could also occur as a result of applications of blunt force to the right side of the head in other circumstances. Direct blows from a fist or other hard body part could cause such injuries although where abrasions are present contact with a rough surface may be a more probable explanation."***

[44] *Dr Ranson referred to Mr Bramwell's account and Mr Bramwell's video re-enactment and said:*

*"In the Interview of Roy Bramwell with re-enactment (201104) the following dialogue is noted (page 2 of 10):*

*'B Cameron was behind the (UI) ... and he was dragged in. And Cameron, Cameron must've hit him outside and then Chris dragged him in and he laid him down here and started hitting him. All I could see from here just cause the elbow gone down, up and down, like that ... 'do you want more mister, mister Doomadgee, do you want more of these eh, do you want more. You had enough.' He's just gone like that'*

*Roy Bramwell's several descriptions of Senior Sergeant Hurley hitting Cameron Doomadgee, while he is on the floor inside the door of the police station, appears in many places in the materials. It is difficult to find a consistent version of this alleged incident as kicks and punches are described, but an account of three punches with a closed fist following Cameron Doomadgee's fall to the floor seems to occur regularly.*

*Forceful punches with a fist could have caused the facial injuries and other soft tissue bruises seen at autopsy and depicted in the photographs. However these injuries could also have occurred in a wide variety of ways for example, in a complicated fall or by contact with the environment in the process of putting Cameron Doomadgee into the police vehicle or removing him from the vehicle and taking him into the police station whilst he was struggling.*

*Three jab like punches with a fist would not in my opinion be a sufficient explanation for the force that caused the liver injury.*

*A number of other descriptions of actions involving possible force being applied to Cameron Doomadgee are present in the documentary materials but for the most part these are covered in the examples given above.*

*In my opinion none of the alleged actions and activities attributed to Senior Sergeant Hurley and commented on above would be sufficient to cause a liver injury of this degree of severity to Cameron Doomadgee."*

*[45] It can be seen that the effect of Dr Ranson's evidence was to exclude the punches described by Mr Bramwell as the cause of those injuries.*

*[46] On behalf of the appellants, it was submitted that the medical evidence supported the possibility that the punches of which Mr Bramwell gave evidence caused the fatal injuries suffered by the deceased. That submission is accurate only in the theoretical and abstract sense that a "full-blooded punch" might have caused the damage to the liver and portal vein if delivered with sufficient force. The issue which had to be resolved, on the evidence, was whether the punches described by Mr Bramwell did carry the necessary force. In this regard Dr Ranson expressed the opinion in his report that three "jab-like punches" described by Mr Bramwell would not have been able to generate sufficient force to*

*rupture the deceased's liver and portal vein. His opinion was not disputed by any party at the inquest. None of the other doctors who gave evidence offered a contrary opinion. The other medical evidence was to the effect that, whatever the nature of the contact between Mr Hurley's body and the body of the deceased, it was necessary that the full weight of Mr Hurley's body needed to be behind the blow in order to cause internal injuries of the kind suffered by the deceased. Dr Lampe thought that a blow with a knee or a torso with the weight of Mr Hurley's body behind it might have carried sufficient force to inflict the fatal injuries suffered by the deceased; and Dr Lynch was of a similar view.*

*[47] None of the medical witnesses nor any of the parties sought to dispute Dr Ranson's unequivocal rejection of the possibility that the punches described by Mr Bramwell could have caused the fatal injuries. But the Coroner did not refer to the unequivocal evidence of Dr Ranson or to the circumstance that his opinion was undisputed. That this is so is apparent from the following passage in the Coroner's reasons:[20]*

*"The original autopsy examination of [the deceased's] body was performed by forensic pathologist, Dr Guy Lampe. This occurred on 23 November 2004 at the Cairns Base Hospital mortuary. A second autopsy was performed in Brisbane on 30 November 2004 by Associate Professor David Ranson. Professor Anthony Ansford and Dr Byron Collins were also in attendance together with Dr Guy Lampe.*

***The only external sign of injury was a small oval abrasion in the centre of the right eyebrow measuring 0.4 centimetres by 0.2 centimetres which was bleeding slightly. The right upper eyelid was swollen but there was no haemorrhage of the right eye. The second autopsy examined the right eye area below the skin surface. There was a small amount of contusion (bruising.) The second autopsy also found some deep bruising immediately adjacent to the right side of the mandible and a small (3 centimetre) scalp contusion on the right frontotemporal region of the scalp.***

*Dr Lampe noted that there was no abrasion or boot or shoe impression on the anterior (front) abdominal wall, or the lower chest.*

*The right sided rib cage showed lateral to anterolateral fractures of four ribs, from the sixth to the ninth inclusively. There was no associated contusion of the muscle area above the fractured ribs, but there was some internal haemorrhage of the muscles above and adjacent to the eighth and ninth rib fractures.*

*The most significant finding was in the peritoneal cavity. There was at least one and a half litres of blood and clot. The liver was virtually completely ruptured- ' ... cleaved in two' in Dr Lampe's words. The two halves of the liver were only connected by some blood vessels. The portal vein had an oval hole along its posterior surface measuring 1.5 by 0.7 centimetres which was along the line of the contusion extending through the soft tissue. There was localised haemorrhage to the pancreas adjacent to the peri-duodenal haemorrhage. '*

*Both autopsies concluded that the cause of death was intra-abdominal haemorrhage, due to the ruptured liver and portal vein.*

*The consensus of medical opinion was that severe compressive force applied to the upper abdomen, or possibly the lower chest, or both together, was required to have caused this injury.*

*I accept that evidence and rely upon it in considering the evidence in this inquest to explain how this injury was caused to [the deceased].*

*All the expert medical evidence also concurred that a fall together, side-by-side, of the two men onto a flat surface was unlikely to have caused the injury that occurred. I accept that evidence.*

*Medical witnesses were asked to consider whether the application of a knee or an elbow, whilst [the deceased] was on the hard flat surface, either during or separate to the fall could have caused the mechanism of injury. This was accepted as a possible means by which the injury could have occurred.*

*Dr Lampe noted that the reported changes in [the deceased's] behaviour from aggressive prior to the fall, to passive after the fall, suggests the events surrounding the fall are crucial.*

*It is noteworthy that the second autopsy did reveal bruising on the left index finger knuckle and right little finger. Again, this was said to be consistent with either punching, or injuries sustained in defensive moves, or during the fall onto the right side.*

*Finally there was a comment confirming that [the deceased's] blood alcohol content indicated he would have been significantly intoxicated. The blood alcohol level was 292 mg/100mL (0.292) His coordination would have been affected and he would have had less capacity to protect himself from injury in any altercation or fall.*

*Associate Professor Ranson's plain English language statement is helpful:*

*'In my opinion the death occurred from blood loss as a result of the liver being torn. I believe the liver injury was the result of forceful pressure being applied to the front of the upper abdomen or stomach area. This force squeezed the liver by pushing it up against the front of the spine so that it was nearly split in half.'*

*Dr Ranson also said:*

***'A complicated fall where the two individuals fall together from a standing position would not usually cause the liver laceration seen in this man unless during the process of the fall a small area of direct crushing pressure was applied to the front of the upper abdomen with the back or posterior lateral aspect of the body fixed against a hard surface ... .. If a large person were to fall in an accelerated or uncontrolled fashion on top of an individual who was lying on their back on the ground, such that a small part of their body, for example a knee applied a crushing type force to the upper abdomen, it is possible that such a liver laceration might be caused.'***

*Associate Professor Stephen Lynch, who is a specialist general surgeon practising in the field of liver transplant surgery and treatment gave evidence. He discounted any physical possibility of [the deceased] having sustained the liver injury prior to the point of being removed from the police vehicle at the back of the police station. He said [the deceased] would not have been able to struggle, as the evidence suggests, if he had blood in his abdominal cavity at that time. His injuries must have occurred at the time of the fall or afterwards. This is again noteworthy because of the evidence that after the fall, and after Sergeant Leafé had returned from opening the cell door, [the deceased] was no longer resisting and required to be dragged to the cell.*

*He agreed with other medical opinions that signs of the abdominal injury could be masked by the degree of intoxication.*

*Most importantly, Dr Lynch was clear that [the deceased's] injuries were so serious that, even if their true nature had been appreciated at the time, it would have been impossible to stabilise his condition sufficiently on Palm Island to allow safe transfer to Townsville, even if a doctor had been in attendance at the time of injury and had commenced resuscitation immediately.*

***Dr Lynch also agreed with other medical opinions that [the deceased's] injuries were inconsistent with a simple fall through the door of the watch house. He also concurred that the mechanism of injury was a***

*compressive force of very considerable magnitude to the right lower rib cage with the rest of the body otherwise immobilised.*

*Therefore, he said, the four fractured ribs, liver laceration and portal vein rupture could have occurred as a result of a single injury involving the application of a very considerable force anteriorly over the lower right ribs, with the torso otherwise immobilised (against the floor for example.)*

*Dr Lynch observed that [the deceased] was one hundred and eighty one centimetres tall and weighed seventy four kilos. He also observed that Senior Sergeant Hurley was approximately the height of the watch house door frame. Senior Sergeant Hurley himself informed the court that he was six foot seven inches tall (200.66 centimetres). His build was proportionate to that height.*

*Dr Lynch then indicated that the:*

***'... combined mass of the two struggling men, falling together perhaps in an accelerated and less than controlled fashion through the doorway could generate considerable force. This force, if applied over a small surface area (for example a knee contacting the lower right ribs of the deceased) may have been sufficient to cause the injuries sustained.'***

*Dr Lynch was taken by Mr Callaghan SC through a discussion of the mechanics of such a fall that might result in such an injury. At page 648 of the transcript **Dr Lynch agreed that the force applied to [the deceased's] body must have been from the front (anteriorly) of the body or perhaps the right hand side of the body. He agreed that this logically would mean [the deceased] was on his back or on his left hand side. It would be difficult in such a scenario to then explain the injury to the right eye as being incurred in the course of such a fall.***

*The evidence is clear that [the deceased] died due to blood loss caused by rupture of the liver consequent upon blunt compressive force to the upper abdomen."*

*[48] We conclude that the finding of the Coroner that punching by Mr Hurley caused the fatal injuries sustained by the deceased was not reasonably open on the evidence. Accordingly, the decision of the District Court that this finding of the Coroner should be set aside was correct even though the process of reasoning whereby his Honour arrived at that decision was flawed. [emphasis added]*

110. Therefore, on the medical evidence alone, an accidental cause for the fatal injuries sustained by Mulrunji, namely the cleaved liver and the hole in the portal vein,

cannot be excluded and is a distinct possibility. As extracted above, the medical experts agreed that the four fractured ribs, liver laceration and portal vein rupture likely occurred as a result of a single injury involving the application of a very considerable force anteriorly over the lower right ribs, with the torso otherwise immobilised (against the floor for example.). Dr. Lynch was of the opinion that the fatal injuries occurred as a result of a single injury involving the application of a very considerable force. The medical evidence suggests that there were not a number of blows to the region but only a single blow.

111. Dr Lynch observed that the deceased was one hundred and eighty one centimetres tall and weighed seventy four kilos. He also observed that Senior Sergeant Hurley was approximately the height of the watch house door frame. Senior Sergeant Hurley himself informed the court that he was six foot seven inches tall (200.66 centimetres). His build was proportionate to that height.

112. Dr Lynch then indicated that the:

*'... combined mass of the two struggling men, falling together perhaps in an accelerated and less than controlled fashion through the doorway could generate considerable force. This force, if applied over a small surface area (for example a knee contacting the lower right ribs of the deceased) may have been sufficient to cause the injuries sustained.'*

113. The evidence of Dr Lynch in this regard is consistent with the evidence of Dr Lampe that any part of the anatomy applied with appropriate force will cause the injuries that Dr Lampe found<sup>37</sup>. Further, Dr Ranson did not disagree with the evidence of Dr Lampe and identified particularly the hip or tip of a shoulder as being possible culprits.

114. Mr Zillman, Counsel for Senior Sergeant Hurley, suggested in submissions that it may be that the greater part of Hurley's body landed to the side of Mulrunji but

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<sup>37</sup>DSC Inquest, Dr Lampe, T625

that it is entirely conceivable that some part of Hurley's body, be it the tip of his shoulder or his hip, his knee, his elbow or his forearm, impacted with Mulrunji causing the fatal injuries<sup>38</sup>.

115. Under cross-examination by Mr Zillman, Dr Lampe accepted the following propositions:

- A punch results in a fairly concentrated area of the body being attacked and is more likely to rupture the blood vessels causing bruising<sup>39</sup>;
- There was certainly no bruising present<sup>40</sup>;
- An elbow is even more concentrated than a fist<sup>41</sup>;
- A knee is a broader structure and is certainly a suspect<sup>42</sup>;
- Any part of the anatomy adequately applied with appropriate force will cause this injury<sup>43</sup>;
- If two people struggle together, perhaps going through a doorway, and then fall together, this can involve a greater force than one person simply falling by themselves – the force is accelerated because of the activity of the struggle and then going down very quickly<sup>44</sup>;
- A person with a high blood alcohol level will not have those protective devices available to a person unaffected by alcohol - the ability to brace

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<sup>38</sup> Mr Zillman's submissions at this inquest.

<sup>39</sup> DSC Inquest, Dr Lampe, T638

<sup>40</sup> DSC Inquest, Dr Lampe, T638

<sup>41</sup> DSC Inquest, Dr Lampe, T638

<sup>42</sup> DSC Inquest, Dr Lampe, T638

<sup>43</sup> DSC Inquest, Dr Lampe, T638

<sup>44</sup> DSC Inquest, Dr Lampe, T638

oneself when one lands is going to be diminished by reason of a high blood alcohol level<sup>45</sup>;

- The deceased had a blood alcohol level of .26 – Dr Lampe considered that to be a high blood alcohol level<sup>46</sup>;
- There simply was no evidence to suggest the use of direct force in the nature of punching, kicking or stomping because there was no bruising, but that does not absolutely exclude it<sup>47</sup>; and
- Two people falling essentially at the one time, when struggling, with that accelerated force, is going to produce the sort of force that is necessary<sup>48</sup>;

116. The position is less clear with the injury above the right eye. Although it may have been caused in the fall, logic would seem to indicate that it was inflicted by some other cause.

117. Dr Lynch was asked about this in evidence<sup>49</sup>:

*So, the force is, in this scenario, explaining the fracture to the ribs and the rupture of the liver, applied to the front of the body or perhaps to the right-hand side? Sure.*

*Sure. But that means that the deceased was either on his back with his back supported by the fall or perhaps on his left-hand side as well? Sure.*

*You agree with that? Yes.*

*And you'd agree that there's - as a matter of logic rather than science, it's difficult to imagine how a fall where you end up on your back or your left-hand side could explain an injury to your right eye? That's right.*

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<sup>45</sup> DSC Inquest, Dr Lampe, T639

<sup>46</sup> DSC Inquest, Dr Lampe, T639

<sup>47</sup> DSC Inquest, Dr Lampe, T639

<sup>48</sup> DSC Inquest, Dr Lampe, T639

<sup>49</sup> DSC Inquest, Dr Lynch, T648

*As a matter of logic? Yes.*

118. Although, Dr Lampe was of the opinion that the injury to the eye might have occurred in the course of the fall, Dr Lynch agreed with counsel that, as a matter of logic, it is difficult to imagine how a fall, where you end up on your back or on your left-hand side, could explain an injury to your right eye.
  
119. However, during the interview with Senior Sergeant Hurley conducted by Inspector Williams and Detective Inspector Webber of 20 November 2004, Hurley said that when Mulrunji and he fell at the doorway, he recalled Doomadgee was on his right side first before going onto his back. Dr Lynch agreed that the force applied to Mulrunji's body must have been from the front (anteriorly) of the body or perhaps the right hand side of the body. He agreed that this logically would mean Mulrunji was on his back or on his left hand side. It would be difficult in such a scenario to then explain the injury to the right eye as being incurred in the course of such a fall.

## **The Central Issue**

120. On 19 November 2004 Mulrunji was drunk as he was walking down Dee Street, Palm Island.
  
121. Senior Sergeant Hurley arrived in Dee Street in a police van to protect Gladys Nugent, the complainant in a domestic violence matter, while she retrieved medication from her house. Hurley was accompanied by PLO Lloyd Bengaroo [Bengaroo]. Mr Hurley arrested Patrick Nugent aka Bramwell [Nugent] for disorderly conduct at a residence in Dee Street, and placed him in the back of the van. Nugent was heavily intoxicated.

122. Mulrunji was walking past at the time. After a verbal exchange, initially with Bengaroo, he was arrested by Hurley. Mulrunji resisted the arrest and Hurley forcibly placed him in the back of the police van with Nugent.
123. The police van was driven to the police station, although not directly. Gladys Nugent was given a lift in the police van and dropped off at her sister's house on the way to the police station. The police van was stopped in the garage area at the police station. Hurley attempted to take Mulrunji into the police station but Mulrunji again resisted.
124. It seems clear that Mulrunji struck Hurley as Hurley tried to extract him from the police van. According to eye witnesses, Penny Sibley and Alfred Bonner, a struggle ensued as Mulrunji was being taken into the police station and Hurley was seen to strike Mulrunji, although Hurley has repeatedly denied that he did so.
125. Mulrunji continued to resist and Hurley and Mulrunji struggled while Mulrunji was being taken towards the door of the police station. At the door of the police station there was a step. It seems likely that one or both of them tripped on the step and fell through the doorway into a corridor to the right of the doorway.
126. Something occurred at that point that eventually killed Mulrunji. It was either through:
  - (i) the force imparted by Hurley falling on Mulrunji in a violent struggle with a knee, hip, shoulder or elbow protruding, or
  - (ii) through Hurley administering some deliberate force, most probably with his knee, with such violence as to cause Mulrunji's liver to be virtually cleaved in two across his spine.

127. Hurley strongly denied that he had fallen on Mulrunji and maintained that he had fallen beside him. He later conceded, when advised of the autopsy report on the medical cause of death that he must have fallen on Mulrunji.
128. As noted above, the deceased suffered a ruptured portal vein which leads from the digestive tract to the liver. He died of internal blood loss. Mulrunji suffered other injuries, namely, four broken ribs on the right side of his rib cage, an injury over his right eye and some bruising to his jaw and scalp.
129. The medical evidence is to the effect that the fatal injuries were caused by a massive compressive force to the front of Mulrunji's body while Mulrunji's back was immobilised on a hard surface, probably the floor. The force that was administered not only cleaved Mulrunji's liver almost in two, but it also immobilised him.
130. There is no dispute about the medical cause of death.
131. Hurley, and another police officer, Sergeant Leafe, together then dragged a now limp Mulrunji down the corridor and into a cell. Nugent was also taken from the police van and placed in the same cell. Mulrunji died in the cells after a period of approximately a little under an hour from internal bleeding

### **The two possibilities**

132. At the inquest held by the DSC, Senior Sergeant Hurley conceded through his Counsel Mr Zillman<sup>50</sup>:

*“The evidence to this point in the inquest has quite starkly revealed only two possibilities. That is, my client accidentally came into contact with Mulrunji just inside the entrance to the Police Station and accidentally the*

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<sup>50</sup> T 788.5

*injury was sustained which led to his death. The only other possibility is that he applied deliberate force to Mulrunji thereby causing the injury, thereby causing death.”*

Determining which possibility represents the truth is the task of this Inquest.

### **Did Hurley react to provocation?**

133. The medical evidence squarely raises the possibility of an accidental cause for the fatal injuries suffered by Mulrunji. Is there countervailing evidence that Mr Hurley may have been provoked into applying deliberate force that resulted in the injuries?

#### **A. Did Hurley strike Mulrunji in the garage?**

134. It is clear from the evidence of the Dee Street witnesses, Ms Coolburra, Mr Kidner and Ms Snyder referred to above, that Mulrunji objected to being arrested, and that he physically resisted, and verbally complained about, his arrest. This culminated in Mulrunji striking Hurley’s face upon being removed from the police vehicle at the police station. That level of disrespect, belligerence and resistance was unusual in Mr Hurley’s experience of Palm Island residents. Mulrunji continued struggling, “holding himself low” and possibly “flopping down” on the way into the police station.

#### **The evidence of Sibley and Bonner**

135. Senior Sergeant Hurley emphatically denied any striking, punching, kneeling or other deliberate application of force to Mulrunji, even when punched by Mulrunji or during the ensuing struggle and fall. The evidence of Ms Sibley and Mr Bonner, if accepted, may impeach Hurley’s denials of forceful retaliation, and assist a determination that he inflicted a deliberate blow to Mulrunji in the corridor after the fall.

## Mrs Florence Sibley

136. Mrs Sibley was in the parking bay when the police van drove in. She stated that she saw Mulrunji punch Hurley as Mulrunji was extracted from the police vehicle. Shortly after she saw Hurley retaliate by punching Mulrunji to the right hip/rib area.

137. Mrs Sibley was first interviewed by Detective Sergeant Kitching two days after the death on 21 November 2004 at Ingham Police Station and provided a statement<sup>51</sup>. In that statement she said, inter alia:

- She saw Bengaroo and Hurley get out of the police van and saw Hurley open up the cage. She saw and heard Cameron Doomadgee “*swearing and very abusive*” towards Hurley. She said Doomadgee was drunk.
- When Hurley opened the cage, she saw that Doomadgee “*punched Chris in the face*”. Hurley then “*grabbed Cameron and pulled him out of the car*”.
- She observed that Hurley “*pulled him out of the car by grabbing on to his feet and then another police man I think was Ben, then grabbed Cameron by the two arms near his shoulder and dragged him into the police station*”.
- While they were doing this “*they were roughing him up a bit because Cameron was struggling being drunk and he was trying to get out of there*”.
- She saw that “*Chris punched Cameron one on his right side near his hip area*”. The two police officers then “*dragged Cameron into the police station through the door near the police car and dragged him inside*”.
- After this, she did not see anything else “*they got Cameron in the police station, the door was closed and I did not see anything else*”.

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<sup>51</sup> Sibley Statement Exhibit D33.1

138. She later provided an addendum statement on 5 December 2004 in which she corrected her description as to where Hurley’s punch landed on Mulrunji, saying that the blow landed “*above his right hip and just near the bottom of his ribs*”.
139. Mrs Sibley gave evidence at both the original and the re-opened inquest, and at Hurley’s trial. Mrs Sibley gave evidence at the original inquest on 2 and 5 August 2005. That evidence is recorded at pages 395 to 405, and 755 to 761. Mrs Sibley gave evidence on day one of the trial of Hurley on 12 June 2007<sup>52</sup>. She was cross examined at some length by Mr Mullholland QC for Hurley. Finally, Mrs Sibley gave evidence to the re-opened inquest on 8 March 2010<sup>53</sup>.
140. Her evidence was substantially consistent on each occasion. Under cross-examination she said:
- Saw the police van arrive and saw Sergeant Hurley and Lloyd Bengaroo and someone else.
  - It was put to her that she referred to a policeman named Ben in her statement of 21 November 2004 – now can’t recall his last name, he was a white policeman, he was in the police van
  - She saw Cameron and Patrick in the back and the cage door open up
  - She was standing just inside the garage, on the driver's side at the back of the van
  - The two policemen, Chris Hurley and the other white policeman, were both at the back of the van
  - Sergeant Hurley opened the door and Cameron was screaming and swearing inside.

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<sup>52</sup> *R v. Hurley* T53 to 65.

<sup>53</sup> T1-28 to 1-57.

- Sergeant Hurley pulled him, that's when Cameron started swearing telling him to leave him alone.
- Cameron punched Sergeant Hurley somewhere on the side of the face as they were pulling him out.
- The police got Cameron outside the back of the police van down on the ground where Sergeant Hurley gave him "*a quick hit up the rib*". Cameron was standing in between the two policemen who were holding his arms.
- Not down on the ground but out of the van onto the cement floor
- Sergeant Hurley did not hit him in the head. A quick jab, she could not see whether the hand was open or closed. Cameron sang out "*oh*".
- Cameron was struggling until he was hit, then the police dragged him to the door.
- The two policemen, one on either side, dragged Cameron along to the door and through the door and closed the door.
- Lloyd Bengaroo came and got Patrick out of the back of the police van and took him inside.
- The police van was open and Patrick was laying down there still drunk. He grabbed Patrick out of the back of the police van and took him in.
- Bengaroo got Patrick out of the back of the van and walked him in. Patrick woke up and walked in.
- Saw Cameron's two feet dragging on the ground.
- Hurley and the other policeman were pulling him forwards to the door and the three of them went through the doorway together, and then the door closed.

141. In evidence to the re-opened inquest, Mrs. Sibley said that Senior Sergeant Hurley did not hit Mulrunji in the head. It was a quick jab to the area of the ribs, and Cameron sang out "*oh*". Mrs Sibley said that it was a glancing blow with an open

- hand and the force of it was such that it would not hurt anyone.<sup>54</sup> Mrs Sibley noticed that Mulrunji put his foot on the step at the entrance to the police station to try to stop himself being forced into the police station.
142. Mrs Sibley presented as an honest witness not favouring one party over another, who frankly told investigators of Mulrunji's punch to the side of Hurley's face and was otherwise disapproving of Mulrunji's drunkenness and behaviour. She was, however, inconsistent with the testimony of other witnesses on certain matters.
143. Mrs Sibley described Bengaroo, Hurley and another police officer "*Ben*" as all arriving in the police van. In fact, only Bengaroo and Hurley arrived in the van. Under cross-examination, Mrs Sibley conceded that she may have been incorrect about three officers arriving in the van. Her mistaken belief that three officers arrived in the van is probably understandable since Sergeant Leafe (Ben?) arrived in the vicinity of the van at about the same time that the van pulled into the parking bay at the police station.
144. Mrs Sibley also described two police officers escorting Mulrunji towards the door of the police station. Whilst the preponderance of evidence [Leafe, Steadman and Bengaroo] shows that Hurley alone was escorting Mulrunji to the door of the police station, Sergeant Leafe's version was that he did assist Hurley momentarily with Mulrunji, then realizing that the door of the cage was still open, broke from the struggle with Mulrunji, and closed the door. He then moved ahead of Hurley and Mulrunji into the police station to open the cell door. This intervention by Leafe could understandably have created the impression in Mrs Sibley's mind of two police officers escorting Mulrunji towards the door.
145. Mrs Sibley was also of the belief that it was Bengaroo who took Nugent from the police van into the cells. The preponderance of evidence shows that Bengaroo did

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<sup>54</sup> Transcript 8 March 2010 page 39

not do this; it was Hurley and Leafe. However, Mrs Sibley may have assumed that Bengaroo took Nugent to the cells because Hurley and Leafe were otherwise engaged in the struggle with Mulrunji.

146. Mrs Sibley was not alone in overlooking people at the scene. Leafe did not see Steadman and Steadman did not see Leafe. These are understandable lapses in human recollection in the circumstances of a violent confrontation when a person's attention naturally is focused on the protagonists.

### **Mr Alfred Bonner**

147. Mr Bonner was involved in a verbal argument with Mr Roy Bramwell before Sgt Leafe took Bramwell to the police station. Later, Bonner was walking past the police station at about 10.45am on Friday 19 November, 2004 when he heard some yelling and saw Hurley dragging Mulrunji out of the back of the police van. He saw someone else lying in the van.
148. Mr Bonner was standing approximately 25 to 30 metres from the back entrance to the police station where Mulrunji and Hurley were struggling in the parking bay. Bonner saw what he described as Hurley "*pushing*" Mulrunji towards the door of the police station. In the course of this, Bonner saw what looked like Hurley throwing a punch at Mulrunji.
149. Bonner was interviewed by Detective Inspector Bemi on 26 November 2004 and provided a statement. He subsequently provided an addendum statement on 11 January 2005 which simply set out a more accurate estimate of the distance from where he observed the incident, namely "*probably closer to 25 to 30 metres*" or "*about 28 paces*" rather than the estimate in his original statement of some 30 to 40 metres from the back entrance of the police station.
150. In the first interview, Bonner described what he saw as follows:

*“Well it looked like, it looked like to me he was trying to punch at Cameron but I couldn’t actually say for sure because I was a fair distance away, but um, to me it looked like a hit”.*<sup>55</sup>

151. Mr Bonner went on to say that he did not see Hurley actually hit Mulrunji and could not say where, if it were a punch, it might have been directed. He referred to Hurley’s arm going over as *“just a flash”*.

152. Bonner gave evidence at the original inquest on 1 August 2005 and at the re-opened inquest on 8 March 2010<sup>56</sup>.

153. Salient points in that evidence were:

- He saw Hurley grabbing Cameron from the back of the police car and pushing him to the door<sup>57</sup>;
- Cameron was screaming;<sup>58</sup>
- A wall was blocking his vision;<sup>59</sup>
- Saw a punch by Hurley but couldn’t see if the blow landed because of the wall;<sup>60</sup>

154. Upon cross-examination by Mr Zillman:

- Believed Hurley was responsible for Mulrunji’s death;<sup>61</sup>
- Saw Hurley throw a punch, didn’t say he hit him;<sup>62</sup>

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<sup>55</sup> Line 308

<sup>56</sup> DSC Inquest, T380 to 389. Re-opened Inquest, T1-7 to 1-27.

<sup>57</sup> Transcript page 382

<sup>58</sup> Transcript page 382

<sup>59</sup> Transcript page 382

<sup>60</sup> Transcript page 383

<sup>61</sup> Transcript page 384

<sup>62</sup> Transcript page 385

- Could not see if the punch landed – the wall was in the road;<sup>63</sup>
- Has good vision at a distance;<sup>64</sup>
- Did not see Lloyd Bengaroo, Sergeant Leafe or Patrick Bramwell;<sup>65</sup> and
- Did not see Mulrunji punch Hurley when getting out of the van – 387;<sup>66</sup>

155. At the re-opened inquest Bonner gave evidence that he heard Mulrunji crying out. There was no mention of this at the original Inquest.

156. Mr Bonner presented as a credible witness. However, as Bonner himself conceded, whilst it looked like a punch being thrown, he “*couldn’t actually say for sure*”. There do not appear to be any bruises in the area where the roundhouse punch Bonner thinks he saw Hurley throw may have landed.

157. Mr Bonner cannot assist with what occurred between Mulrunji and Hurley at or just inside the door of the police station.

### **Mr Roy Bramwell**

158. Roy Bramwell was first interviewed on 20 November 2004, by Detective Senior Sergeant Kitching and Detective Sergeant Robinson at the conclusion of which Robinson obtained a signed three page statement in which Bramwell made the following statements about what he had observed in the police garage:

- As Bramwell was “*coming through the garage I saw Chris, the police man, was at the back of the police car. I saw Chris open the door to the cage and*

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<sup>63</sup> Transcript page 385

<sup>64</sup> Transcript page 385

<sup>65</sup> Transcript page 386

<sup>66</sup> Transcript page 387

*there was Cameron inside. I could hear him swearing at Chris and calling him a “Queeny”. Queeny is an aboriginal term for a gay white man”.*

- He saw Hurley had Cameron Doomadgee “*by the leg and trying to pull him out*”.
- He saw “*Cameron hit Chris in the face with his right fist. It was a good punch and he hit Chris a good one*”.
- Leafe took him through the door and sat him “*in a yellow chair opposite the door*”.

159. In this first version, taken the day after the incident, Bramwell made no mention of seeing Hurley retaliate and strike Mulrunji. Later the same day, Bramwell was interviewed by Inspector Williams and Detective Inspector Webber in a video recorded re-enactment. During the interview, Bramwell relevantly stated in respect to the altercation outside the police station: Bramwell had a record of interview with Robinson first. He said in his interview at the Townsville Correctional Centre on 18 October 2006 that Robinson changed the statement and had him sign another one. He then made a statement to Mr. Frank Shepherd the ATSICLS lawyer and did not mention kicking he did not mention it when the Aboriginal Justice of the Peace Mr. Ralph Watson was there for the alleged second interview nor to Inspector Bimi in his interview with Mr. Frank Shepherd present. Mr. Bramwell did not mention it at the Inquest conducted by the DSC. He also mentioned for the first time in his interview at the Correctional Centre in Townsville that he could see in a mirror “like a big rear vision mirror” Line 217 he said he mentioned the mirror to Robinson in the first interview yet he did not mention it in the taped interview or the video interview. Further he says he punched him three times then he kicked him.<sup>67</sup> There is medical evidence the shows it was improbable that there was any kicking Despite saying that he was told by Detective Robinson “if anything happens to his friend Chris Hurley he would come looking for me” and explaining “I did not tell anyone of this threat

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<sup>67</sup> Line 217 Record of Interview at the Townsville Correctional Centre on 18 October 2006

until ... until now – sorry ah as I – something – as I am –I am more scared for my safety...”<sup>68</sup> he in the address to the crowd on Palm Island a few days later stated:

*“about three, three other coppas Black fellas, they just get locked up and set em free. Even if they hit em,, they charge em.*

*But that one hell of a Chris I tell ya he probably don’t like blacks like us*

*(pause)*

*I wish he fuckin loose his job.”*<sup>69</sup>

This shows he is disingenuous about being scared.

- He was at the police station, sitting in the orange chair. Doomadgee “*was dragged in*”.
- *“Cameron must’ve hit him outside and then Chris dragged him in and laid him down there and started hitting him. All I could see from here just cause the elbow gone down, up and down, like that ... “do you want more mister, mister Doomadgee, do you want more of these eh, do you want more. You had enough”. He’s just going like that”.* [emphasis added]
- Hurley had opened the door himself. Hurley came in first and he dragged Doomadgee in. Hurley had hold of Doomadgee “*by one hand and dragged*

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<sup>68</sup> Record of Interview Townsville Correctional Centre 18/10/06, Lines 69 to 73

<sup>69</sup> Transcript 58.01 to 58.42

*on the door, opened the door and dragged him in by one hand. Cameron was drunk”.*

160. Bramwell’s position, in the more impressive and immediate setting of a video re-enactment, altered to one where he did not directly see what had occurred outside and speculated as to what had occurred: *“Cameron must’ve hit him outside and then Chris dragged him...”*
161. *Mr. Bramwell has given different versions of how Mulrunji and Hurley entered the door and has even said that Hurley and Leafé pulled Mulrunji in at one statge.*
162. Bramwell, as set forth below, is a highly problematic witness whose evidence is full of reconstructions, contradictions, inconsistencies and is generally without credit unless substantially corroborated by other reliable evidence. His evidence provides no assistance in the context of whether Hurley struck Mulrunji in the garage area outside the police station

#### **The evidence of the police witnesses**

163. PLO Bengaroo has consistently denied that Hurley ever punched or struck Mulrunji, although as analysed below, his credibility is substantially impeached by his observation to investigating police during a video re-enactment on 20 November 2004 that he remained on the mat outside the door at the parking bay entrance to the police station when Mulrunji was dragged to the cells *“..... because I was thinking um if I see something I might get into trouble myself or something ...the family might harass me or something you know ...”*<sup>70</sup>
164. Sergeant Leafé also denied that Hurley struck Mulrunji, although he was absent from the scene for most of the struggle:
- placing Bramwell in the day room,
  - closing the rear door of the van to prevent Nugent’s escape; or

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<sup>70</sup> Lines 257-259

- unlocking the door to the cell.
165. Leafe had intervened in an argument between Alfred Bonner and Roy Bramwell and returned to the police station with Roy Bramwell. He put Bramwell into the day room seated on a yellow chair. From this position Bramwell had a view of the doorway from the garage area into the police station, and a restricted view of the start of the corridor to the cells.
166. Leafe then went outside to see if Hurley needed assistance to bring the persons in the police van in to the cells. Leafe could not recall whether Mulrunji had ever said anything during the struggle. All he could remember was Hurley yelling out “*he’s hit me, he’s hit me*”. He said it was like Hurley was shocked - it was just a surprise to him<sup>71</sup>.
167. Leafe described Hurley as “*scuffling*” with Mulrunji and “*trying to push him through the back door ...Doomadgee was resisting*”<sup>72</sup>.
168. Leafe went to Hurley’s assistance and was helping to restrain Mulrunji. He said he then realised the cage door was open and went to the back of the police vehicle and closed it. Leafe noticed an older lady standing there at the time (Mrs Sibley). Leafe said he then entered the door leading from the parking bay into the police station and went to the cells area and opened a cell.
169. Constable Steadman similarly denied that Hurley struck Mulrunji, however, his field of view was obstructed by the police van. He heard but could not see the initial scuffle between Mulrunji and Hurley at the back of the van.
170. Steadman at the relevant time had only been transferred to Palm Island shortly before 18 November 2004 and his first shift was on 18 November 2004. On 19

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<sup>71</sup> Leafe Interviews 19 and 20 November and 8 December 2004.

<sup>72</sup> Leafe Interview 19 November 2004, line 84.

November 2004 Steadman was not on duty and was walking from the police barracks to the police station through the vehicle parking bay when the police van pulled in to the bay. Steadman was standing just outside the entrance from the parking bay and his view into the police station was obscured by the angle from which he was looking. Steadman saw Hurley escorting Mulrunji and saw both men fall through the doorway.

171. Steadman's first interview with investigators was on 8 December 2004 when he was interviewed by Detective Inspector Webster and Detective Sergeant Britton of the CMC. Steadman told police that both men fell over at the same time. From where he was standing he could see two pairs of feet on the floor. Steadman noted that Hurley got to his feet and he heard Hurley yell at Mulrunji. Although he could not remember the words, he gained the impression that what was being yelled out was to an extent abusive<sup>73</sup>.

## **Analysis**

172. The failure of both Leafe and Steadman to see Hurley strike Mulrunji is not dispositive; significantly, both police officers did not see Mulrunji strike Hurley either, although Leafe heard Hurley complain of it.
173. Hurley acknowledged that Mulrunji struck him as he left the van. He asserted however, that, rather than following an instinctive reaction, he refrained from responding to an unprovoked and unlawful assault. A return blow to Mulrunji in these circumstances would have been understandable and probably lawful, and it was the reaction described by both Mrs Sibley and Mr Bonner.
174. Hurley admitted to being a *"bit fazed, annoyed"*<sup>74</sup> by Mulrunji's actions. The evidence of Hurley<sup>75</sup> was that whilst Mulrunji was getting out of the van, he

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<sup>73</sup> Steadman Interview 8 December 2004, lines 599-618.

<sup>74</sup> DSC Inquest Transcript page 604

punched Hurley. Hurley said that he then reacted by grabbing Mulrunji on the shirt and pulled him quickly towards him. Hurley said that he was not angered. *“I wasn’t angry at him. I just wanted to do my job. Over 18 years of policing that’s happened to me, you know numerous times.”*<sup>76</sup> He said a tussle took place between himself and Mulrunji from the back of the van through to the doorway to the police station which was about 3 to 4 metres away<sup>77</sup>. Sergeant Hurley denied punching Mulrunji<sup>78</sup>. However, his annoyance appears to have been exacerbated by the struggle to get Mulrunji into the police station. This was witnessed by Steadman who testified that Hurley yelled “to an extent abusive” at Mulrunji after the fall through the garage doorway.

175. There is no doubt that a struggle was going on as they approached the doorway. It is best described by Mrs Sibley who was one of the closest persons to the fray and took a real interest in what was happening as the deceased was a nephew to her. She did not try to excuse his actions but stated candidly that Mulrunji was drunk, swearing, and struggling to resist arrest. Her focus was upon Mulrunji and his resistance to Hurley, because towards the end of the incident in the garage, she admonished Mulrunji for his behaviour: *“Amber, knock it off”*<sup>79</sup>.
176. Mrs Sibley conceded that Senior Sergeant Hurley may have used his hand rather than a fist to respond to Mulrunji. She stated in this inquest “I didn’t see him shut his fist to do it.” She was adamant that it must have been hard because ‘Cameron said, ‘Ooh’ ’’.<sup>80</sup> She gave considered answers and appeared to be doing her best to be honest and forthright with the Court. Snr. Sgt Hurley gave evidence that he grabbed Mulrunji by the shirt quite forcefully to bring him towards him so he could not throw any further punches. Mr. Alfred Bonner was across the street about 28 metres from the rear of the police vehicle. Once Mulrunji was removed

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<sup>75</sup> DSC Inquest Transcript page 603

<sup>76</sup> DSC Inquest Transcript page 604/605.

<sup>77</sup> DSC Inquest Transcript page 605.

<sup>78</sup> DSC Inquest Transcript page 1223

<sup>79</sup> Re-opened Inquest Transcript page 1-32

<sup>80</sup> Re-opened Inquest Transcript page 1-41

- from the back of the police van and they started to walk down the corridor between the van and the wall of the carport he could not see Mulrunji as Hurley was obscuring his view. He could still see Hurley clearly and he saw the motion of a punch thrown but he did not see Hurley connect with the punch. He gave evidence in the inquest of a downward strike with a closed fist. He agreed that Hurley was “a fair bit taller than Cameron Doomadgee”.
177. Mrs Sibley’s evidence, when taken with the evidence of Mr Bonner, and assessed in the light of the credible demeanour of both witnesses, enables the Court to be satisfied that Hurley did, in all probability, grab Mulrunji very forcefully by the shirt and pull him toward him during their struggle between the police van and the police station. I am satisfied that his action caused Mulrunji to cry out.
178. As noted above, Leafe remembered Hurley yelling out “*he’s hit me, he’s hit me*”. He said Hurley was shocked - it was a surprise to him. Steadman recalled that Hurley yelled at Mulrunji after the fall. Regardless of his denials, it is clear that Hurley was shocked and upset at being struck by Mulrunji, an attitude which could only have been exacerbated by the ensuing struggle to get Mulrunji into the police station, and the heavy fall to the floor at the door. The evidence firmly establishes that Hurley was upset and angry with Mulrunji, and likely to retaliate.
179. I am re-enforced in my view that Hurley is likely to have retaliated by striking Mulrunji, by what has been termed ‘the propensity evidence’.

### **The Propensity Evidence**

180. As noted above, evidence had been led at the original inquest (after a ruling by Muir J in *Doomadgee & Anor v Deputy State Coroner Clements & Ors* [2005] QSC 357) from which it was maintained by counsel for the family of the deceased, and counsel for the Palm Island Aboriginal Council, that the Court could conclude that Senior Sergeant Hurley had assaulted other persons in the

course of or after arresting them on Palm Island and placing them in the watch house, thereby assisting the Court in determining what happened on this occasion when Mulrunji was arrested and placed into custody.

181. In making his ruling Muir J said at paragraph 51:

*The Propensity Evidence, if accepted, is “logically probative” of the fact or one of the facts in issue. It is thus relevant and potentially available for use by the Coroner together with all the other evidence before her. Consequently, the conclusion that it is “impermissible” to receive that evidence for the purpose of s 45 is erroneous.*

182. In this context, this Court incorporated the evidence given at the original Inquest in respect to the “propensity evidence” complaints of Noel Cannon, Barbara Pilot, Douglas Clay and Neville Bonner pursuant to section 50(8) of the Act. It was open to counsel in the re-opened inquest to raise these, and other prior complaint matters, in cross-examination of Mr Hurley if they were relevant and logically probative of a fact in issue.

183. As a result, there is uncontested evidence before the Court of previous instances during the two years Senior Sergeant Hurley was stationed on Palm Island in which he accepted in evidence that he responded physically when he was confronted physically or with verbal disrespect.

### **Conway**

184. In September 2003, some 14 months prior to Mulrunji’s death, Ivan Conway, a young indigenous man with a mental disorder [unknown to Hurley at the time] who was drinking with companions and was drunk, had called Hurley’s female companion a “bitch” after he had been refused a cigarette by Hurley who was off-

duty at the time. Hurley considered that this insult was not to be “tolerated”<sup>81</sup>, and went to arrest Conway. When Conway swung his arm in an outward motion Hurley placed Conway in a headlock, brought him to the ground and a wrestle ensued. Hurley placed his hand on Conway’s neck, before lifting him up off the ground, arresting him and placing him in the watch house. Conway was later found to have suffered a hairline fracture to his foot.<sup>82</sup> Hurley recalls seeing Conway limp when leaving the police station, but disputes that this injury occurred during the struggle.<sup>83</sup>

## Clay

185. In August 2004, three months prior to Mulrunji’s death, Douglas Clay, a young indigenous person who was also suffering from a mental disorder, approached a group of police officers inside the Palm Island police station. Hurley was with them. Clay was drunk. Hurley said that when Clay made a move towards him, his “instinctive” response was to strike Clay in the face and “drive him away”. He said “I mean a man’s first instinct is survival”.<sup>84</sup> He did so with such force that Clay ended up against the wall and hit a whiteboard. This caused Clay to bleed, probably in his mouth.<sup>85</sup>
186. The investigation which followed Mulrunji’s death led to the discovery of Clay’s blood in the cell at the police station. There is no explanation for its presence other than as a consequence of the injury caused to him by Hurley. I accept that as Clay was drinking out of a VB Can and yelling at the police officers and was acting in an aggressive manner before lunging at Snr. Sgt Hurley, on his evidence to give him a head butt, that it may have been an instinctive reaction and not unreasonable in the circumstances.

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<sup>81</sup> Transcript page 5-27 – 12.03.10.

<sup>82</sup> Transcript pages 5-27 to 5-29 – 11.03.10.

<sup>83</sup> Transcript page 5-29 – 12.03.10).

<sup>84</sup> DSC Inquest Transcript page 1193.

<sup>85</sup> Transcript pages 5-30 to 5-31.50 – 12.03.10); 1211 to 1212 – 02.03.06); 1172.30 (Clay –2.03.06);

187. Hurley does not dispute that the Conway and Clay incidents occurred

### **Cannon**

188. However, Hurley denies the evidence of another Palm Island resident, Noel Cannon, who complained of being physically assaulted by Hurley, in July 2004. Cannon gave evidence at the original inquest that when he had requested a mattress whilst in the watch house, Hurley had held him by the neck and squeezed his throat, before “kneeing him in the guts”.<sup>86</sup> The statement of Cannon’s previous partner Ms. Haines states that he was influenced by liquor and she was aware he had been smoking marihuana on the day. There is also the evidence of the medical records that show Mr. Cannon presented at the Joyce Palmer Health Service on Palm Island some 6 days after the event and did not state that he had been assaulted by a police officer only that he had ongoing difficulty and painful swallowing for 12 months since a consultation in May 2003. As this evidence is disputed, there is no independent support and I did not have the opportunity personally to observe the demeanour of the witnesses while they gave evidence, I will not have regard to this matter.

### **The Fall**

189. There can be no doubt that there was a fall into the corridor at the step at the garage entrance to the police station. This is the evidence of all but one of the witnesses who were in a position to see, namely, Hurley, Leafe, Steadman and Bengaroo. The only exception is Bramwell, who maintained that Mulrunji was dragged through the door by Hurley and then was “laid down” on the corridor floor by Hurley where Hurley proceeded to punch him into submission.

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<sup>86</sup> DSC Inquest Transcript pages 933 to 935 (Cannon – 28.02.06); 1187 & 1226 (Hurley – 02.03.06).

190. Bramwell's evidence on the point of falling (not punching) may not necessarily be in complete conflict with the other testimony. It is possible that Bramwell may have perceived that the struggle and fall through the doorway with Hurley holding Mulrunji close and falling on top of him to be Hurley 'laying Mulrunji down'. Hurley when interviewed on 8 December 2004 said the he had hold of Mulrunji "the whole way down until we hit the floor".<sup>87</sup> The explanation may also be that Bramwell's attention was drawn to the fall by the noise of the impact and only saw the direct aftermath of the fall.

### **Senior Sergeant Hurley's accounts**

191. Hurley has always claimed, and maintained on oath, that he fell and landed to the left side of Mulrunji<sup>88</sup>. On four separate occasions prior to giving evidence at the original inquest, and again on oath in the original inquest and at the re-opened inquest, Hurley affirmed his belief that he did not fall on top, but to the left, of Mulrunji. Further, immediately after the event he said to his colleague Sergeant Leafe, who was on duty with him, that he fell next to Mulrunji<sup>89</sup>. If Hurley is right, it follows that the fall cannot have caused the fatal injury.

192. The medical evidence unequivocally establishes that the fatal injury could not have occurred in the fall described by Hurley<sup>90</sup>. For example, Dr Ranson said, inter alia:

*A simple fall on to a flat surface from a standing position in my opinion would not cause the liver laceration seen in this man.*<sup>91</sup>

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<sup>87</sup> Exhibit 17.5, line 940.

<sup>88</sup> DSC Inquest Transcript pages 605, 606.

<sup>89</sup> DSC Inquest Transcript page 697

<sup>90</sup> DSC Inquest Transcript pages 625, T 628 (Dr Lampe); T 647 (Dr Lynch); T 652 (Dr Ranson).

<sup>91</sup> DSC Inquest Transcript page 652

193. The difference in the quality of the impact between falling on a human body and falling on a concrete floor and, given the medical evidence, the massive nature of the force applied, one may think would be stark and apparent to Hurley and not lost to his memory, even in the “*hard and fast*” fall to the ground he describes.
194. Consequently, 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.
195. In the interview conducted on 19 November 2004, several hours after the death, Hurley stated that he “*fell to the left of [Mulrunji] and he was to the right of me*” and that he could “*only presume that we fell over the step because when we were at the station I can remember that we were on the ground.*”<sup>92</sup> When asked again by the investigating police whether he had landed on top of Mulrunji, Hurley stated “*No, I landed beside him on the... lino*”.<sup>93</sup>
196. In a further interview with police on 8 December 2004, at which he was legally represented, Hurley stated:
- “I had hold of [Mulrunji] and we both came through over the step and through the door at the same time and I recall I fell to the left and he was to the right, but I had hold of him the whole way down until we hit the floor... his head went close to hitting near a... filing cabinet and the door frame but I noted that it didn’t”.*<sup>94</sup>
197. However, this account did not assist him in explaining the injuries:
- “What plausible – what explanation can you give for that injury then? – Well, I don’t know. It may have occurred during the tussle, I don’t know, sir. May have*

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<sup>92</sup> ROI [Exhibit 17.1] lines 188, 326-327.

<sup>93</sup> ROI [Exhibit 17.1] line 419

<sup>94</sup> ROI [Exhibit 17.5] line 940

- occurred during the fall.” “If I didn’t know the medical evidence, I’d tell you that I fell to the left of him. The medical evidence would suggest that that wasn’t the case.”*<sup>95</sup>
198. In his interview on 19 November 2004, closest in time to the death, Hurley stated that he then “*stood up*” and Sergeant Leafe came over and assisted him “*to drag him into the cell.*”<sup>96</sup>
199. However, in his next interview, at 11.53am on 20 November 2004, Hurley performed a re-enactment of the event and relevantly stated: “*I ended up on my knees beside him*”.<sup>97</sup> He then added, for the first time, that he “*tried to lift him a couple of occasions...picked him up...but his shirt kept ripping*”, and he was saying “*get up Mr Doomadgee*”.<sup>98</sup>
200. Roy Bramwell was electronically interviewed by Detective Senior Sergeant Kitching and Detective Sergeant Robinson on 20 November 2004 at the police station at conclusion of which Robinson obtained a signed statement from Bramwell in which he gave a description of events in which Mulrunji was on the ground, with Hurley standing over him. Hurley’s elbow could be seen moving up and down in a punching action, while Hurley was saying “*Do you want more Mr Doomadgee, do you want more?*”
201. As stated, in the next interview with Hurley, conducted by Inspectors Webber and Williams at 11.53 am, Hurley described an action which he explained as being that which occurred in the course of “*helping Mulrunji up*”. This action involved his elbow moving up and down. Hurley's account explains what Roy Bramwell

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<sup>95</sup> DSC Inquest Transcript page 606

<sup>96</sup> Exhibit D17.1 [lines 331-332].

<sup>97</sup> Exhibit D17.2 [lines93].

<sup>98</sup> Exhibit D17.2 [lines 95-96;117].

- purported to have seen and an innocent explanation was given for a damaging piece of evidence.
202. There were subcutaneous bruises and injuries to the area above Mulrunji's right eye, forehead and back of the neck, left index finger knuckle, right little finger, bruising around the rib fractures and the right side of the jaw. Although the injuries to the face were consistent both with contact during a fall or during an assault, they could not have occurred at the same time as a fall, if the fall had caused the fatal injuries. These are unexplained signs of violence, with Hurley being the only possible perpetrator.
203. Hurley has now accepted that "some part of my person has touched some part of Mr Doomadgee" so as to cause the fatal injuries. Such a concession is to state the obvious. He was the only person who had physical contact with Mulrunji at the time the injuries were sustained. It is undeniable that this must have occurred on the floor near to the entrance to the station, given the observations of Mulrunji being limp from that point onwards.
204. The prior case of Conway is instructive given Hurley's continued denial, despite contrary evidence from Constable Steadman, that he was angry or physically reactive following the fall. In Conway's case Hurley does say that he "just straight away reacted".
205. Hurley accepts that if he did not fall on Mulrunji, an intentional assault is the only other available finding as to cause of death. In such circumstances, one possibility is that the accounts by Hurley eschewing any possibility of physical contact between Mulrunji and him during the fall are lies which may amount to admissions against interest. But they need not be treated as such. The motive for the lie must have been a realization of guilt and a fear of the truth. People sometimes lied, for example in an attempt to bolster up a just cause or out of

shame or a wish to conceal disgraceful behavior from their family. I will say more on this later.

206. Nowhere in Hurley's first interview did he mention any action or statement by him which could have been mistaken by Bramwell for punching or for the words he (Bramwell) attributed to Hurley.
207. Hurley in the video re-enactment described trying to lift Mulrunji and described the arm movements involved in that lifting. Those arm movements appear similar to the punching movements described by Bramwell.
208. Further, Hurley described saying to Mulrunji "get up Mr Doomadgee, get up" which in tone and form of address are similar to the words attributed to Hurley by Bramwell but, of course, now with an innocent explanation.
209. It beggars belief that this is simply the result of an amazing coincidence that, even though Hurley did not mention in his first interview either lifting Mulrunji or uttering these words to him at this critical moment, yet in the video re-enactment conducted with him after Bramwell's interview, he offered innocent explanations to both of those damaging allegations by Bramwell.
210. The suspicion is strongly raised that one or more of the police investigators had tipped off Hurley as to the content of the Bramwell statements made by Bramwell during the re-enactment, or that Hurley was in a position to see or hear Bramwell's re-enactment before participating in one himself. There is an admission by Hurley, in the video re-enactment that was started at 11.53am on the 20 November 2004 with Detective Inspector Webber and Williams, that contrary to the operational procedure manual he had been again speaking to other witnesses. He states at line 96 "Anyway he was down there and ah, he refused to get up. Now I can't... I can't remember, I just asked Michael before...um when

did he come through.”<sup>99</sup> The investigators, even at that stage, were clearly not ensuring the witnesses were kept apart.

211. This was an area identified by Counsel Assisting as requiring an explanation. Mr Hurley was asked under cross examination:

*“ Do you agree that in giving your second version you inserted into the narrative attempts to get Mr Doomadgee off the ground?-- Yes.*

*And statements to Mr Doomadgee, "Get up, Mr Doomadgee, get up."?-- Yes, I did.”*

And later:

*“And so nobody told you that Bramwell had made the allegation that he could see over a filing cabinet the upper movement of your arm in three repeat punches-----  
?-- No ----- on Doomadgee?-- No, nobody had said that.*

*Nobody tipped you off about that?-- Nobody had said that to me.*

*No? And nobody tipped you off that Bramwell had said that you, had said to Doomadgee or had alleged that you said to Doomadgee words to this effect, "Have you had enough, Mr Doomadgee, have you had enough?"?-- No, I wasn't aware of that.*

*You see, what's missing from your story - your first account to the investigators the night before is this detail that (A) you tried to pick him up unsuccessfully by the shirt and (B) you said words to him along the lines of, "Get up, Mr Doomadgee, get up, Mr Doomadgee."?-- Yes, I see that.*

*And so how did that come to be in the second version you gave to investigators? Can you assist the coroner with that?-- And why was it in the second one and not the first one?*

*Mmm?-- I don't know. There was a lot of things in that second one. I was-----*

*Were there?-- That second video, at the time I regretted doing that second - I regretted doing that re-enactment.”*

212. Both Hurley and Leafé did not know what the cause of death was. They both thought that Mulrunji died from head injuries. They had observed the small

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<sup>99</sup> Video re-enactment 20/11/04, Transcript Line 96

wound to Mulrunji's eyebrow. They were concerned about trouble in the community when the news got out that Mulrunji had died.

213. It may be possible that the exact manner of a violent and complicated fall may not be remembered by one of the participants in the fall, however, it seems improbable that he did not realise that he had fallen onto Mulrunji at all. The severe force required to cause the injuries spoken of by all the medical experts convinces me that Hurley must have realised that he had indeed fallen onto the deceased rather than directly onto a concrete floor if it was the severity of the fall that caused the fatal injuries. I note that Hurley in his Video interview of 20/11/04 stated at line 195 that Mulrunji was already low when he came in the door and therefore he may not have had such a heavy fall from a standing position as suggested by the medical evidence. He also said in his interview with Sergeant Kitching on 19 November 2004 at line 326 "I can only presume we fell over the step because when we were at the station I can remember that we were on the ground". This does tend to show that he may not have realised what had occurred during the fall or that the fall was not particularly heavy.

214. -

215. Even as late as his evidence at the re-opened inquest, Hurley was not prepared to say that he had fallen onto Mulrunji. When cross-examined by counsel for the Attorney-General, he said<sup>100</sup>:

*Yes? – "..... if I sat here today without the medical evidence, I would say again, that I fell to the left of Mulrunji."*

.....

*You still can't say, "I remember coming in contact with him", can you?-- Correct.*

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<sup>100</sup> Re-opened Inquest Transcript page 5-52

*Right. So, you've come into - some part of your body has come in contact with Mulrunji's abdomen so violently as to cleave his liver across his spine; right?-- Yes.*

*And you've missed it?-- Yes.*

*You've just not noticed?-- Yes.*

*This man has an injury that is usually seen in head-on motor vehicle accidents and plane crashes. You've seen that in the medical evidence?-- No, I didn't know about a plane crash. I didn't know that he said head-on - head-on motor vehicle accident. I just thought the doctor said a motor vehicle accident. I accept that.*

*You have inflicted that injury, you say, accidentally, by falling upon this man?-- Yes.*

*That's your theory?-- Yes.*

*And you just missed it?-- Yes.*

*You actually get up, you say, afterwards, actually believing that you never contacted him at all?-- Correct.”<sup>101</sup>*

216. I am satisfied that both Hurley and Leafe did not realise the massive internal injuries which Mulrunji had suffered at the time. But I find that Hurley was concerned that if it was reported to the Palm Island Community that he had fallen on Mulrunji or assaulted him there would be severe repercussions. Sergeant

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<sup>101</sup> Re-opened Inquest Transcript pages 5-52 to 5-53

Leafé's telephone call to his wife is confirmation of his fear of retribution if word got out.<sup>102</sup>

217. As a consequence, Hurley decided to tell everyone that he had fallen beside Mulrunji, and not on top of him or if he had applied the force deliberately he again would not mention it. Later, when the autopsy results were announced, he was trapped. He had by then given a number of statements and participated in the re-enactment video and could not thereafter change his version of what had occurred.
218. It is significant that in his interview on 19 November 2004, the closest in time to the time of death, Hurley stated that he then "stood up" and Sergeant Leafé came over and assisted him "to drag him into the cell."
219. However, in his next interview, at 11.53am on 20 November 2004, Hurley performed a video re-enactment of the event and relevantly stated: "I ended up on my knees beside him". He then added, for the first time, that he "tried to lift him a couple of occasions...picked him up...but his shirt kept ripping", and he was saying "get up Mr Doomadgee".
220. Roy Bramwell was electronically interviewed by Detective Senior Sergeant Kitching and Detective Sergeant Robinson on 20 November 2004 at the police station at the conclusion of which Robinson obtained a signed statement from Bramwell in which he gave a description of events. Bramwell said Mulrunji was on the ground, with Hurley standing up, bending over him. Hurley's elbow could be seen moving up and down in a punching action, while Hurley was saying "Do you want more Mr Doomadgee, do you want more?"
221. In the next interview with Hurley, conducted by Inspectors Webber and Williams at 11.53 am, Hurley described an action which he explained as being that which

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<sup>102</sup> Statement of 19/11/04 with Sgt Kitching, page 7, L 187

occurred in the course of "helping Mulrunji up". This action involved his elbow moving up and down, as he unsuccessfully attempted to lift Mulrunji by his shirt. Hurley's account explains what Roy Bramwell purported to have seen; an innocent explanation was given for a damaging piece of evidence.

222. Could Hurley's close colleague, Detective Sergeant Robinson, have passed on Bramwell's account giving Hurley an opportunity to neutralize the allegation?
223. As noted above, the issue was pursued in examination-in-chief of Hurley at this Inquest. Hurley could offer no explanation as to why it was mentioned in the second interview and not the first, and added that he regretted doing the re-enactment.
224. I consider that Hurley's failure to proffer an explanation impacts adversely on his credit. This subtle modification of Hurley's account provides some support for Roy Bramwell's account of punches having been thrown by Hurley. However, this evidence would not, of itself, support a positive finding of a deliberate act by Hurley which caused Mulrunji's death.

#### **What do the other witnesses say?**

225. Apart from Hurley, there are four other witnesses to the fall and/or its immediate aftermath, namely, PLO Lloyd Bengaroo, Sergeant Leafe, Constable Steadman and Roy Bramwell.

#### **Roy Bramwell**

226. As Bramwell was seated in the yellow chair opposite the door to the parking bay when Hurley and Mulrunji came through that door, he ought to have been in a good position to witness the incident.

227. As noted above, Bramwell was first interviewed on 20 November 2004, the day after the incident, by Detective Senior Sergeant Kitching and Detective Sergeant Robinson at the conclusion of which Robinson obtained a signed three page statement in which he stated:

- As Bramwell was *“coming through the garage I saw Chris, the police man, was at the back of the police car. I saw Chris open the door to the cage and there was Cameron inside. I could hear him swearing at Chris and calling him a “Queeny”. Queeny is an aboriginal term for a gay white man”*.
- He saw Hurley had Cameron Doomadgee *“by the leg and trying to pull him out”*.
- He saw *“Cameron hit Chris in the face with his right fist. It was a good punch and he hit Chris a good one”*.
- Leafe took him through the door and sat him *“in a yellow chair opposite the door”*.
- While sitting in this position, he *“saw the side door open and Chris grab Cameron through and up the hallway. Chris was dragging him by the top of his shirt”*.
- From where he was sitting, he could see Doomadgee’s feet and he heard Chris saying *“you want more Mr. Doomadgee, you want more”*.
- He could not see what Chris was doing; I could see his elbow going up and down into the air.
- Doomadgee *“was drunk”* and he could tell this by the way he was talking. He stated Doomadgee *“should not be swearing the police for no reason”*.

- Hurley and Leafe took Doomadgee to the cells however he could not see from his position. They then came back after “*a short time*” and “*went back outside the door*”.
- “They came back with Patrick Bramwell and they were carrying him by his arms. They dragged him through and down the hallway into the cells. Patrick was drunk. I did not hear Patrick talking at all.
- Roy Bramwell then stated either Hurley or Leafe came back from the cells “*they put the TV on where you can see into the cells. I saw both TV’s on and could see them both lying in the cell together*”. “*Both were quiet and drunk and looked like they were sleeping*”.
- Hurley then spoke to him and told him “*they will come and look for me tomorrow and I was allowed to leave*”. Bramwell stated he “*was not drunk when this was going on and only had a six pack of VB cans of beer in the morning*”.
- Roy Bramwell stated that he was involved in an interview first and he then made this statement. He could read and write but he needed help with some words.

228. Later the same day, Bramwell was interviewed by Inspector Williams and Detective Inspector Webber in a video recorded re-enactment. As observed above, his recollection at this point starts with Mulrunji being “dragged in” to the police station by Hurley. Bramwell stated:

- He was at the police station, sitting in the orange chair. Doomadgee “*was dragged in*”.

- *“Cameron must’ve hit him outside and then Chris dragged him in and laid him down there and started hitting him. All I could see from here just cause the elbow gone down, up and down, like that ... “do you want more mister, mister Doomadgee, do you want more of these eh, do you want more. You had enough”. He’s just going like that”.*
- Hurley had opened the door himself. Hurley came in first and he dragged Doomadgee in. Hurley had hold of Doomadgee *“by one hand and dragged on the door, opened the door and dragged him in by one hand. Cameron was drunk”.*
- In response to a question, Bramwell stated Hurley had Doomadgee by the right arm and *“underneath the shoulder, tucked in”.* Doomadgee started *“kicking around”* and said *“let me go” ... “now” ... “leave me go – I’ll get up and walk”.*
- Doomadgee was on the *“ground when they dragged him – when he dragged him in”.* He could see Doomadgee’s feet – *“Just the feet up – just see feet from here”.*
- During the re-enactment Bramwell indicated how Hurley moved his elbow up and down towards the floor.
- Hurley had Doomadgee on the floor *“he was on his side, he was on his side and the just went like that – what I could see, he just went like that. Want any more Mr. Doomadgee, eh, you want more, you had enough?”*
- In answer to a question he said he did not hear any noise from any blows or hits at the time. *“He must’ve knocked him out then”.*

- At the request of Detective Inspector Webber, Bramwell assumed the role of Hurley and demonstrated during the re-enactment the manner in which he claimed Hurley had punched Doomadgee while he was lying on the police station floor.
- Hurley came in through the door quickly and laid Doomadgee onto the floor. Doomadgee started to *“kicked him”* and he was on his side *“trying to double up, you know, double up”*.
- Hurley was holding Doomadgee’s head down – *“holding his head down”* and *“hitting him yes, like that, yes”*. Hurley did this *“three times”*. He did not hear any noises at the time.
- *“I never see him – I never heard him – I never heard him singing out (ui) he must have just knocked him out with one hit and then king hit him (ui) him two times (ui) hit him again”*.
- He saw Hurley and Leafe attempting to pick Doomadgee up from the floor and *“they had him by the shirt”* and *“because his shirt was half torn anyway”*.
- In response to questioning in relation to the position of Doomadgee’s feet, Bramwell stated he could see them – *“Yeah from here I could see feet like that on the side. He was gone, he was on the side. All I can see just (ui) Chris elbow going up and down – you want more Mr. Doomadgee, you want more”*. *You more (ui). Have you had enough Mr. Doomadgee”?*
- Bramwell demonstrated the position of Hurley and Doomadgee when he was punched *“three times”*. Bramwell stated Doomadgee *“was just lying there doubling up”* and *“covering his face – with his two hands, arms over his face”*.

- Bramwell then stated if he had got up and said anything like “*Say I could report you for this. Chris would’ve said. Chris would have locked me up in the cell (ui). That’s what I saw*”.
- Bramwell stated he had not consumed any liquor that morning but then said “*only early this morning*”. He further stated he was feeling okay and his memory was good.
- He saw Hurley punch Doomadgee “*three times*” and this was done with his “*right hand*” and the “*knuckle closed*”.
- Hurley was “*hitting him in the face – three times*” and Doomadgee was “*covering up his face like this (ui) Chris (ui) wouldn’t bust him or so*”. Hurley was holding down Doomadgee onto the ground with his left hand and saying “*You want more mister, mister Doomadgee, want more eh, you want more*”.

229. Subsequently, a further statement was provided by Bramwell to Mr Frank Shepherd of the Aboriginal and Torres Strait Islander Community Legal Service. On 26 November 2004 a further interview was conducted with Bramwell by Detective Inspector Bemis and Detective Inspector Williams of the ESC in the presence of Ms Lisa Florence and Mr Shepherd.

### **Evidence at the Inquest**

230. Bramwell gave evidence to the original inquest on 28 February 2005 at transcript pages 126 to 447, and at the re-opened inquest on 9 March 2010 at transcript pages 1-58 to 2-59.

231. His evidence contained many discrepancies in respect to his previous statements.  
For example:

Upon examination by counsel assisting the original inquest by the State Coroner, Bramwell said:

- "I saw Chris had him by the leg and trying to pull him out. I saw Cameron hit Chris in the face with his right fist. It was a good punch and he hit Chris a good one." Do you see that you've said that in your statement? I didn't really said that<sup>103</sup>. .....

Well, did you see Muringi (sic) hit Chris? He kicked him<sup>104</sup>.

- Chris and Sergeant Leafe dragged him in. Brang him through the door<sup>105</sup>.
- Chris dragged Muringi (sic) through the door and, you say, he put him down on the floor? Yes<sup>106</sup>.
- Did Chris go to the floor as well? Did he fall over or anything? No. He just put his knees down on him<sup>107</sup>.
- One knee on the ground and one knee on Muringi (sic)? Yeah<sup>108</sup>.
- So, were you able to tell where the punches were landing? - I just seen the foot. You just saw what? - I just saw his foot sticking out from the hallway. So, you couldn't tell where the punches were landing? - No. No<sup>109</sup>.

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<sup>103</sup> T129

<sup>104</sup> T129

<sup>105</sup> T130

<sup>106</sup> T131

<sup>107</sup> T131

<sup>108</sup> T132

<sup>109</sup> T138

- Well, at some stage did you tell police that you did see where the punches were landing? - I never tell them that either. Well, did you go back to the police station another day and do what they call the re-enactment? - Yes.

And in the course of that re-enactment, did you tell the police that you could see where the punches were landing? - Probably the ribs.

.....

Well, in particular, did you tell the police that you saw punches landing to his face? No.<sup>110</sup>

232. The cross-examination of Bramwell highlighted many more inconsistencies<sup>111</sup>. Some examples are:

- As well as the six cans of beer he told police he had that morning when previously interviewed saying that he was not drunk, he here admitted that he had forty beers the night before.<sup>112</sup>
- Despite much previous evidence to the contrary, he here admitted that he did not see anything that happened outside.<sup>113</sup>
- Contrary to previous statements, he here admitted that he did not hear Mulrunji swearing at the police that day.<sup>114</sup> He also denied that he had previously said that Mulrunji had called Hurley a ‘Queenie’ even though that was on tape.<sup>115</sup>

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<sup>110</sup> T138,139

<sup>111</sup> T416-430

<sup>112</sup> DSC Inquest T417

<sup>113</sup> DSC Inquest T420

<sup>114</sup> DSC Inquest T417

<sup>115</sup> Inquest State Coroner page 136

- Contrary to previous statements, he here admitted that he did not see Mulrunji punch Hurley that day.<sup>116</sup>
- Contrary to previous statements, he here maintained that he did not say *“Cameron hit Chris in the face with his right fist. It was a good punch and he hit Chris a good one.”*<sup>117</sup>
- The tape played of the interview of 26th November 2004 by Inspector Bemis, Inspector Williams, and Lisa Florence of the CMC, which was also attended by his solicitor, Mr Frank Sheppard. Bramwell denied it was his voice, and later said that this was said by Patrick Bramwell.
- Most importantly on examination by Mr. Callaghan<sup>118</sup> :

*“Well let me ask you about one thing in particular because you were taken – when Mr Zillman there was asking you questions – he was asking you asking you questions about how Chris Hurley was standing when he was hitting Mulrunji? -- Yeah.*

*Okay? And he reminded you that when we over on the basketball Court, you said that Hurley had his knee on Mulrunji when he was on the ground. Okay? He just – just bear with me – he just reminded you that that’s what you said when we were over there? -- Yeah.*

*Okay? But here he reminded you that when you were demonstrating how Mr Hurley was standing, that you didn’t get right down on your knee – you were in more of a crouch position, still standing. Okay? And he asked you which was true? And you said the standing one. And he said well what was the story with the knee, was that just a guess and you agreed that it was a guess. Okay? What I’m wondering is, if your memory, back in February, might not have been a bit better and whether in fact it might have been the case that he have his knee on Mulrunji as he was on the ground?*

*INTERPRETER: Did you remember better in February than now?*

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<sup>116</sup> DSC Inquest T417

<sup>117</sup> DSC Inquest T417

<sup>118</sup> Line 39 page 433 to line 41 page 434, day 9, transcript 02/08/2005 Inquest DSC

WITNESS: *No.*

INTERPRETER: *When you gave evidence then.*

WITNESS: *Yeah.*

INTERPRETER: *You remember better?*

WITNESS: *A bit. Yes. A bit.*

MR CALLAGHAN: *Yes and what? -- A bit.*

*A bit? -- Yes.*

*So it might be right that his knee was actually on him? --No.*

*It's not right? --No.*

*You did not see Mr Hurley's knee on Mulrunji when he was on the ground? --  
No.*

*Could it have been the case that you couldn't actually see his knee, but from  
where his legs were positioned – from the position he was in, you worked out  
that his knee was on him? -- Well he's a tall man.*

*Yes? --Yeah.*

*He is a tall man? --Yeah.*

*That's what I'm asking you – could he have been crouching down far enough  
for his knees to be on him? -- Right.*

*I beg your pardon? -- No, not yet. No -----*

*Not yet? -- No, not [indistinct].”*

233. The whole of his evidence is littered with these, and numerous other, inconsistencies.

## **Post Inquest Interviews**

234. Further interviews were conducted with Roy Bramwell, and statements taken by officers of the CMC, after the original inquest.
235. The interviews took place at the Townsville Correctional Centre. The CMC personnel were interviewers, Detective Inspector Webster and Senior Investigator Brookes, and indigenous support person, Ms Lisa Watson. The interviews were recorded and took place on 18 October, 19 October and 20 October 2006.
236. Those interviews were distilled to two statements signed by Bramwell on 20 October 2006.
237. The main import of those interviews and statements are:

### **1. Threats by Detective Sergeant Robinson**

When interviewed by the CMC, Bramwell said:

- After the death of Mulrunji at the Palm Island Police Station, Bramwell was being interviewed by DSS Kitching and DS Robinson. During the interview, Kitching left and Bramwell was alone with Robinson. Bramwell did not recall if a tape recorder was being used.
- Robinson initially took down a statement on the computer and printed it off. In the statement Bramwell had said that he had seen Hurley punching and kicking Mulrunji.
- Robinson read over the statement, screwed it up, and threw it in the trash. Bramwell had not signed the statement. Robinson said that they needed to do

the statement again. Bramwell agreed, and Robinson typed a second statement on the computer.

- The second statement only mentioned the arm movement of Hurley but not the kicking.
- Robinson got a local Justice of the Peace, Ralph Watson, to attend and read over the statement and then Bramwell signed it in his presence.
- After Bramwell had signed the statement and was again alone with Robinson, Robinson allegedly said “*He’s [Hurley] is a good copper; he’s not that kind of man.*”
- Robinson then said to Bramwell “*If anything happens to my friend Chris Hurley, I’ll come looking for you*”.
- Bramwell said that he was frightened and concerned for his safety. He said that up until this time he knew they were both police officers, but he did not know that they were close friends. He just put his head down.

Arrangements had been made to call Detective Sergeant Robinson to obtain his response to Bramwell’s allegations. Robinson’s counsel submitted evidence to the Court that he was not medically fit to give evidence and that this situation was unlikely to change for some time.

It appears improbable that Robinson would leave in the evidence of the punches to the head and take out the kicking when the only visible injury to Mulrunji was the one near the right eyebrow. Given the lateness of this allegation and the generally problematic nature of Mr Bramwell’s evidence, I have no regard to these specific allegations in making my determination.

## 2. The Mirror

In a separate statement dated 20 October 2006, Bramwell said<sup>119</sup>:

- On the day of Mulrunji's death [19 November 2004], he recalled sitting on the yellow chair facing towards some filing cabinets. He recalled that there was a mirror which reflected into the hallway, thus enabling him to see beyond the filing cabinets which obstructed his direct view.
- He thought that the mirror was about ½ metre wide and looked a bit like a reversing mirror.
- The mirror was no more than four metres away from where he was sitting, and was positioned so that it gave a view down the corridor, so you could see who was walking along. The corridor was about eight metres in length.

Two witnesses, residents of Palm Island, were called during the hearings on Palm Island, namely, Lance Poynter, who described himself as a career criminal, and Vincent Thimble, who worked as a Community Police Officer between 1988 and 1998, in a part-time capacity from 1994, and gave evidence about the existence of a mirror in the destroyed Palm Island Police Station.

Thimble gave evidence that the mirror was like "*half a ball*" and was positioned on the wall opposite the corridor.<sup>120</sup> Poynter said he was frequently in the watchhouse up until 2000 or 2001. He recalled two mirrors in the corridor. He placed them in positions which would not have been visible to Bramwell seated on the yellow chair in the day room.<sup>121</sup>

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<sup>119</sup> Paragraphs 24 and 25

<sup>120</sup> Re-opened Inquest, Transcript page 2-61

<sup>121</sup> Re-opened Inquest, Transcript page 2-72

Later police witnesses denied the existence of any mirror of the type or location alleged by Bramwell:

- Constable Steadman – transcript page 3-94;
- Sergeant Leafe - transcript page 4-5;
- Senior Sergeant Hurley - transcript page 5-53;

In addition, the QPS through its Senior Counsel, Mr MacSporran, produced photographs and statements which were tendered into evidence which disproved the existence of any such mirror in the position alleged by Bramwell at the relevant time:

- Inspector Neil Wilson – no police record of any mirror being installed or removed at the Palm Island Police Station at least since the 2000-2001 financial year.
- Peter Amiguet – relieved as officer in charge of the Palm Island Police Station from August to November 2002 and had no recollection of any such mirror.

Further, the re-enactment videos taken on the day following the death, namely 20 November 2004, showed the presence of no such mirror nor any indication that it could have been located where Bramwell asserted.

## **Analysis**

238. Seated on the yellow chair in the day room of the police station, Roy Bramwell was in a good position to witness the incident.

239. His Inquest evidence, both at the original and the re-opened inquest, contradicts his video re-enactment where he presented as reasonably articulate, responsive and a person trying to tell the truth. Indeed, parts of his re-enactment of 20 November 2004 in which he described Hurley's words and actions in an animated

- way have, *prima facie*, the ring of truth. He did however start to embellish his evidence by say that he could see Mulrunji covering his head up. His account, however, at the video re-enactment, was not subject to cross-examination or any other form of testing.
240. Even if one reasons that the version of Bramwell's evidence most likely to be reliable is that given in the re-enactment on 20 November 2004 (a version given before substantial embellishment), taking that version at its highest, Mr Bramwell seems to allege blows by Hurley to Mulrunji's face but does not seem to describe any application of force to the abdomen or torso. Such a description of blows may be consistent with the injuries to Mulrunji's right eye and bruising to the jaw and scalp, but does not explain the fatal injuries.
241. Further, Bramwell's version that Mulrunji was dragged inside the police station by Hurley who "*laid him down*" on the floor is at odds with the preponderance of evidence, accepted by all the other witnesses [Bengaroo, Steadman, and Hurley] that Hurley and Mulrunji fell through the doorway onto the floor of the police station.
242. An analysis of all of Bramwell's interviews, statements and evidence at the Inquest discloses substantial re-construction, many and numerous important contradictions and inconsistencies within his own observations, and large embellishments on earlier descriptions. The high water mark of re-construction is probably Bramwell's recollection, several years after the incident, of the mirror in the police station which has enabled him to see around corners and get beyond the visual obstruction of the filing cabinets.
243. Bramwell gave evidence that Hurley had come out of the cells rubbing his jaw and that he had asked Hurley, "What, did he give you a good one?" Hurley had replied, "a hell of a good one," before asking him if he had seen anything, to

which Bramwell replied “no.” Hurley had then sent him away.<sup>122</sup> Hurley recalled a conversation to that effect,<sup>123</sup> but denied asking him whether he had seen anything, or that he was rubbing his jaw. He said at the original inquest that he had released Bramwell because of his level of intoxication.<sup>124</sup> Hurley had earlier proffered a different reason to investigators: that he wished to make further inquiries before proceeding; and agreed that arrangements were in place to deal with Bramwell at a later time.<sup>125</sup> He then embraced both responses in evidence before the re-opened inquest.<sup>126</sup>

244. Roy Bramwell’s initial account, notwithstanding the subsequent gross inconsistencies and embellishments, appears to portray the mechanism necessary for the subsidiary injuries discovered post-mortem. The blows he described (Hurley punching Mulrunji, his elbow going up and down) are consistent with the bruising above the right eye, to the jaw and on the scalp. He said he could see that Mulrunji was on his left side facing away from him,<sup>127</sup> which is consistent with force being applied to his right side, as specified in the medical evidence.<sup>128</sup> And the manner in which Hurley is said to be crouching above Mulrunji<sup>129</sup> provides a clear opportunity for dropping a knee into Mulrunji’s torso.
245. Bramwell was consistent in maintaining that after he saw Mulrunji being dragged in, he then saw Hurley’s elbow going up and down three times and heard Hurley say, “You want more Mr Doomadgee, you want more?” “You had enough Mr Doomadgee?”<sup>130</sup> It must be said, however, that Bramwell does not speak about

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<sup>122</sup> DSC Inquest, Transcript pages 410, 414 to 417 – 02.08.05.

<sup>123</sup> Transcript of interview on 19.11.04 (Exhibit D17.1) at lines 224 to 225.

<sup>124</sup> DSC Inquest Transcript page 1228 - 2.03.06.

<sup>125</sup> Transcript of interview on 8.12.04 (exhibit D17.4) at lines 469-472.

<sup>126</sup> Transcript pages 4-92 to 4-93 – 11.03.10.

<sup>127</sup> State Coroner Inquest Transcript pages 131-28.02.05); 407 to 408-2.08.05; Re-opened Inquest 1-77–08.03.10; Re-enactment transcript on 20.11.04 at about line 108.

<sup>128</sup> Transcript page 648 - 4.08.05 – Dr. Lynch).

<sup>129</sup> Re-enactment video on 20.11.04 (exhibit D17.2), transcript at about line 95.

<sup>130</sup> State Coroner Transcript pages 131, 132 & 134 – 28.02.05; DSC Inquest Transcript pages 408, 409, 413 to 415 02.08.05); interview on 20.11.04 (exhibit D8.3) at lines 250 and 277; re-enactment on 20.11.04 (exhibit D8.4) at transcript lines 18, 104, 108 and 260; interview on 26.11.04 (exhibit D8.5) at pages 10 and 20.

- Hurley dropping a knee into Mulrunji's torso, although from the video re-enactment it can be observed that Hurley's knee would have likely been out of Bramwell's direct line of sight. He could not see Mulrunji other than his feet and his legs from the knee down. It is possible Bramwell may have seen a bobbing motion if Hurley had dropped his knee into Mulrunji's torso, but this is speculation. Suffice it to say that Bramwell makes no mention at any time of seeing such an action.
246. Bramwell's evidence at the initial interview (8.15am the following day) and later at the video re-enactment was received before there was any opportunity for Bramwell to have heard any police version of events, to know the cause of death, or to be aware of the facial and scalp injuries and bruising revealed later by the autopsy.
247. Steadman's notes of Mulrunji being dragged in and Hurley yelling at Mulrunji are consistent with Bramwell's account. Hurley's<sup>131</sup> and Leafe's<sup>132</sup> later mimicking of that mechanism and wording provides strong evidence of collusion, especially against the silence of Hurley on this central issue when interviewed the previous day, and gives some support to Bramwell's initial account in respect to the allegation of punching. This view is re-enforced when it is noted the Leafe's head-on view when approaching the scene along the corridor from the area of the cells would have provided a different perspective. The actions shown by Leafe in the video re-enactment were not from this perspective but resembled Bramwell's actions.
248. The other difficulty in the way of an acceptance of the explanations of Hurley and Leafe of the arm action observed by Bramwell, is that Bramwell spoke of seeing three punches. One lifting action by Hurley may have been explained in this way,

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<sup>131</sup> Re-enactment video on 20.11.04 (exhibit D17.2) transcript at lines 84 to 128; Interview on 08.12.10 (exhibit D17.5 – second tape) at lines 219 to 224.

<sup>132</sup> Re-enactment video on 20.11.04 (exhibit D27.2) transcript at line 57 and lines 147-154

- but for such an attempt to be repeated makes no sense. If Mulrunji's shirt would not hold his dead weight and ripped upon lifting releasing him on the first occasion, why would a second or third attempt achieve a different result? Significantly, the video shows both police officers repeating the alleged action. Why? In seeking to cover up Hurley's actions, Leafe and Hurley may have overplayed their hands.
249. The television footage a few days later of Bramwell's comments to the Palm Island community describing what he had seen in the police station, in which he repeated the action shown on the video re-enactment of 20 November 2004<sup>133</sup> is a substantial verification of the truth of his original account. What may otherwise have been written off as the invention of an intoxicated individual [Bramwell had admitted to having six cans of beer that morning before his interview, in addition to a large quantity the night before] has now been repeated with precision.
250. Bramwell has also said he saw Hurley kicking Mulrunji [for example, in the passage above extracted from the original inquest], but on other occasions did not refer to any kicking. During his evidence to the re-opened inquest, he sought to explain this allegation by indicating that by kicking he meant that Hurley was using his knee.
251. Dr Lampe referred to the absence of any bruising in the abdominal wall, skin or fat or the muscles overlying the front of the abdomen<sup>134</sup> and seemed to rule out stomping because of lack of evidence of trauma from footwear.<sup>135</sup> Further, he said that there simply was no evidence to suggest the use of direct force in the nature of punching, kicking or stomping causing the major injuries because there was no bruising, but that did not absolutely exclude it.<sup>136</sup>

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<sup>133</sup> TV footage and transcript of Steve Hume (marked 3 March 2010)

<sup>134</sup> Transcript page 2443

<sup>135</sup> Transcript page 2443

<sup>136</sup> DSC Inquest, Transcript page 639

252. To be fair, Bramwell had communication difficulties, however, those difficulties cannot explain the nature and extent of the variations and discrepancies in Bramwell's evidence.

253. At a fundamental level, Bramwell maintained throughout that:

- Mulrunji was dragged through the doorway into the hall leading to the watch house. He did not accept that either Mulrunji or Hurley fell to the floor of the police station.
- Hurley's elbow was seen by him to be moving up and down in the vicinity of Mulrunji and Hurley was saying "*You want more Mr Doomadgee, you want more?*".

254. A court is entitled to accept a witness completely, to reject a witness' evidence completely, or to accept some parts and to reject other parts. I find that Bramwell has been consistent throughout in what he has said about the apparent punches and as to what Hurley said at the time that those punches were allegedly delivered. However, my acceptance of what Bramwell says about those words and punches is the only part of his evidence I am prepared to accept. I do so because of the corroboration referred to, namely:

- The mimicking of Bramwell's actions by Hurley and Leafe during the video re-enactment;
- The evidence of Constable Steadman about Hurley yelling abusively at Mulrunji after the fall;
- The medical evidence of an unexplained injury over the right eye, swollen eye lid, and bruises to the jaw and scalp which logic indicates could not have been incurred in the fall [see the evidence of Dr Lynch above];
- The propensity evidence reviewed above; and
- Hurley being the only person in physical contact with the deceased.

255. I am unable to find, even on the Briginshaw test, that Bramwell was telling the truth about anything else.

**Police Liaison Officer Lloyd Bengaroo**

256. PLO Lloyd Bengaroo [Bengaroo] was a police liaison officer stationed at Palm Island. Previously he had served as a community police officer for many years. Bengaroo at all times denied seeing Hurley strike or punch Mulrunji.

257. In particular, he denied that Hurley assaulted Mulrunji at the police station, and in his re-enactment video on 20 November 2004, he stated that Hurley fell on Mulrunji.

258. Bengaroo accompanied Hurley in the police van to Dee Street, participated in the arrests of Patrick Nugent and Mulrunji in Dee Street, returned to the police station in the police van with Hurley and the prisoners, and witnessed the events at the police station.

259. Bengaroo was in the police parking bay at the door leading into the police station when Hurley forced Mulrunji from the police vehicle into the police station.

260. In an interview on 19 November 2004 conducted by Detective Senior Sergeant Kitching and Detective Sergeant Robinson, Bengaroo stated that Hurley tried to walk Doomadgee into the station but Doomadgee was aggressive and was *“flopping down or something”* and *“he wouldn’t hardly walk you know just flopped himself down”*.<sup>137</sup>

261. Bengaroo did not mention in that interview that Hurley fell over.

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<sup>137</sup> Lines 297-317

262. In the video taped re-enactment on 20 November 2004 conducted by Detective Inspector Webber and Detective Inspector Williams, Bengaroo stated:

- Hurley was attempting to take Doomadgee out of back of the police vehicle.
- He heard Hurley say *“oh he, he punched me in the face”*.
- He just stood there and he saw Hurley *“grabbed him out of the police truck and brought him towards the station, to the door”*.
- He saw both of them were *“struggling”* and they were not walking in a straight line.
- Hurley and Doomadgee were both still struggling as they went in through the station door. *“They both fell down”* inside the station.
- Both Hurley and Doomadgee were side by side near the door and he believed *“they went both together”* through the doorway and they were still struggling with each other at that time.
- They continued to struggle through the doorway and into the hallway of the police station. He thought Doomadgee *“flopped against the floor and Chris fell on him ... Chris fell on him. I.. I can’t tell you ... mmm ... they fell down I think ... Chris was trying ... trying to pick him up”*.
- In response to further questioning, he stated both Hurley and Doomadgee had *“fallen down together”*.
- He then saw Hurley attempting to pick up Doomadgee from behind him and indicated the shoulders area. Hurley - *“he scuffed him – like he sort of a bear*

*hugged him ... just has his right arm around his shoulder – around this part here”.*

263. On this occasion, although Bengaroo insisted that *they both fell down*, he added significantly that *Chris fell on him*. This concession was then immediately qualified when Bengaroo told the interviewers that at that time he was thinking about his position - if anything [had] happened, any possible retribution from Doomadgee’s family members in the future.

264. In an interview on 8 December 2004 conducted by Detective Inspector Webster and Detective Sergeant Britton of the CMC, Bengaroo stated:

*“Q: Thank you. Lloyd I’ll refer you to the transcript – transcript of interview on 20<sup>th</sup> November 2004 at line 272. It appears to umm be a question there hasn’t been really answered ahh. The question that I want to ask you – Did you see Doomadgee go to the floor?”*

*A: Ahh both of them fell down.*

*Q: Both fell down. And my next question is did Detective Senior Sergeant go to the floor at the same time as Doomadgee or is there a difference in time?*

*A: Same as Doomadgee.*

*Q: Ok. Was Senior Sergeant Hurley at any time on top of Doomadgee?*

*A: I can’t recall that, no.”<sup>138</sup>*

265. In evidence at the original inquest on 3 August 2005, Bengaroo stated that both men fell at the same time but fell side by side.<sup>139</sup>

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<sup>138</sup> Lines 47-61

266. Bengaroo was given a direction by the Commissioner of Police dated 7 March 2007 to attend an interview with prosecuting counsel. The following day, 8 March 2007, he signed a 2 page statement under direction. In that statement he said, inter alia:

- He saw Cameron punch Hurley in the face;
- He did not see Hurley hit Cameron;
- When Hurley and Cameron got to the door, *“they tripped together over the steps. I saw them fall together. As they fell I could see them fully. As the men reached the ground they fell partly together. Cameron was on the floor, and although I am not sure I think he was on his back. Senior Sergeant Hurley appeared to fall with one knee on the floor and the other foot on the floor, with the knee above it in the air and beside Cameron<sup>140</sup>.”*
- *“I then saw Senior Sergeant Hurley trying to pick Cameron up.....”*
- *“.....Senior Sergeant Hurley did not fall on Cameron. Senior Sergeant Hurley did not hit Cameron. Between the time the men tripped and the time Senior Sergeant Hurley tried to lift Cameron, I was in a position to see both men fully from my position at the door<sup>141</sup>.”*

267. The prosecution decided against calling evidence from Bengaroo on Hurley’s trial.

## Analysis

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<sup>139</sup> DSC Inquest, Transcript pages 519 to 520

<sup>140</sup> Paragraph 8

<sup>141</sup> Paragraph 11

268. There is an obvious lack of consistency in Bengaroo's descriptions of the one event:

- On 19 November 2004, Bengaroo described Mulrunji just flopping himself down and made no mention of Hurley falling.
- On 20 November 2004, Bengaroo initially stated that he thought that Mulrunji “*flopped against the floor*” and Hurley fell on him, but then went on to describe both men falling down.
- On 8 December 2004 Bengaroo described both men falling down but could not recall Hurley being at any time on top of Mulrunji.
- On 3 August 2005 at the original inquest, Bengaroo described both men falling at the same time and side by side. He described Mulrunji's fall as “*probably a hard fall – hard landing*’.
- On 8 March 2007, in his directed statement for the prosecution, “*they fell partly together .....Senior Sergeant Hurley did not fall on Cameron. Senior Sergeant Hurley did not hit Cameron.*”

269. In the re-enactment on 20 November 2004 Bengaroo clearly stated and described that he remained on the mat outside the door at the parking bay entrance to the police station when Mulrunji was dragged to the cells. He was even asked why he was standing there, to which he replied:

*“Um ... I can't remember. I just stood here because I was thinking um if I see something I might get into trouble myself or something ...the family might harass me or something you know ...”*<sup>142</sup>

270. In evidence to the DSC inquest, Bengaroo initially gave a detailed version of standing, not at the doorway leading from the parking bay, but at the doorway that

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<sup>142</sup> Lines 257-259

- led to the cells at the time when Mulrunji was placed in the cell. His evidence was that he watched Mulrunji being placed in the cell and described him being “*gently*” put on the floor of the cell.<sup>143</sup>
271. When questioned about the inconsistency of his versions, Bengaroo reverted to his version of 20 November 2004 and stated that he had at all relevant times remained at the door leading from the parking bay.
272. In his directed statement of 8<sup>th</sup> of March 2007 for the prosecution he said: *I was in a position to see both men fully from my position at the door*<sup>144</sup>. ”
273. Further, in evidence both at the original inquest and the re-opened inquest, Bengaroo gave no satisfactory explanation as to why he had told investigators that his reason for remaining on the mat outside that door was “*because I was thinking um if I see something I might get into trouble myself or something ...*”.<sup>145</sup>
274. Bengaroo also gave evidence that after the fall and whilst Mulrunji was being dragged to the cell, Mulrunji continued to struggle somewhat.<sup>146</sup> This description is completely at odds with the evidence of Hurley and Leafe who describe a distinct lack of resistance by Mulrunji at this time, and is contrary to the medical evidence that the injuries suffered by Mulrunji at that point would have incapacitated him.
275. On Bengaroo’s evidence, he ought to have been in a position to witness any unlawful assault by Senior Sergeant Hurley upon Mulrunji inside the door of the police station, if such an assault had occurred. Bengaroo has at all times denied

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<sup>143</sup> Transcript pages 522 to 533

<sup>144</sup> Paragraph 11

<sup>145</sup> DSC Inquest, Transcript pages 527 to 532

<sup>146</sup> DSC Inquest, Transcript page 532

seeing Hurley strike or punch Mulrunji. Bengaroo said he did not notice, and could give no explanation for, the injury to Mulrunji's eye.

Given the inconsistencies in his versions of events (inexplicable other than as resulting from deliberate changes in his story), inconsistencies in his evidence compared with other evidence, and his unimpressive demeanour, I consider that Bengaroo after his initial interviews he cannot be relied upon as a credible witness, especially as to what occurred between Hurley and Mulrunji just inside the door of the police station. He changed his version safter the results of the autopsy came out and he may well have been spoken to by other perople and his version then comes in line with the version of Hurley.

### **Sergeant Michael Leafe**

276. Sergeant Michael Patrick Leafe [Leafe] is a police officer who at the relevant time was stationed at Palm Island. He had been at Palm Island for a couple of months arriving in September of 2004. He intervned in an argument between Alfred Bonner and Roy Bramwell and returned to the police station with Roy Bramwell. He put Bramwell into the day room seated on a yellow chair. From this position Bramwell had a view of the doorway from the garage area, and a restricted view of the start of the corridor.

277. Leafe then went outside to see if Hurley needed assistance to bring in to the cells the persons in the police van. Leafe could not recall whether Mulrunji had ever said anything during the struggle. All he could remember was Hurley yelling out "*he's hit me, he's hit me*". He said it was like Hurley was shocked - it was just a surprise to him<sup>147</sup>.

278. Leafe described Hurley as "*scuffling*" with Mulrunji and "*trying to push him through the back door ...Doomadgee was resisting*"<sup>148</sup>.

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<sup>147</sup> Leafe Interviews, 19 and 20 November 2004

<sup>148</sup> Leafe Interview, 19 November 2004, line 84

279. Leafe went to Hurley's assistance and momentarily helped to restrain Mulrunji by holding one arm. He then realized the cage door was open and went to the back of the police vehicle and closed it. Leafe noticed an older lady standing there at the time (Mrs Sibley). Leafe then entered the door leading from the parking bay into the police station and went to the cells area and opened a cell.
280. Leafe returned from the cells area and saw at this time Mulrunji was lying in the hallway leading to the watch house. Upon his first interview on 19 November 2004, he said that , when he came out from inside the watchhouse area, he saw 'Doomadgee' was "*on the ground in the police corridor just inside the back door and long ways running with the hallway that goes up to the CIB office*". He then said that he and Hurley tried to lift Doomadgee up from behind the shoulder areas to carry him into the cell but "*he felt like a dead weight, like he would not try and help them*". Leafe made no mention of Hurley trying to pick Mulrunji up by the shirt.
281. When interviewed the following day by way of a video re-enactment, he said that Hurley attempting to pick him up by the shirt. He made an interesting comment in that interview when asked if he remembered how many times Hurley tried to pull Mulrunji up when he replied "No. I've no I... I would have seen probably the last... well just once." Why would he say the last unless he was told about Bramwell claiming there were three punches and knowing that Hurley was going to say he tried to lift Mulrunji several times.<sup>149</sup> When interviewed on the 8 December 2004, Leafe said that when he came back through the door to the cells, he looked down the corridor and saw Mulrunji on the floor with Hurley standing over him.
282. Leafe noted that Mulrunji was "*basically limp*", but Leafe viewed this as Mulrunji not wanting to assist. He and Hurley tried to lift Doomadgee up from behind the

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<sup>149</sup> 140 Leafe video Interview of 20/11/04 Line 154

- shoulder area to carry him into the cell but “*he felt like a dead weight, like he would not try and to help them*”<sup>150</sup>. Leafe described Hurley as grabbing Mulrunji by the left arm and he grabbing Mulrunji by the right arm and dragging him into the cell.
283. Leafe and Hurley then went out to the police van and both dragged Patrick Bramwell into the same cell. Leafe then walked out into the station area and completed a log and saw Hurley ejecting a tape from the cell surveillance equipment. Leafe then pulled out a video tape numbered 19 representing the 19<sup>th</sup> of the month and gave that to Hurley. Hurley gave Leafe the old tape and Hurley then placed the video tape in the recorder and activated the equipment.
284. Leafe was interviewed on 19 November 2004 by Detective Senior Sergeant Kitching. On 20 November 2004 a video re-enactment was conducted by Detective Inspector Webber and Detective Inspector Williams. On 8 December 2004 Leafe was interviewed by Detective Inspector Webster and Detective Sergeant Britton of the CMC.
285. Sergeant Leafe did not see Sergeant Hurley strike Mulrunji outside in the parking bay area<sup>151</sup>, neither did Leafe see Bengaroo or Steadman in the parking bay area at any time during the incident<sup>152</sup>.
286. Leafe did not notice any injury to Mulrunji when he was placed in the cell, but he was not looking for any injury<sup>153</sup>.
287. In cross-examination Leafe stated that on 19 November 2004, within hours of the death, he and Hurley were discussing what could have happened to cause the death. In the course of this discussion Hurley mentioned to Leafe that he and

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<sup>150</sup> Leafe Interview 19 November 2004

<sup>151</sup> Leafe Interview 8 December 2004, lines 258-272

<sup>152</sup> DSC Inquest, Transcript 681, 684

<sup>153</sup> Leafe Interview 19 November 2004, line 276

Mulrunji had tripped and fallen down and “he” (Hurley) “*fell next to Mulrunji*”, which Leafe took to mean that Hurley had fallen down beside Mulrunji<sup>154</sup>.

288. Leafe did not see what occurred between Hurley and Mulrunji inside the door of the police station before Leafe returned from the cells to see Mulrunji on his back in the hallway and Hurley then crouching over him, attempting to get him up.

### **Analysis**

289. Sergeant Leafe’s evidence is of limited utility. He did not remain with Hurley during the struggle from the police van to the watchhouse, he did not witness the fall or its immediate aftermath, and he did not notice the injury to Mulrunji’s right eye and he did not question Hurley about what had happened to render a man full of fight completely supine such that he was a “*dead weight*” and had to be dragged into the cells by two large men.
290. Leafe states that he observed Hurley to be “shocked” by Mulrunji’s punch to the side of his face and that Hurley did not retaliate.
291. Leafe does, however, confirm Steadman’s evidence that he did not hear the sounds of an assault on Mulrunji by Hurley at or shortly after the fall. He also states that within a short time of the fall, Hurley told him that he had fallen beside Mulrunji.
292. When cross-examined by counsel assisting, Leafe could not explain why, when he and Hurley were discussing how Mulrunji could have died while awaiting the investigation team, neither he nor Hurley examined the corridor for any clue as to what had occurred<sup>155</sup>.

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<sup>154</sup> DSC Inquest, Transcript 697

<sup>155</sup> Re-opened Inquest, Transcript 4-21

293. Leafe and Hurley admitted to discussing the circumstances of Mulrunji's death while awaiting the arrival of the investigation team. They had probably formed the view at that time that Mulrunji had died due to some sort of internal head injury, hence Hurley's great focus on ensuring that he make clear to investigators that there was no head contact during or as a consequence of the entry into the station. This claim, and the assertion that he exercised great care in that regard, are captured in the re-enactment video. He was also conscious to mention no head contact in his interview of 8 December 2004:

*"...I had hold of him the whole way down until we hit the floor.....the one thing I recall was uh, his head went close to hitting near a filing cabinet and the door frame but I noted that it didn't, that was a relief at the time."*

294. As noted above, in his second interview, the video re-enactment interview on 20 November 2004, Hurley adopted similar words and movements to that described by Bramwell as relating to an alleged punching assault. He had not said anything about such actions in his earlier interview. That alone appears too much of a coincidence. However, when added to the fact that Leafe's account also varied at the exact same time in the exact same way, it leads to the inexorable conclusion that this development was orchestrated.

295. It is clear that both Hurley and Leafe were very concerned about what would occur in the aftermath of the incident. This is confirmed by Leafe's phone call to his wife where he spoke of his fear of retribution if word got out<sup>156</sup>. After the death, Hurley, Leafe and Bengaroo stayed within the police station. Both Bengaroo and Leafe were told by Hurley to stay there and not tell anyone of the death.<sup>157</sup>

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<sup>156</sup> Interview of 19 November 2004 with Sergeant Kitching – page 7, line 187.

<sup>157</sup> DSC Inquest Transcript pages 565 and 687.

296. Leafe's credibility is open to doubt given several aspects of his evidence. His failure to provide CMC investigators with information about relevant conversations with Hurley when interviewed on 8 December 2004 is striking. He cannot explain that situation at all.<sup>158</sup> It was not until the re-opened inquest, that he disclosed the conversation that they had. He had not heard the fall himself, he did not know about the fall until Hurley had told him after Mulrunji was found dead, and Hurley had not indicated any pain to him from the fall.<sup>159</sup>
297. Hurley, Leafe and Bengaroo were able to discuss the events together, and did so, on Hurley's account, over a period of several hours before investigators arrived. Steadman's notes corroborate this<sup>160</sup>. After falsely denying that any such conversations occurred,<sup>161</sup> Leafe eventually described it as "running things past ourselves".<sup>162</sup> Much to his discredit, Bengaroo still maintains that they didn't speak although I accept that he was not included very much in the conversations.<sup>163</sup>
298. Further, Leafe changed the times he was away from Hurley and the deceased when opening the cells and reduced it to an estimated 6-7 seconds for the purposes of his evidence at the trial of Hurley,<sup>164</sup> although there is clearly still sufficient time for an assault to occur.
299. There is other evidence from which it might be thought that Leafe has lost all objectivity and was prepared to fashion his evidence to support Hurley. For example, under cross examination by counsel for the family, Leafe said:  
*"Chris had nothing to worry about, but he ended up on the wrong side of a manslaughter charge."*

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<sup>158</sup> Transcript of interview on 8.12.04 (exhibit D27.3) at lines 498-510; transcript page 4-32 – 11.03.10.

<sup>159</sup> Re-opened Inquest, Transcript page 4-10 – 11.03.10.

<sup>160</sup> Page 5 of Constable Steadman's notes (Exhibit D35.2).

<sup>161</sup> Transcript of interview on 8 December 2004 at line 510 (exhibit D27.3).

<sup>162</sup> DSC Inquest, Transcript page 697 – 4.08.05.

<sup>163</sup> Re-opened Inquest, Transcript page 5-58 – 12.03.10.

<sup>164</sup> Trial of CJ Hurley transcript page 212

### **Constable Kristopher John Steadman**

300. As noted above, Kristopher John Steadman [Steadman], is a constable of police who at the relevant times had only been transferred to Palm Island shortly before the 18th November 2004.
301. On 19 November 2004 Steadman was not on duty and was walking from the police barracks to the police station through the vehicle parking bay when the police van pulled in to the bay. Steadman was standing just outside the entrance from the parking bay and his view into the police station was obscured by the angle from which he was looking. Steadman saw Hurley escorting Mulrunji and saw both men fall through the doorway.
302. Steadman's first interview with police was not until 8 December 2004 when he was interviewed by Detective Inspector Webster and Detective Sergeant Britton of the CMC. Steadman told police that both men fell over at the same time. From where he was standing he could see two pairs of feet on the floor. Steadman noted that Hurley got to his feet and he heard Hurley yell at Mulrunji. Although he could not remember the words, he gained the impression that what was being yelled out was to an extent abusive<sup>165</sup>.
303. From his position outside the door, Steadman saw Mulrunji's feet being dragged along towards the cells. (line 344). He did not see if anyone was assisting Hurley to drag Mulrunji towards the cells. Steadman waited until everything was clear before walking inside the police station to sit down at a computer. In the course of the interview, Steadman stated as follows<sup>166</sup>:

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<sup>165</sup> Interview of 8 December 2004 lines 599-618

<sup>166</sup> Interview of 8 December 2004 lines 599-618

*“Q: Ok did you see ... if Senior Sergeant Hurley had landed on top of the ah indigenous person at all?”*

*A: It appeared as though he had, yes.*

*Q: So, but you can only see his legs?”*

*A: Yes.”<sup>167</sup>*

304. Later in the interview Constable Steadman repeatedly told police that the fall appeared to be a heavy fall<sup>168</sup>: This was after he was asked by Mr. Cranny to indicate if the fall and a light fall or a heavy one and he replied “The fall it didn’t look like a heavy fall.. ah they both just, boom (hand clap) straight down and Chris appeared like it, Chris li’ appeared to fall on top of him.” Mr. Cranny then asked “Sorry did you say did or didn’t ah... appear to be a heavy fall?” and he replied “Ye’ yeah appeared to be a heavy fall yes.” At the re-opened inquest he stated that he became tongue tied and had meant to say heavy the first time.

*“Q: Yes, when ... Senior Sergeant Hurley and the indigenous person, have entered the, the police station and fallen to the floor, was it a heavy fall or was it a soft landing?”*

*A: Oh, it was a heavy fall.*

*Q: Ok, now, you can still only view the feet?”*

*A: Yes.*

*Q: But you wouldn’t, how do you know it was a, a heavy landing?”*

*A: Well, the way they fell, I saw oh, they fell through the doorway.*

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<sup>167</sup> Interview of 8 December 2004 Lines 307-314

<sup>168</sup> Interview of 8 December 2004 Lines 862-890

*Q: Yes?*

*A: Just the way they fell, it ... certainly wouldn't have been light.*

*Q: Did you hear a, an impact when they hit the floor?*

*A: The two of them hitting the floor, yeah.*

*Q: And did you look and see if, Senior Sergeant Hurley was top of the indigenous person or that was an assumption on your behalf?*

*A: That's an assumption from the position of their feet.*

*Q: Right, ok so their legs could have been crossed up?*

*A: Yes."*

I am not entirely convinced that his first answer of a light fall can be entirely discounted.

305. Steadman was asked whether he heard any blows being inflicted on Mulrunji after the fall and he stated that he did not. He stated that it was only a matter of seconds after the fall that Hurley got to his feet<sup>169</sup>.

306. In his original inquest evidence Steadman stated that the fall sounded heavy and looked heavy. He stated that he did not hear any noises consistent with striking Mulrunji<sup>170</sup>.

307. In cross-examination Steadman stated<sup>171</sup>:

*"Q: Alright. Can you tell us then, focusing on the feet, which way the toes were pointing, that is to say can you recall whether the toes*

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<sup>169</sup> Interview of 8 December 2004 Lines 526-540

<sup>170</sup> DSC Inquest, Transcript 660

<sup>171</sup> DSC Inquest, Transcript 663

*were face up or face down, were pointing – pointing up or pointing down?*

*A: No, I don't remember.*

*Q: Ok. And can you recall anything else other than just two pairs of feet?*

*A: No.*

*Q: Ok. So, you – there's nothing about that which would indicate to you whether one of them was on top of the other or vice versa?*

*A: I remember the black boots were on top.*

*Q: On top?*

*A: Yes.*

*Q: Well, which way were they pointing?*

*A: I don't remember which way they were pointing, but I remember Chris Hurley's black boots were on top.*

*Q: On top of what?*

*A: Of Mulrunji.*

*Q: Well ...?*

*A: Of Mulrunji's feet.*

*Q: On top of his feet? And that's all you recall?*

*A: Yes.*

*Q: Was that the – the boots were on top of the feet?*

A: Yes.

Q: *Alright. You can say nothing else about any other part of the body?*

A: *Well, no.”*

308. Later in cross-examination Steadman stated<sup>172</sup>:

“Q: *And just to go back to the – to the fall itself, in your evidence here you said, ‘It looked heavy’, you don’t know how the bodies fell, so you can’t really say whether the fall was heavy or not, can you?*

A: *No.”*

309. In cross-examination Steadman stated<sup>173</sup>:

“Q: *So, we’ll go to the next issue, and that is you weren’t able to see the upper body of the persons but you saw feet?*

A: *Yes.*

Q: *And your opinion of things was that the position of them was such that somehow in some manner at least, Senior Sergeant Hurley had fallen in some way at least, onto Mulrunji?*

A: *Yes.*

Q: *That, in part, at least, was based on the positioning of the feet as you were able to observe?*

A: *Yes.”*

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<sup>172</sup> DSC Inquest, Transcript 664

<sup>173</sup> DSC Inquest, Transcript 675

310. Steadman saw Bengaroo and also saw an older woman, no doubt, Mrs Sibley. However, Steadman did not see Sergeant Leafe in the vicinity of the incident<sup>174</sup>.

### **Analysis**

311. There is only one contemporaneous written record of the relevant events concerning this incident, that of Constable Steadman's notebook, which first came to light during his cross-examination before the DSC inquest.<sup>175</sup> These notes were made about 4 pm on the day of the death, in his official notebook, in the knowledge that there had been a death in custody, and in the interests of keeping an accurate and complete record of events for evidentiary purposes.<sup>176</sup>

312. The notes, which are Exhibit D35.2, record:

*“Attended Palm Island Station to make inquiries regarding movement of my furniture. Observed the marked cruiser in the parking bay. Could hear two persons saying something from the cage. S/Sgt Hurley opened the rear door and spoke with one of the persons in the rear of the van. I walked to the front right hand side of the van. I heard a scuffle at the rear of the van. I then saw S/Sgt Hurley grapple with an aboriginal male. He was dragging him towards the station entrance. He appeared to slip as he walked in the door. Chris was yelling something at the ATSI male. I could not see the top half of the ATSI male as they were obscured by the doorway.*

*I then walked into the station and sat down at the computer.”*

313. As it can be seen, these notes make no mention of any fall, let alone a heavy one. They record only “he” (i.e. one person) “slipping”. There is no mention of seeing Hurley's feet, let alone seeing them on top of Mulrunji's (as later recalled in evidence in support of the proposition that Hurley fell on top of Mulrunji.

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<sup>174</sup> DSC Inquest, Transcript 662

<sup>175</sup> DSC Inquest, Transcript page 665 - 4.08.05.

<sup>176</sup> DSC Inquest, Transcript pages 666 – 4.08.05; Re-opened Inquest 3-23 – 10.03.10.

314. The notes, per se, provide no support for Hurley's position now, that he must have fallen on top of Mulrunji to have inflicted the fatal injuries. They also record that Hurley was 'yelling' at Mulrunji; but that Steadman could not see him and that he could not see the top half of Mulrunji's body at this time.<sup>177</sup>

315. Steadman maintained his position about Hurley yelling at Mulrunji after the fall, when interviewed on 8 December 2004, when giving evidence at the original inquest, when giving evidence at the trial, and finally, when giving evidence at the re-opened inquest.

316. Before the DSC inquest<sup>178</sup>:

*"You've heard Senior Sergeant Hurley say something at that time? – Yes.*

*It was something abusive? – I – it was loud, it was yelled.*

*It was something abusive? – Possibly, yes.*

*It was abusive or it wasn't Constable? – It was loud. I don't remember what he – I don't know what he said.*

*No. But you got a sense – a sense of what he said? – Yes.*

*And it was at least to an extent abusive, wasn't it? – Yes.*

*Yes. And it was in a raised voice? – Yes."*

317. Before the re-opened inquest<sup>179</sup>:

*" ... and you accept that the yelling bordered on being abusive, correct? – Yes.*

*And the volume and manner of the yelling suggested to you that Senior Sergeant Hurley was angry; correct? –*

*Yes.*

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<sup>177</sup> DSC Inquest, Transcript pages 668 – 4.08.05); Re-opened Inquest 3-45 – 10.03.10.

<sup>178</sup> DSC Inquest, Transcript 663, 664

<sup>179</sup> T3-44

318. Before the trial<sup>180</sup>:

*“it sounded angry.”*

319. Steadman did not water down this evidence at the inquests or at trial. Being angry and yelling in response to being punched, struggled with, and after a fall caused by the resistance to his authority by a prisoner, might be considered an ordinary human response.

320. However Hurley claimed<sup>181</sup> :

*“ It was a heavy fall? Yes.*

*It was a hard fall? Yes.*

*That floor is hard? Yes.*

*At that point, I suggest you snapped? No.*

*You yelled? Yelled what?*

*You yelled abuse at him? No.*

*You spoke abusively to him? No.*

*You yelled loudly? No.*

*Constable Steadman is not someone who would have a grudge against you is he?  
No.”*

321. Hurley’s denial can be seen as a calculated and tactical stratagem particularly in light of earlier statements that show he may not really remember what occurred in the fall.. It was untrue. It affects his overall credibility. There would seem to be no reason to lie about this material issue other than that the truth would implicate him in a physical assault by providing further evidence that his response to Mulrunji’s provocation was an angry response.

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<sup>180</sup> T273

<sup>181</sup> DSC Inquest, Transcript page 1225

322. Steadman appeared to me to be the most consistent and honest of all the witnesses. Steadman's evidence on this point is consistent with Bramwell's version; Bramwell probably did not see the initial fall into the police station, but became conscious of their presence because of the accompanying racket.
323. This evidence also ties in with the fact that Bengaroo saw the fall into the police station, heard the angry yelling, and did not want to be involved in case he got into trouble.
324. Bramwell's evidence of the words used by Hurley in calling the deceased "Mr. Doomadgee" are the words that Hurley admits he does use. He kept telling Mulrunji to "*get up Mr Doomadgee get up*" and "*don't start it again*".<sup>182</sup> Ms. Nobie Clay, who heard the arrest in Dee Street, said in her statement that Hurley jumped out of the police van and said "*shut up Mr. Doomadgee I'm locking you up*."<sup>183</sup> It would be unusual for Mr. Bramwell to remember that if it was not said. This tends to show that despite his state of sobriety he was able to remember. He also remembered other salient points such as the striking of Hurley by Mulrunji and the conversation later with Hurley about that event.
325. I accept the evidence that shows that Hurley used abusive language in an angry manner after he rose from the floor of the corridor. Hurley did not state that he used any words in the first interview conducted on 19 November 2004 and the similarity of those words to the words Mr Bramwell recalls he used in striking the deceased to provide an innocent explanation of them in the video re-enactment of 20 November 2004 is highly suspicious. This leads me to the conclusion that Hurley did indeed use the words attributed to him by Mr. Bramwell.

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<sup>182</sup> Statement 8/12/04 P10/13 line 376 to 378

<sup>183</sup> Statement lines 6 to 11.

326. I find it improbable that Sgt. Leafe did not hear any yelling from Hurley when Steadman and Bramwell did. He would have been no further away from Hurley than Bramwell. He was of the opinion, as he stated in his evidence, that Hurley had done nothing wrong. He had obviously made up his mind that he was not prepared to give evidence that would suggest that Hurley had done something wrong.

### **The probability of punches being inflicted**

327. In the DSC inquest Hurley was asked by counsel for the family<sup>184</sup>:

*Well do you accept there was a significant injury to his right eye post death?—*

*Well , I don't think it was a significant injury.*

*An Injury?—There was an injury, Sir.*

*I can take you to the picture if you want? – Yes I didn't think it was significant.*

*An injury described by – in medical reports as being one consistent with intentional assault, do you accept that? I haven't seen that report. I..*

*Are you prepared to accept it or do you want me to take you to it?—no, I'm prepared to accept that, sir.”*

328. Hurley says he checked Mulrunji's head to see that it did not hit the floor when he was picking himself up. So, on Mr Hurley's own evidence, there was no injury to Mulrunji straight after the fall. Hurley and Leafe gave evidence that Mulrunji's head did not hit the ground on the way into the cells. The struggle between the back of the police van and the doorway to the police station was unlikely to cause any injury to Mulrunji as Hurley was on the side closest to the police station and gave evidence of being pushed against the grills.

329. In the re-enactment video on the 20<sup>th</sup> November 2004, Inspectors Webber and Williams<sup>185</sup>:

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<sup>184</sup> DSC Inquest, Transcript page 1237 – 3 March 2006

*“Okay, but when you were on the ground who could you see around at that point.*

*Ah nobody to tell you the truth, Oh I didn't only from hindsight and from speaking to the people found out that Lloyd was the one that opened the door and um, um, Bramwell was over there. But I was aware I told Michael to bring Bramwell in, but I couldn't see Bramwell. I didn't know whether he was there there or not. But ah, I knew Michael was there and I knew Mrs Sibley, Penny Sibley was out there and Lloyd was around this area somewhere. Like everybody was around. Um but I didn't like try and mentally picture it I did see them you know. I was more concerned about what you know having the tussle with Doomadgee.”*

330. Snr. Sgt Hurley was questioned about whether Mulrunji was moving after the fall.<sup>186</sup>

He replied: “Yes, yes”

He was asked: “Did he .. was he trying to get...say when he was moving, what what were his actions”

He replied: “Oh, he was moving his legs and whatever but he wasn't ah, I think he was resigned to the fact that he was going in there and..”

He was asked: “Was he trying to stand. Was he trying to move forward.”

He replied: “No, He didn't stand he, he refused to stand when I tried to get him up on a number of occasions.”

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<sup>185</sup> Lines 203 – 212.

<sup>186</sup> Taped interview Kitching 19/11/04 line 259

Earlier<sup>187</sup> he stated: “ I tried to lift him a couple of occasions. Like this, I’m going get up Mr. Doomadgee, Get up, I said ‘Don’t start it again you know’.”

Mr. Bramwell also gave evidence of Mulrunji moving around after the fall. It would be reasonable to assume that at that stage Mulrunji was writhing in pain much the same as he did in the video in the cells.

331. We therefore have the scenario that Mulrunji has insulted Bengaroo in Hurley’s eyes. Mulrunji has struck Hurley whilst being removed from the police van. Mulrunji has continued to struggle and protest his innocence whilst being forced towards the police station. There has been a fall because of that struggle. I am satisfied that Hurley is angry, he cannot see anyone around and Mulrunji is, in his opinion, still refusing to co-operate after the fall.

332. I accept the truth of what Mr Bramwell said he saw in relation to the punching of Mulrunji by Hurley. I do not accept that the injuries to the side of the head occurred in the fall but as a result of blows inflicted by Hurley on Mulrunji after they had fallen to the ground. There is a possibility that Hurley also ‘Dropped the knee in’ at this stage.

## **The Investigation and the Police Culture**

333. The Deputy State Coroner [DSC], in her Findings of Inquest, made comments under section 46 in relation to the conduct of the investigation into the death of Mulrunji. I am in agreement with her comments. Some of the more pertinent comments to the abridged Inquest I have conducted were:

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<sup>187</sup> Taped interview Kitching 19/11/04 line 123

27. *The involvement in the investigation of Mulrunji's death of officers from Townsville and Palm Island was inappropriate and undermined the integrity of the investigation.*
30. *The OPM should be amended to make explicit the need to consider, when selecting officers for involvement in an investigation of a death in custody, the impartiality and the appearance of impartiality in the conduct of the investigation.*
31. *The involvement in the investigation of Mulrunji's death of officers who knew Senior Sergeant Hurley personally, or were friends with him, was inappropriate and compromised the integrity of the investigation.*
32. *The OPM should be amended to explicitly require officers involved in an investigation into a death in custody to disclose any relationship with an officer involved in, or a witness to, that death.*
33. *The investigation's appearance of impartiality was further undermined by the following conduct:*
- *It was inappropriate for Hurley to meet the investigating officers at the airport upon their arrival;*
  - *It was inappropriate for Hurley to drive the investigators to the scene of Mulrunji's arrest; and*
  - *It was completely unacceptable for investigators to eat dinner at Hurley's house while the investigation was being conducted.*
35. *The discussion by Senior Sergeant Hurley of the death of Mulrunji with Sergeant Leafe and Police Liaison Officer Bengaroo prior to being interviewed was inappropriate and contrary to the OPM. It had the potential to undermine the integrity of the investigation and undermine the appearance of integrity of the investigation.*
36. *The OPM should be amended to require the officer in charge of an investigation of a death in custody to instruct officers involved in, or witness to, the death not to discuss the matter with other witnesses prior to being interviewed.*
334. I have made some additional comments of my own hereunder. The purpose of mentioning the comments of the DSC at this point is to record the fact that the fact finding process has been substantially compromised and rendered more difficult by the unsatisfactory state of the investigation which was conducted into the death of Mulrunji as commented upon by the DSC. It has made the determination of the finding required under section 45(2)(b) more problematic.

335. There has been extensive evidence about, and much has been said of, the flaws of the QPS investigation into this death, in terms of transparency, independence and thoroughness. The evidence is such that it can properly be found that Hurley became aware of Roy Bramwell's allegations which were first made in the time between Hurley's first interview and subsequent interviews, in particular the re-enactment video. Whether this knowledge came from information divulged to him by his "good friend" Detective Sergeant Robinson, the then head of the Palm Island CIB, who was part of the Bramwell interviewing team, or through his capacity to hear conversations in the day room from his office, the developments in the interviews speak for themselves.
336. As noted above, in his second interview, Senior Sergeant Hurley adopted similar words and movements to that described by Bramwell as relating to the alleged assault upon the deceased in the corridor after the fall. He had not said anything about any such actions in his first interview on 19 November 2004. That alone appears too much of a coincidence. However, when added to the fact that Leafe's account also varied at the exact same time in the exact same way, it leads to the inexorable conclusion that this development was orchestrated.
337. During the investigation of the earlier complaints of Mrs Pilot and Mr Neville Bonner, Senior Sergeant Hurley was told to leave the station when Detective Sergeant Robinson was conducting an interview with Mrs Pilot<sup>188</sup> and when Mr Bonner was making a complaint. However he was allowed to stay in his office during this investigation when all the video interviews were being conducted.
338. Hurley denies that he spoke to any person substantively about the incident before his first or the re-enactment interview. The fact that he had repeated opportunities

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<sup>188</sup> DSC Inquest, Transcript page 1206

to do so is clear from his own evidence. The relevant part of the transcript of the re-opened inquest would appear to be the examination of Hurley:<sup>189</sup>

*Very well. Now, I want to explore a couple of events.*

*Firstly, at 11.45 a.m. on Friday the 19th of November, after you'd discovered that Cameron Doomadgee had died, did you telephone Darren - Detective Darren Robinson in Townsville?--*

*No.*

*You didn't?-- No.*

*So-----?-- Not that I recall. I can't remember phoning Darren Robinson.*

*I see. So you didn't speak to Detective Robinson at all that*

*day?-- Not that I recall. I spoke to the senior sergeant at communications and I think I spoke to Inspector Walmsley. I can't remember speaking to Darren Robinson.*

*All right. Well, I'm referring to Exhibit number C 15.1 in which Detective Robinson makes that statement that he received a call from you advising of the death of Cameron Doomadgee.*

*Do you deny making such a call?-- Well, I don't remember ringing Darren Robinson. If I say I deny it you'll say that's a lie, but I don't remember calling Darren Robinson. I had no need to call Darren Robinson. I-----*

*Didn't you?-- Well, I had advised my superiors.*

*Darren Robinson - well, yes. Darren Robinson arrived with other investigators from Townsville, didn't he?-- Yes, he did.*

*And he was a friend of yours, wasn't he?-- He was a colleague at work.*

*Colleague at work? He was the detective on Palm Island?--*

*There was two.*

*Right. And he was one of two and worked in the same building?--*

*Correct, sir.*

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<sup>189</sup> Examination of Hurley at pages 4-82 (11/3/10) onwards

*You went to the airport to pick up the first round of investigators?-- Yes, I did.*

*And one of those was Robinson?-- Most likely, yes. I can't recall.*

*And so the others were whom, Detective Senior Sergeant Kitching from Townsville?-- Detective Senior Sergeant Kitching and Detective Inspector Webber, and there was also*

*members of the Scenes of Crime, the senior sergeant in charge of Townsville Scenes of Crime and other police.*

*Yes. And it was Kitching who interviewed you at 4.04 p.m. that day, we've just heard that interview, the 19th of November - yes?-- Yes, sir, Kitching and Robinson.*

*And then you did the re-enactment at 11.53 a.m. the following day?-- Right. [4-83]*

*Mmm. 8 a.m. to 4 p.m.? Did you work, do you believe, in and around the police station?-- I don't think I left the police station.*

*Mmm. So what we know from other evidence in the inquiry – in this matter - sorry - the - this inquest is that Mr Bramwell was interviewed by detective - detectives anyway at about 8 a.m. on the Saturday?-- Was he? Okay.*

*And that he gave a re-enactment himself at about 10 a.m. that day, about two hours before yours?-- Right.*

*You weren't in a position to hear any of those discussions or interactions with police between police and Bramwell?-- I don't know where that took place in the station-----*

*Right?-- The detectives' office was down the other end of the building.*

*Yes. And when the re-enactment was going on, that's through the doorway in close proximity to your office - correct?-- Yes, if that happened there; yes.*

.....

*Do you say that those re-enactments involving Bramwell, Leafe and Bengarou, you had absolutely no knowledge of them going on?-- No. We were told to go to separate areas. None of us were together-----*

*All right?-- -----I don't know who did what in what timings.*

*And so nobody told you that Bramwell had made the allegation that he could see over a filing cabinet the upper movement of your arm in three repeat punches-----?-- No-----*

*-----on Doomadgee?-- No, nobody had said that.*

*Nobody tipped you off about that?-- Nobody had said that to me.*

*No? And nobody tipped you off that Bramwell had said that you had said to Doomadgee or had alleged that you said to Doomadgee words to this effect, "Have you had enough,*

*Mr Doomadgee, have you had enough?"?-- No, I wasn't aware of that. [4-84]*

**And later upon cross-examination by Boe at 5-9 to 5-10:**

*All right. Did you speak to Robinson at all prior to the re-enactment video on the 20th of November?-- I don't recall speaking to Robinson.*

*You did speak to him on the evening of the 19th?-- Is that when they were supposed to come to the house?*

*Sorry?-- Is that when they were supposed to have come to the house?*

*To your house, yes?-- Yeah. No, I don't - I don't even remember them coming into the house.*

*Did you know that - did you know that he'd already interview Mr Bramwell?-- No.*

*The night before I mean?-- No.*

*Sorry, he hadn't, I'm sorry. Did you know that by the time you were giving your re-enactment that Robinson and Kitching had already interviewed Mr Bramwell?-- I didn't know anything about the investigation. I wasn't*

*told anything about the investigation. I was told what they wanted me to do.*

*MR BOE: So can I summarise my understanding of your recollection is that you don't recall seeing Bramwell anywhere in the station on the 20th of November; correct?-- No, I didn't see - I didn't see Roy, no.*

*You weren't aware of what conversations, interviews, recordings had taken place with any other person prior to your re-enactment at 11.53?-- No, I wasn't.*

*From your room, you are in a position, when the door is closed, to hear a conversation if it's immediately outside your office; correct?-- Yes, I would have done, yes.*

*But not so if it's in the counter area or otherwise in the day room?-- Correct.*

339. Senior Sergeant Hurley himself, when giving evidence to the re-opened inquest, stated that he did not think it was right for Robinson to investigate a complaint against him

340. Barbara Pilot, a resident of Palm Island, was injured on 9 May 2004 (6 months before Mulrunji's death) when a police vehicle, driven by Senior Sergeant Hurley, ran over her foot. This incident was the subject of evidence at the original inquest on the basis of propensity evidence.

A reading of the transcript of Mrs Pilot's evidence to the original inquest demonstrates that she was confused about events and was distressed by the experience of giving evidence.

However, it is open to proceed principally on the basis of the statements made and evidence given by the police involved, namely, Senior Sergeant Hurley and

Constable Kylie Fuller. Both officers attended at Ms. Pilot's residence in response to a complaint of domestic violence<sup>190</sup>.

It was dark and the victim, Mrs Pilot was drunk. She called out, from the ground, that they had run her over. Hurley's assertion that he could not recall if Ms. Pilot was screaming in pain is disingenuous. The pain from the injury sustained would have been immediate and intense<sup>191</sup>.

Hurley could have acknowledged that an accident had occurred, but decided to admit nothing. His attitude at that time appears to raise close parallels with how he dealt with the present matter. His first action was to attempt to persuade the treating doctor that the injury did not occur in the manner complained of<sup>192</sup>. Concerned by the doctor's unwillingness to agree with him, Hurley then set about ensuring that he and Constable Fuller were going to present a united front.

Fuller agreed<sup>193</sup> that she had, in company with Hurley, discussed their version of events and agreed upon it. In particular, they agreed that when Ms. Pilot was picked up off the ground, the police vehicle had not moved. The proposition that this conversation was collusive in nature is supported by Hurley's denial that it ever occurred<sup>194</sup>.

Hurley then misrepresented the position to his superior officer. He told Inspector Hickey<sup>195</sup> that the doctor had said that Ms. Pilot's injury was more consistent with kicking the ground than with a motor vehicle accident. The doctor did no such thing. His evidence was<sup>196</sup>:

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<sup>190</sup> DSC Inquest, Transcript 1198.23 to 1199.6.

<sup>191</sup> DSC Inquest, Transcript 1136.35 to 40.

<sup>192</sup> DSC Inquest, Transcript 1134-1138.

<sup>193</sup> DSC Inquest, Transcript 1012.37-1013.9

<sup>194</sup> DSC Inquest, Transcript 1206.1-9.

<sup>195</sup> DSC Inquest, Transcript 1123..51-57.

<sup>196</sup> DSC Inquest, Transcript 1135. 2-19; and Transcript 1137-1138

*“I told him that I'd never seen an injury like this before and that it was unusual and, in my opinion, it required something quite profound to push a bone, not only out of its joint, but through the skin and out into the open. And I told him that - that such a great force would be well explained by a car tyre, but it could be from any other thing which I've - you know, not aware of at the scene, but may have been possible. Okay. In particular, did you tell him that it was highly unlikely that the car tyre could have caused that injury?-- No. Did you tell him that the injury was more consistent with the patient kicking the ground?-- No, I didn't. Did you believe that it was more consistent with the patient kicking the ground?-- Absolutely not.” .....*

*“And in paragraph 10 of your statement you said that Chris Hurley did seem eager to persuade you of his side of the story?-- He did. Thank you. His side of the story being that it was more likely caused by her tripping over?-- That's right. Yes. I'm asking you to speak to the perception of eagerness that you - you formed. What was it that made you think that he was eager to persuade you?-- Well, it was common for the police officers to be present in the emergency department at night for - situations that both of us were involved with, but it wasn't common for people to sit down and go through a scenario and tease out possibilities, probabilities, which was the case in this instance, because - and I understood that because - you know, there was an allegation that he had caused it. Mmm?-- And so I understood his interest in the matter, but I - but there was a perseverance on his side of trying to create a possibility or a probability that it hadn't been from a car tyre. Okay. And just finally, Doctor, you're familiar with the legal definition of grievous bodily harm?-- I am. This injury would clearly fall within that definition?-- Yes. Thank you.”*

The doctor's testimony revealed that Hurley made an attempt to suborn him. There is no rational explanation for it other than as evidence of a guilty mind.

The investigation became the responsibility of Hurley's good friend and close colleague Det. Sgt. Robinson.

To his mind, the whole incident could be explained away on the basis of alcohol abuse. His "investigation" into the Barbara Pilot incident was superficial, biased,

and misleading. His conclusion that the complaint was "fictitious"<sup>197</sup> (ie. imaginary: not real.<sup>198</sup>) was dishonest, and flew in the face of the objective evidence.

On 19 November 2004, Robinson had been one of the first persons called by Hurley, but Hurley would have the Court believe that he cannot now recall this communication: *I can't remember phoning Darren Robinson*<sup>199</sup>. Hurley also sought to distance himself from Robinson, eschewing the description of "friend": *And he was a friend of yours, wasn't he?-- He was a colleague at work*<sup>200</sup>.

The lengths to which Robinson would go to assist his colleague as demonstrated in the Pilot case are relevant to considering whether he was the source of the obvious 'tip off' to Hurley concerning the evidence of Bramwell about the punches Hurley threw and the words Hurley used as noted above.

341. Further, during their evidence to the re-opened inquest, both Sgt Leafe and Constable Steadman commented in evidence that they had made themselves readily available to assist the defence of Hurley on his trial, while requiring a direction from the Police Commissioner to attend prosecution conferences. Both police officers conceded that this was the first and only time they had assisted the defence, and that it had occurred because Mr Hurley was a police officer.
342. These issues were raised in cross examination by counsel for the Attorney-General at the current inquest and Leafe conceded (although reluctantly) that the *Queen v Hurley* was the first trial in which he was involved where he had

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<sup>197</sup> Report of 14/10/2004 from Robinson to Assistant Commissioner Northern Region.

<sup>198</sup> Chambers 20th Century Dictionary: New edition 1983.

<sup>199</sup> Re-opened Inquest, Transcript page 4-82

<sup>200</sup> Transcript page 4-82

conferred with defence counsel and the first case in which he had been involved where he had kept potentially important information from the Crown<sup>201</sup>. The cross examination then concluded as follows<sup>202</sup>:

*“So, what we've got is a case where it seems that this is the first time that you've failed to pass information - important information on to the Crown?-- Yes.*

*That's right? And it seems to be, subject to the qualification that you mentioned about your memory, that it's probably the first case you've been involved in where you've actually sat down and conferred with defence counsel?-- Yes.*

*What is it that distinguishes this case from all those other cases you've been involved in? [After a delay] Can I suggest something to you?-- Please do.*

*A policeman was the defendant?-- Possibly, yes.”*

343. There is other evidence from which it might be thought that Sgt Leafe had lost all objectivity and was prepared to fashion his evidence to support Hurley.
344. The evidence of PLO Bengaroo is another instance where collusion on the part of police is apparent. Hurley and Leafe discussed the incident at the police station before the arrival of the investigating team and Hurley made his first statement. Bengaroo was not taken into their confidence. Hurley insisted in his interviews, and had told Leafe during their discussions, that they had tripped and he had fallen down beside Mulrunji.

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<sup>201</sup> Transcript pages 4-38 to 4-39

<sup>202</sup> T4-39:55 – T40:15

345. The video interview shows Bengaroo reflecting on why he did not go straight in to the police station after Hurley and Mulrunji. The obvious answer is that, either he saw Hurley punch Mulrunji and he did not want to become involved in the incident, or that, because he heard Hurley yelling at Mulrunji, he thought that something untoward might occur and he should not witness it.
346. By the time he gave evidence at the DSC inquest on 3 August 2005, Bengaroo stated that both men fell at the same time but fell side by side.<sup>203</sup> This change of evidence leads inevitably to a conclusion he had been spoken to by then.
347. Another obvious instance of collusion is the mimicking of Bramwell's actions by Hurley in the video re-enactment of 20 November 2004, which conveniently explained actions earlier depicted by Bramwell in his re-enactment, and which were mentioned to Sergeant Robinson in Bramwell's interview and statement earlier that day. The suspicion is compounded by Hurley's failure to mention his repeated attempts to raise Mulrunji from the floor by grabbing his shirt when he was interviewed for the first time on 19 November 2004.

### **Accidental or Deliberate**

348. We return to the two possibilities posed did Hurley accidentally come into contact with Mulrunji just inside the entrance to the Police Station thereby inflicting the fatal injuries, or did he apply deliberate force to Mulrunji thereby causing the fatal injuries after the fall most probably with his knee, with such violence as to cause Mulrunji's liver to be virtually cleaved in two across his spine.
349. Hurley maintained at the original inquest, and again when examined by Counsel Assisting at the re-opened inquest, that his integrity is demonstrated by the fact

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<sup>203</sup> DSC Inquest, Transcript pages 519 to 520

that he stuck to his recollection that he did not fall on Mulrunji. It would have been an easy thing for him to say that he did fall on Mulrunji:

*“Sir, if I’d struck some blow with a very forceful nature to Mulrunji, I would’ve had the time to think about that before the investigators arrived. They flew from Townsville. I would’ve had time in my mind to get to – to get together a story. And in that first interview, it would’ve been practical and made sense to me to say to the investigators that I did fall upon him.*

However, Senior Counsel Assisting [Mr Martin SC] at the original inquest before the DSC pointed out a possible flaw in this argument<sup>204</sup>:

*“Well, that – that may well be so if you had known what the nature of the injury was and what the cause of death was. But you didn’t know that then, did you? – I didn’t know that. But I would’ve been if it – had I dropped down with an elbow and knee flopped on Mulrunji and then he’s found dead later, I would’ve been thinking to myself, oh, well, this must have something to do with, you know, this act that I’ve done. So, I better say that I’ve fallen on him and I remember my knee going into him or my elbow or something. That would make – that would make sense to me that, you know, you’d say something like that. I gave the recollection as best I – as best I could. And it’s truthful, that I’d fallen beside him, I thought.”*

*“Well, the only thing that you know on the 19th of November, after he’s found dead in the cell, is that he is dead. You don’t know the cause of death, do you?-- No, I don’t know the cause of death. And the only other thing that I did know, sir, was that I saw some blood above his right eye and there was - there did appear to be a little bit of swelling there.”*

350. The cut and swelling above the deceased’s right eye is probably the reason why Hurley did not consider that landing on Mulrunji was anything to do with the cause of death at that time.

351. As Counsel for Hurley, Mr Zillman, pointed out in his final submissions in the original inquest before the DSC , it is difficult to understand if Hurley had deliberately assaulted Mulrunji in the police station, why he would not have told

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<sup>204</sup> Transcript page 607

the investigators some story consistent with an accident. As Mr Zillman pointed out, it was not necessary for Hurley to be aware of the medical evidence to explain the death. As Hurley said in evidence, he would have concluded that had he dropped his knee with severe force into the body of Mulrunji or done something else of that kind, then that force might have caused the death.

352. Whilst I do not agree that it showed Hurley's integrity was intact I do agree with that summary. If Hurley had dropped the knee in with the severe force required on the medical evidence to inflict the fatal injuries, he would be on notice that severe internal injuries may have resulted.
353. I am satisfied on the evidence of Steadman, whom I consider to be the most truthful witness of all the witnesses called, and on the evidence of Bengaroo that there was a fall. I further accept the evidence of Steadman of what he saw in the fall and the evidence of Bengaroo, before he started to change his story that 'Chris fell on him'. Accordingly I also accept that Hurley did fall on to Mulrunji
354. The evidence establishes that Mulrunji did not have the fatal injuries before arriving at the police station and that the only time that he could have received the injuries was during the fall through the door or very soon thereafter. There is no doubt that Hurley is fabricating his evidence in saying he fell to the side of Mulrunji.
355. I am satisfied that Snr. Sgt Hurley may well not have realized the extent of the force applied when he fell on to Mulrunji. It is probable that he lied about whether he landed on Mulrunji because of fear of retribution from the community and at that stage he thought that Mulrunji had died of head injuries or a heart attack. Leafe was questioned on this aspect and his answer assists in understanding their reasoning at the time –

*“ All right. When - going back to the 19th of November for a minute, 2004. When it was clear that - and the QAS had confirmed that Mr Doomadgee had died, what was the first thing you did?-- Rang my wife. And why did you do that?-- Tell her to stay in the compound. Why?-- I was concerned that once word got out it wouldn't be a pleasant place to be. Word got out what?-- The death in custody. But at that stage as far as you were concerned from everything you knew, neither you or Hurley had done anything wrong?-- Correct. But that's not how the public often sees it.”*<sup>205</sup>

356. I accept that there was a fall and in the course of that fall that Hurley fell on to Mulrunji there is still the possibility that the fall was not sufficient to cause the injuries and there is still sufficient evidence to find that Hurley also then stood up and sunk the knee in. The only real evidence that supported that later proposition was Hurley’s denial that he fell on to Mulrunji and the evidence that I accept that he was angry and punched Mulrunji. There is another possible explanation for that denial. Whist both hypotheses are available on the evidence, having regard to all the evidence before me I am unable to find whether he lied because he was concerned about the public reaction of the community to the death in custody and any possible perception he had done anything wrong or that he denied falling on to Mulrunji out of a consciousness of guilt from having sunk the knee in.

357. At his trial, Hurley gave evidence that the fall was without warning and that it occurred in an instant. This was corroborated by Constable Steadman in evidence at the re-opened inquest<sup>206</sup>:

*Question: I know there has been a deal of cross-examination on the way they fell, but I just want to confirm a few of those things before I move further to the*

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<sup>205</sup> Re-opened Inquest, Transcript 4-47 11/3/10

<sup>206</sup> Transcript page 3-87 – 10 March 2010.

*position of the legs of the two people. It all happened extremely quickly I suggest. That is from the point of their struggle to the point of the fall and the ultimate collision with the floor.*

*Answer: Yes.*

*Question: Basically the blink of an eye.*

*Answer: Yes, within moments, it was quick.*

*Question: And they fell together, did they not? I'm suggesting that to you.*

*Answer: Yes, they did fall together.*

358. I find on the evidence that Senior Sergeant Hurley, a tall well built person, falling in an accelerated or uncontrolled fashion on top of, or close to, the deceased, a person of much smaller height and build and who was heavily intoxicated and unable to protect himself in the usual manner because of that intoxication, could have caused a small area of direct crushing pressure, in all probability with his elbow or the tip of his shoulder or his hip, applied to the front of the upper abdomen of the deceased with the back or posterior lateral aspect of the body fixed against the hard concrete floor.
359. The hip cannot be ruled out as Hurley's feet were at the same level as Mulrunji's feet [see the evidence of Constable Steadman] and Mulrunji is much shorter so Hurley's hip could be in the vicinity of the injury. As Dr. Lampe in his evidence stated any part of the anatomy adequately applied with appropriate force will cause this injury. Dr Ranson did not disagree with the evidence of Dr Lampe and identified particularly the hip or tip of a shoulder as being possible culprits. I do not accept that I must necessarily find that a knee caused the injuries simply because that was the most probable cause put forward by the medical opinions. In such a sudden and complicated fall it is not possible to state with any exactitude the precise part of the body that applied the force.
360. I find the liver injury was the result of forceful pressure being applied to the front of the upper abdomen or stomach area. This force squeezed the liver by pushing it

up against the front of the spine so that it was nearly split in half. I am satisfied that the four fractured ribs, liver laceration and portal vein rupture could have occurred as a result of a single injury involving the application of a very considerable force anteriorly, that is, at or near the front of the body, over the lower right ribs, with the torso otherwise immobilised. There is no medical evidence to suggest the use of direct force in the nature of punching, kicking or stomping because there was no bruising that supports that possibility.

361. The next question to be considered is whether the application of the force by Senior Sergeant Hurley in the fall was a willed act or was it unintentional.
362. A Coroner's decision must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant.
363. There is simply no evidence before me that would allow me to find that Senior Sergeant Hurley made a conscious choice to apply the necessary force during the fall. His denials, as stated previously, are explained by his lack of knowledge of the cause of death and his fear of the consequences from the community if he was seen to be in any way responsible for the death.
364. Given the nature of the struggle up to the doorway, the way the deceased was attempting to stop his entry into the police station, the small confined space in which the fall occurred, it is possible to find on the evidence before me that the fall was sudden and uncontrolled. Hurley in his first record of interview stated:<sup>207</sup>

“...the struggle moved into the station where we were on the ground – because the step up. he was asked by Kitching ‘so you tripped over a step

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<sup>207</sup> Record of Interview Kitching 19/11/04 Line 180

is that right’ and he replied ‘over the step as we came in – there’s a step there.’

Mrs Sibley described how Mulrunji had his foot up against the small step so they could not take him into the door to the police station. She stated<sup>208</sup>:

“But they finally got his foot loose from where they take him in and I didn’t see anything after.”

The possible sudden release of Mulrunji’s foot from the step helps explain the physical forces in play. The twisting in the struggle and the sudden release shows how Mulrunji may well have ended up on his back. Against this is the fact that Hurley himself says that Mulrunji was down low when he came in the door. Hurley admitted he did not remember the fall and therefore his opinion later that it was heavy cannot be relied upon. The evidence of Bramwell that Hurley laid Mulrunji down leads to a conclusion that the fall may not have been heavy.

365. I find that Senior Sergeant Hurley then punched Mulrunji three times to the face before dragging him limp into the cells. Sgt Leafe came out after the yelling by Hurley as he states that he did not hear any such thing. Consequently there was time for Hurley to punch Mulrunji as alleged by Mr Bramwell and to sink the knee in at the same time before he returned. There is no doubt that Mulrunji was a “Dead weight” at that stage.
366. In view of the reasons stated I consider that I am unable to make a definite finding and I am of the opinion that an open finding would be more appropriate. If the two main witnesses of the incident, namely Bengaroo and Bramwell, had not continually changed their versions and fabricated evidence I would have been possible to make a proper judgment.

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<sup>208</sup> Re-opened Inquest, Transcript 1-30 8/3/10

367. Counsel assisting summed up the issues very well when he submitted “As noted above, the task of the Coroner under section 45(2) is to find, *if possible*, how the person died. In our respectful submission it is not possible within the constraints of the Briginshaw test to make a positive finding against Senior Sergeant Hurley that he applied deliberate force to Mulrunji after the fall. As reviewed above, much of the circumstantial evidence against Hurley is suspect [for example, Bramwell] or highly qualified [the medical evidence] and does not provide the necessary certainty.

On the other hand, there is sufficient compromising material to deny the possibility of a positive finding that what occurred in the corridor of the police station was an accident.

For example:

- The evidence of Mr Bonner and Mrs Sibley of a retaliatory punch by Hurley in the police station garage, an action Hurley denies;
- The evidence of Constable Steadman of Hurley’s seemingly abusive yelling at Mulrunji after the fall, an action Hurley also denies;
- The allegations of punching by Roy Bramwell [a profoundly unreliable witness] to the extent that those allegations may be supported in part by the medical evidence of an injury over the right eye of Mulrunji, which logic seems to indicate was not sustained in the fall;
- In our view, the logically unexplained sending away of Bramwell by Hurley from the police station shortly after he witnessed the altercation between Hurley and Mulrunji in the corridor;
- The failure by Leafe and Hurley, when discussing how Mulrunji could have died while awaiting the investigation team, to examine the corridor for any clue as to what had occurred.
- The mimicking of Bramwell’s actions by Hurley in the video re-enactment of 20 November 2004, which conveniently explained actions earlier depicted by Bramwell in his re-enactment, and which were mentioned to Sergeant Robinson in Bramwell’s earlier interview and statement. The

suspicion is compounded by Hurley's failure to mention his attempts to raise Mulrunji from the floor when he was interviewed for the first time on 19 November 2004.

I would add that all of this is compounded by the fact that it is not possible on the evidence before me to find to a sufficient degree of probability that the fall was complicated and from a standing position. It is also not possible to say to a sufficient degree of probability that Hurley sunk the knee in after the fall.

### **Finding pursuant to Section 45(2)(b)**

In relation to my finding under Section 45(2)(b) of the Coroners Act 2003, The deceased died of fatal injuries which resulted from some force to the abdomen of the deceased either accidentally as the deceased and Christopher Hurley fell into the Palm Island watchhouse or by deliberate actions of Hurley in the few seconds after they landed, but it is not possible to ascertain whether the force was deliberately inflicted or accidentally suffered. The four fractured ribs, liver laceration and portal vein rupture occurred as a result of this single injury.

## Comments Pursuant to Section 46

1. As noted above, the power to make comments under section 46 of the Act arising from the re-examination of evidence at the re-opened inquest in light of the limited nature of the direction given to me by the State Coroner in consequence of the decision of the Court of Appeal in *Hurley v Clements*, was accepted by me in a formal ruling handed down on 8 March 2010.

Section 46(1) provides:

### *46 Coroner's comments*

*(1) A coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to--*

*(a) public health or safety; or*

*(b) the administration of justice; or*

*(c) ways to prevent deaths from happening in similar circumstances in the future.*

2. Unlike section 45(2)(b) of the Act, which mandates that the Coroner “*must*, if possible, find how the person died”, the power to comment is discretionary (“*may*”), ancillary to the principal finding under section 45, and arises only in respect to issues of public health or safety; the administration of justice; or ways to prevent deaths, which are manifested by the investigation of the death at the inquest.

3. The understanding that the s.46 power to comment is an ancillary function was confirmed by the judgment of Muir J in *Doomadgee & Anor v Deputy State Coroner Clements & Ors*<sup>209</sup> that:
  - the comment-making power under section 46 is ancillary to the finding function mandated by section 45 of the Act;
  - comment under s 46(1) must be on a thing “*connected with*” the death under investigation
  - comment must relate to public health or safety, the administration of justice or ways to prevent deaths from happening in similar circumstances in the future.
  
4. Counsel Assisting submitted that the Coroner give consideration to making two comments under this provision connected with the death under investigation under the rubric of the administration of justice and the prevention of future deaths, namely:
  - a. The failure of the CMC to immediately take full responsibility for the investigation of the death from the time that it was first reported to it; and
  - b. The failure of the CMC to limit the conjoint representation of police witnesses by the Police Union of Employees [the Police Union], during the investigation.
  
5. I note that a Coroner is entitled to make comment as to the appropriateness of the investigation of the death as it relates, not only to the administration of justice, in this case involving CMC policy and practice, but also the means to prevent deaths from happening in similar circumstances in the future. Counsel Assisting submitted that their recommendations were founded on the basis that, if police misconduct was instrumental in the death, only an effective investigation is likely

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<sup>209</sup> Supra

to uncover that misconduct thereby providing the necessary level of deterrence against such conduct in the future.

## **CMC Investigation of the death**

6. Counsel Assisting submitted that the CMC has a special statutory responsibility to investigate possible police misconduct amounting to official misconduct. I note that, pursuant to section 35(1)(e) of the *Crime and Misconduct Act 2001*, the CMC has the power to deal with complaints about official misconduct by itself if so required:

***35 How commission performs its misconduct functions***

*Without limiting how the commission may perform its misconduct functions, it performs its misconduct functions by doing 1 or more of the following--*

.....

*(e) dealing with complaints about official misconduct, by itself or in cooperation with a unit of public administration;*

.....

Official misconduct is conduct that could, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment in a unit of public administration<sup>210</sup>. The Queensland Police Service is a unit of public administration.<sup>211</sup>

7. Relations between the police and indigenous people have had a troubled history, in Queensland and throughout Australia. Some of these problems persist. Such problems arise in the detention of indigenous persons in custody. As the *Report of the Royal Commission into Aboriginal Deaths in Custody* found, detention in police custody in remote communities is a vexed issue. I note that under section 14(2) of the Act, the State Coroner must have regard to the recommendations of

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<sup>210</sup> S.15 *Crime and Misconduct Act 2001*

<sup>211</sup> S.20 *Crime and Misconduct Act 2001*

the Royal Commission that relate to the investigation of deaths in custody. I have provided some extracts from that Royal Commission above which note the importance to the community of a thorough investigation of a death in custody.

8. The investigation of the death of Mulrunji by officers who knew Senior Sergeant Hurley and/or were from within Townsville District Command was, in my view, unsatisfactory and inappropriate. The involvement of such officers undermined the credibility of the investigation and its appearance of independence and impartiality. The conduct of investigating officers and of Senior Sergeant Hurley during the first day of the investigation exacerbated this problem, in particular the perception of collusion.
9. The DSC in her Findings of Inquest dealt with these issues at pages 31 and 32 of her report. Respectfully, I broadly support the comments made therein. In particular, the DSC stated<sup>212</sup>:
10. *The CMC should be actively involved in all investigations into deaths in custody from the outset. Consideration should be given to having a senior officer of the CMC involved in all investigations into deaths in custody.*
11. The need for a thorough and impartial investigation of a death in custody is stressed in the State Coroner's Guidelines<sup>213</sup>:

*Deaths in custody warrant particular attention because of the responsibility of the state to protect and care for people it incarcerates, the vulnerability of people deprived of the ability to care for themselves, the need to ensure the natural suspicion of the deceased's family is allayed and public confidence in state institutions is maintained. Further, a thorough and impartial investigation is also in the best interests of the custodial officers.*

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<sup>212</sup> At page 32, paragraph 38.

<sup>213</sup> Paragraph 7.5

12. The State Coroner’s Guidelines provide that investigations into all deaths (not just deaths in custody) *‘must commence from the premise that they are potential homicide cases.’*<sup>214</sup>

13. The Operational Procedures Manual [“OPM”] of the QPS provides that investigations of *‘police related incidents’* such as deaths in custody *‘are to be conducted expeditiously and impartially’*. OPM 1.17 places investigation of police related incidents *‘under the direction of the Regional Crime Coordinator unless otherwise directed by the Internal Investigation Branch, Ethical Standards Command or the Crime and Misconduct Commission’*. It further notes:

*In cases involving custody police related incidents, a Regional Crime Coordinator should appoint an investigator from a police establishment other than from where the incident occurred, or where the officers or members directly involved in the incident are stationed.*

14. Under the heading *‘integrity of investigations’*, the OPM provides as follows:

*First response officers, Regional Duty Officers and Regional Crime Coordinators should ensure that the integrity of independent versions of members directly involved and members who are witnesses to a police related incident is preserved as far as practicable.*

*In this regard, members directly involved in the incident or who are witnesses to the incident should be interviewed separately and as soon as practicable following the incident. It is highly desirable that interviews occur prior to any critical incident stress debriefing, including any defusing. **Members directly involved in the incident or who are witnesses to the incident should not***

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<sup>214</sup> Paragraph 7.3

*discuss the incident amongst themselves prior to being interviewed.*  
[emphasis added]

15. Without directly referring to the possibility that a death in custody may be a homicide, the OPM states that an officer conducting an investigation into a death in custody should '*not presume suicide or natural death regardless of whether it may appear likely*'.
16. Much was lost in terms of the integrity of this investigation in the initial phases, before the direct involvement of the CMC. However extensive and careful any process of review, there is no substitute for the immediate preservation of the crime scene, and the faithful recording of the initial and uncontaminated observations and recollections of the direct witnesses. These investigative opportunities were substantially lost or at least compromised in this case.
17. Counsel Assisting submitted to me that the recommendation of the DSC for the CMC to investigate all deaths in custody was too onerous an impost on the CMC. Most deaths in custody are the result of natural causes, and in a system with an increasing and aging prison population, the number of such deaths will steadily increase.
18. They submitted that a modification to what the DSC had proposed should keep the burden for the CMC within manageable limits, namely, that the CMC should undertake the immediate and sole investigation of all deaths reported to it which raise a suspicion of unnatural causes, in particular, as in this case, where the death had been preceded by a violent struggle with police, or where it followed some other forceful police action.
19. Mindful of the impact that these submissions by Counsel Assisting may have on the operations of the CMC, I provided a copy of this submission to the CMC and invited a response.

20. In paragraphs 2 and 3 of its response, the CMC stated that there was no failure by the CMC to immediately undertake full responsibility for the investigation into Mulrunji's death because it was the State Coroner's sole responsibility to investigate the death, and that, at the time of Mulrunji's death, there was no agreement or Memorandum of Understanding between the Coroner, the Queensland Police Service and the CMC which provided for the CMC to be the sole investigator of any death in custody, nor has any such agreement ever been in place.
21. As at the date of Mulrunji's death, the Coroner's Guidelines provided that<sup>215</sup>:
- All deaths in police custody or that occur during a police operation will be undertaken by officers from the State Homicide Investigation Group and overviewed by officers from the Crime and Misconduct Commission or the Ethical Standards Command of the QPS. If the investigation is conducted in accordance with the policies of those agencies relating to such deaths it will be consistent with the recommendations of the RCADIC and these guidelines.*  
[emphasis added]
22. This aspect of the Coroners Guidelines was published in conformity with section 14 of the Act referred to above.
23. In reply, Counsel Assisting noted that Detective Inspector Webster, both in his report to the Acting Director Misconduct Investigations of the CMC dated 16 November 2007 concerning Senior Sergeant Hurley, and in his report to the Acting Director Misconduct Investigations of the CMC dated 14 March 2008 concerning Detective Sergeant Darren Robinson, which reports were made available to me as Coroner by the Acting Assistant Commissioner Misconduct of the CMC, stated in the third paragraphs of both reports:

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<sup>215</sup> Section 7.2 at page 7.6

*On 24 November 2004, the Crime and Misconduct Commission was requested by the Commissioner of Police, Queensland Police Service to take command of the investigation [of the death of Mulrunji] due to circumstances surrounding the death. The CMC Investigation File was recorded as MI-04-3741. [emphasis added]*

24. I accept that, from the date that the CMC became involved, the CMC and, in particular, Detective Inspector Webster, have provided full and ongoing assistance to all Coroners who investigated the death of Mulrunji, and to all Counsel Assisting each Coroner, including myself. I wish to place on record our personal gratitude for this assistance.
  
25. The CMC opines that it is unable to act as the ‘*immediate and sole investigator*’ of deaths which may occur in Queensland that raise a suspicion of non-natural causes, or even deaths in custody or deaths that may involve police or occur during police operations, because:
  - (a) the CMC would be usurping the State Coroner’s role by conducting the investigation;
  - (b) the CMC is not resourced or empowered to undertake this role; and
  - (c) it is not practically possible for the CMC to do so.
  
26. However, as the Final Submissions by counsel of behalf of the QPS point out<sup>216</sup>, existing QPS policy (OPM 1.17) and paragraph one of the revised Memorandum of Understanding regarding investigations of deaths arising from police related incidents between the State Coroner, the Commissioner of the QPS and the CMC dated 1 July 2008, recognizes that all police related deaths are to be notified to the Ethical Standards Command QPS and the CMC and are to be treated as homicides until otherwise determined.

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<sup>216</sup> At paragraphs 80 and 81

27. The QPS submission also notes that the CMC currently has the capability to assume responsibility for investigations into police related deaths by the QPS or to monitor such investigations closely. This is recognized in paragraph 3 of the MoU referred to above that requires that in the event of a death arising from a police related incident, the incident is to be investigated by ESC subject to the CMC exercising its power to assume responsibility for the investigation.
28. The CMC position that there is no agreement or Memorandum of Understanding between the Coroner, the Queensland Police Service and the CMC which provides for the CMC to be the sole investigator of any death in custody, nor has any such agreement ever been in place<sup>217</sup>, seems to be at odds with the terms of the MoU which grants power to the CMC to assume responsibility for such investigations.
29. I am grateful for the thrust of the constructive proposals put forward by the CMC in paragraphs 8 to 27 of its submission concerning the future investigation of deaths in police custody, in particular those which exhibit indicia of unnatural causes or which have occurred in the context of police actions or operations. I commend them to the Government. However, I am of the view that the CMC, as a specialist misconduct and anti-corruption body, is uniquely placed to deal with deaths in custody which may have resulted from police misconduct.
30. A death in custody involving police misconduct in a police watchhouse is particularly difficult matter to investigate because in the main, the only available witnesses are fellow police officers who may be imbued with what the Hon. G E Fitzgerald QC referred to as the '*Police Code*' in his landmark Report into police and public sector corruption in Queensland, namely, the *Report of a Commission*

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<sup>217</sup> Paragraph 3 of the CMC response.

*of Inquiry pursuant to Orders in Council [1989], and what I have referred to above as the 'police culture'* <sup>218</sup>:

*The unwritten police code is an integral element of police culture and has been a critical factor in the deterioration of the Police Force. It has allowed two main types of misconduct to flourish. A practical effect of the code is to reduce, if not almost to eliminate, concern at possible apprehension and punishment as a deterrent to police misconduct. The code exaggerates the need for, and the benefits derived from, mutual loyalty and support. The natural attraction of those characteristics for other members of the group has been exploited by the elite to its own advantage.*

*Under the code it is impermissible to criticize other police. Such criticism is viewed as particularly reprehensible if it is made to outsiders. Any criticism which does occur is kept under the control of those who have authority and influence within the Force. Any dissidents are able to be dealt with for a breach of the code, with the approval of other police.*

31. **Recommendation:** I recommend that the future investigation of deaths in police custody, which exhibit indicia of unnatural causes or which have occurred in the context of police actions or operations be undertaken solely or primarily by the CMC, as the specialist misconduct and anti-corruption body for the State of Queensland. To enable this to occur, I recommend that the CMC be resourced and empowered [by legislative fiat] to undertake the role.

## **The Conjoint Representation of Police Witnesses**

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<sup>218</sup> The Fitzgerald Inquiry (1987–89) Report, page 202

- Deaths in custody which may have been caused by police or other misconduct are particularly difficult to investigate. This stems from what the Hon. G E Fitzgerald QC referred to as the ‘*Police Code*’ referred to above.
32. From very early in the investigation of this matter, the Queensland Police Union of Employees arranged for the joint representation of all of the potential police witnesses – Hurley, Leafe, Steadman, **Robinson** and Bengaroo.
  33. Clearly, once it was known that there had been a violent confrontation between Hurley and Mulrunji, and that Mulrunji had died in custody shortly thereafter, the focus of any investigation was likely to be on the actions of Hurley. From the point of view of the administration of justice, Hurley and the other police officers should have been separately represented to ensure, in the words of the OPM quoted above, *that the integrity of independent versions of members directly involved and members who are witnesses to a police related incident is preserved as far as practicable.*
  34. The ability to maintain the integrity of investigations in the face of a Police Union push to jointly represent police witnesses had previously been fought and won by the National Crime Authority [NCA] and by the Criminal Justice Commission [CJC], the precursor to the CMC.
  35. In *National Crime Authority v A, B and D* (1988) 18 FCR 439, the NCA (‘the Authority’) was conducting a special investigation and for that purpose it held a number of hearings. Under the *National Crime Authority Act 1984 (Cth)* a witness at an examination had a right to be represented by a legal practitioner<sup>219</sup>. A witness was represented by a legal practitioner and that witness’s spouse also gave evidence and was represented by the same legal practitioner. It was proposed that the same practitioner would appear for three further witnesses. The Authority decided that the legal practitioner could not appear for the three proposed

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<sup>219</sup> S.25(4)

witnesses and the witnesses challenged the decision under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*. Their challenge was initially successful but failed on appeal to the Full Court of the Federal Court. The Court said<sup>220</sup>:

*‘A starting point for the consideration of the problem is the nature of the Authority and of its functions. It is concerned with investigating, either generally on its own initiative, or specially on references to it pursuant to ss 13 or 14 of the Act, a wide range of serious criminal activity, or suspected criminal activity, in the community. The powers it has are expressed in wide terms and it is clear that the legislature intended its powers to be extensive and far-reaching. Even without s 19 there could be no doubt, notwithstanding the provisions of s 25(4), that the Authority had power to regulate its own proceedings with a view to ensuring that they were not prejudiced, or exposed to the risk of being prejudiced, by the conduct of any person, whether involved in a hearing before it or otherwise.*

...

*We think that the essential nature of the Authority and the functions with which it has been entrusted, when considered along with s 19 of the Act, lead to the conclusion that the power exists. We also regard s 46(8) as a further factor reinforcing this conclusion. It may seem strange that a provision dealing with meetings of the Authority should be relevant to the problem, but s 25(3) expressly applies s 46 to hearings.’*

36. The decision in *A, B and D* was referred to with approval by the Queensland Court of Appeal in *Re Whiting* [1994] 1 Qd R 561. A firm of solicitors [Gilshenan & Luton who acted in these proceedings] was acting for a police officer who was the subject of a complaint under the *Criminal Justice Act 1989 (Qld)*, and for three police officers who were witnesses in the proceeding. The Chairman of the Criminal Justice Commission ruled that the same legal

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<sup>220</sup> At 446-447

representative would not be authorised by the Commission to represent both the potential witnesses and the officer against whom the complaint was made. An application to the Supreme Court challenging the order was dismissed.

Macrossan CJ said <sup>221</sup>:

*'I agree that in cases like the present the question is to be determined by examining the statutory function of the tribunal and the powers which have been conferred. Such an approach when adopted here leads to the conclusion that there is an implication (no express provision excluding it) that the Commission is empowered to conduct its proceedings so as to discharge in an effective fashion the function with which it has been entrusted. That is, the Commission will have an implied power to remove obstacles encountered which impede the effective discharge of its function. This does not mean it has an arbitrary power to override established rights, but where an obstacle is encountered in some procedural aspect which can be expected to be under the Commission's control, authority to act appropriately should be conceded.*

*A test determining the right of a tribunal to exclude a particular representative was arrived at in the Australian Securities Commission case, Lockhart J preferring a formulation of "will or likely to" rather than "will or may prejudice the investigation".*

*In the present case the risk of prejudice which was perceived by the Commission can be regarded as supported by the existence of reasonable grounds. In deciding whether reasonable grounds existed, any apparent loss of integrity of the Commission's proceedings in the eyes of the public would be relevant.*

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<sup>221</sup> At 568

*If, in its discretion, the Commission is seen to have acted in good faith to preserve the integrity of its processes when it has reasonable ground for so acting it should be conceded that it has the necessary implied authority.*

*There is no reason to doubt the good faith of the Chairman in the present case and there were reasonable grounds for him to think that the processes of inquiry would be effectively preserved and be seen to be preserved only if he refused the right of witnesses as well as the person under investigation to be represented by the same counsel. The good faith and a reasonable and substantial grounds test should be adopted to determine the extent of the Commission's right in the interests of procedural integrity to restrict the choice of legal representative in the present circumstances.'*

37. The vice which this power to deny joint representation to police witnesses aims to cure, was demonstrated in these proceedings.
38. On 8 December 2004, Constable Steadman was interviewed for the first time since the death of Mulrunji by Detective Sergeant Britton and Detective Inspector Webster of the CMC. Present at that interview was Mr Glen Cranny, a partner of Gilshenan & Luton, solicitors engaged pursuant to a retainer from the Police Union. Mr Cranny was also representing Senior Sergeant Hurley, Sergeant Leafe and Mr Bengaroo.
39. In describing the fall through the doorway of the police station it was clearly of the utmost importance that Steadman's unaided and uncontaminated account be recorded. When asked to describe the fall, Steadman replied, at first, that it "didn't look like a heavy fall". Mr Cranny intervened and queried his response, whereupon Steadman corrected his reply and said that it was a heavy fall.<sup>222</sup>

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<sup>222</sup> Exhibit D35.1, page 20.

40. The particular segment of the interview [which was tape recorded] was played to Constable Steadman during the hearing for his response. He maintained his corrected version that the fall was a heavy one. Steadman later conceded that a member of the public may perceive the arrangement for joint representation represented bias on the part of the participating police.<sup>223</sup>
41. Mr Cranny is a practitioner of integrity and competence. I note that in their submissions, both Counsel Assisting and Counsel for the Attorney-General, were at one on this point. However, I find that the practitioner was mistaken in believing that his personal representation on behalf of the Police Union of Mr Hurley and each of the other police officers did not represent a real potential for conflict of interest. From the point of view of the administration of justice, there was no community of interest between Hurley on the one hand, and Leafe, Steadman and Bengaroo on the other.
42. Steadman spoke of Hurley yelling somewhat abusively at Mulrunji after the fall; Hurley denied that this occurred. Steadman spoke of Hurley falling on top of Mulrunji; Hurley maintained that he fell beside him.
43. Leafe spoke of Hurley being shocked when he was hit by Mulrunji; Hurley only admitted to being “*a bit fazed, annoyed*”.
44. Bengaroo spoke variously of Mulrunji “*flopping down*”, Hurley falling on top of Mulrunji, then side by side, then on one knee; Hurley maintained that he fell beside Mulrunji.
45. I agree with the submission of Counsel Assisting, that Mr Cranny should never have been put in the situation. The CMC, whose investigators conducted the interview, should have recognised at an early time the clear potential for conflict and robustly required separate representation for Hurley and the other police

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<sup>223</sup> Transcript page 3-39.

witnesses, ideally, separate representation for each witness, given the variations in their recollections. I appreciate that to some extent the tyranny of distance may have played a part in the thinking of Mr Cranny and the CMC. His firm is based in Brisbane and the interviews took place in Townsville. The result, however, is that the public is left with the perception that the effectiveness of the investigation of such a serious matter was fundamentally flawed.

46. The CMC's response to Counsel Assisting's submissions on this issue appears to miss the point when it maintains that<sup>224</sup> *“Following participation in an interview, each of the police officers interviewed were then required to attend a public Coronial Inquest and were cross-examined by a range of parties. Any suggestions of witnesses being ‘coached’ or ‘persuaded’ during an interview could have been fully ventilated during that inquest.”* By the time a coronial hearing is held, versions have been given and positions taken, and experienced witnesses such as police officers are unlikely to be readily shaken in their accounts at that point.
47. It is the initial account taken independently of QPS investigators that is most likely to be uncontaminated and to yield the truth. It is at this point that independent legal representation is vital.
48. At paragraph 28 (d) and (e) of the CMC's submission appears the following:-
  - (d) It is not suggested that the legal practitioner who represented the police officers interviewed, engaged in any unethical practice by representing more than one police officer.
  - (e) The need for the relevant police officers to be separately represented has not been identified.

It is not the case of objecting to a particular practitioner; who may well be beyond reproach, it is the case of not allowing one practitioner to represent both the main actor and the eyewitnesses where the potential for conflict is manifest.

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<sup>224</sup> Paragraph 28(c)

As the Full Federal Court pointed out in *National Crime Authority v A, B & D* (1988) 33 A Crim R 270 at 278, the concern does not necessarily arise from any intentional or reckless wrongdoing by a legal practitioner:

*‘What the Authority feared was that a legal practitioner anxious to do his duty to his clients might, quite unintentionally, perhaps subconsciously, reveal to one or more of the respondents matters which would forewarn them of what they might expect to be asked. That is the sort of risk which concerned the Authority and which persuaded it that it should refuse to allow the legal representative to appear’*

49. The need for the relevant police officers to be separately represented was identified by reference to the conflicts in the varying accounts as set forth above.
50. I do not necessarily agree with the CMC’s response that<sup>225</sup> *“Neither the CMC nor a police officer seconded to the CMC has any power, to exclude a legal representative from being present at an interview.”* As noted above, the Full Federal Court in *National Crime Authority v A, B and D* (1988) 18 FCR 439 referred, *inter alia*, to the fact that:

*...the Authority had power to regulate its own proceedings with a view to ensuring that they were not prejudiced, or exposed to the risk of being prejudiced, by the conduct of any person, whether involved in a hearing before it **or otherwise**.* [emphasis added]

51. Further, Macrossan CJ in the Queensland Court of Appeal in *Re Whiting* [1994] 1 Qd R 561 at page 568 observed:

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<sup>225</sup> Paragraph 28(f)

*'I agree that in cases like the present the question is to be determined by examining the statutory function of the tribunal and the powers which have been conferred. Such an approach when adopted here leads to the conclusion that there is an implication (no express provision excluding it) that the Commission is empowered to conduct its proceedings so as to discharge in an effective fashion the function with which it has been entrusted. **That is, the Commission will have an implied power to remove obstacles encountered which impede the effective discharge of its function.** This does not mean it has an arbitrary power to override established rights, but where an obstacle is encountered in some procedural aspect which can be expected to be under the Commission's control, authority to act appropriately should be conceded.*  
[emphasis added]

52. I accept and support the suggestion set forth in 28 (g) of the CMC submission that *“If it is considered desirable to establish a protocol requiring separate legal representation for witnesses who may be interviewed, the Coroners Act 2003 should be amended to empower the State Coroner to make a lawful guideline to this effect which is binding upon legal practitioners and witnesses who are involved in a Coronial investigation”*. I do agree that in this regard the Coroner should have control over the effectiveness of investigations being conducted by or behalf of his/her Office.
53. In this regard I note that in *Re Whiting*<sup>226</sup> Pincus JA observed:

*'Here, we have solicitors representing persons supposed to be witnesses to the conduct complained of, and representing as well the same person against whom the complaint is made. The case is not the same as, but may be compared with, a firm's accepting instructions to protect the interests of a witness called in a prosecution while also acting for the accused. In that situation, there must be, or at least appear to be, an enhanced risk that in attempting to fulfil their duties to*

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<sup>226</sup> Supra at page 573.

*the person the subject of the complaint the solicitors might make the investigation less effective than it would otherwise be'*

54. In this regard I also note the precarious position of legal practitioners representing different witnesses in contentious matters; they are under an ethical duty to fully inform each client about matters within their knowledge which may affect their individual clients' interests.
55. **Recommendation:** I recommend that the CMC in future cases gives closer consideration to insisting upon separate legal representation for police witnesses in serious contentious matters where evidence may be in conflict, or where the testimony of one officer may inadvertently influence the account of another officer, because of an unwitting disclosure by a common legal representative. If the Chairman considers that a legislative framework is needed, as described above, I would recommend such legislation to the Government.

### **Final Submission of behalf of PIAC**

56. During this Inquest, the long recognized difficulties that may be experienced in communication between Aboriginal and non-Aboriginal people have been manifest. On occasion, communication between legal representatives and Aboriginal witnesses was quite unclear. For this reason, an Aboriginal support officer, Ms Lisa Watson, was made available to the Aboriginal witnesses who gave evidence at the Inquest.
57. However, it is noteworthy that, no interpreters or Aboriginal support officers were used by police in speaking to any of the witnesses in the course of the investigation of the death in custody.

58. In the circumstances, I agree with, and support, the following recommendations for Coroner's Comments under section 46 of the Act made by counsel on behalf of the Palm Island Aboriginal Council [PIAC], namely:

**Paragraph 14:**

*'Local Community Justice Groups comprised of elders and trusted members of Indigenous communities should be established/maintained in Indigenous communities. Questioning of Indigenous witnesses should be undertaken in the presence of members of the Community Justice Group and questioning of witnesses should be delayed until a member of the Community Justice Group is available. Police and other investigative officers should be trained or regularly re-trained on the appropriateness of indirect questioning and alerted to the nuances of silence, gratuitous concurrence and avoidance of eye-contact when questioning Indigenous witnesses'*

**Paragraph 20 to the following extent:**

*'That counselling services be provided to witnesses involved in the Coronial process. Further, that the availability of counselling services should be made known to each witness and should be directly offered to each witness before and after they give evidence'*

**The Comments of the DSC in the Original Inquest**

59. I note that the DSC, in compiling the Findings of Inquest in respect of the original Inquest, broadly supported the written submissions of the Human Rights and Equal Opportunity Commission. The DSC adopted each of the 40 submitted comments, with minor amendment, in her section 46 comments at pages 28 and following of her report.

60. 57. I desire to record my broad agreement with the adopted comments of the DSC.

I wish to express my appreciation of the valuable assistance given by Counsel Assisting Mr Ralph Devlin SC and also his junior Mr. Mark LeGrand.

I also thank all counsel or solicitors appearing for the parties for their helpful submissions and for making themselves available to ensure that the re-opened inquest was completed within a reasonable timeframe.

Thank you especially to the coroners clerk Mr Daniel Grice who needed to ensure that the venues were available and that all recording equipment, exhibits and other materials were available at all times.

The inquest is now closed.

**BP Hine**  
**Coroner**  
**14<sup>th</sup> May 2010**