

**PALM ISLAND DEATH IN CUSTODY
CAMERON DOOMADGEE**

**REPORT BY
SIR LAURENCE STREET, AC KCMG QC**

At about 11.00a.m. on 19 November 2004 Mr Cameron Doomadgee, whom I shall refer to by his tribal name Mulrunji, an indigenous resident of Palm Island aged 36, was found dead in a cell in the Palm Island Police Station. The Acting State Coroner described him as a fit, healthy man who lived with his partner of some ten years. He was not a troublemaker and had never previously been arrested on the Island.

The cause of death has been established by medical evidence as abdominal hemorrhage from a sundered (almost severed) liver and a torn portal vein. The evidence, which I detail later, establishes that these injuries were suffered while Senior Sergeant Hurley, having earlier arrested Mulrunji, was attempting to take him from a police vehicle to a cell.

The events of 19 November 2004 were exhaustively examined in an inquest before the Acting State Coroner. The evidence, most of the exhibits and the Finding of the Inquest delivered on 27 September 2006 were referred by the Attorney General to the Director of Public Prosecutions "for consideration of firstly whether any further evidence needs to be gathered, and secondly, whether the available evidence may warrant the institution of criminal proceedings against any person."

The Director of Public Prosecutions considered the material received from the Coroner's Office and some additional material obtained by her and reached the conclusion that "the only satisfactory explanation for the fatal injury was an accidental fall." The Director of Public Prosecutions accordingly declined herself to institute any criminal proceedings. There remains, however, power in the Attorney General to present an ex officio indictment¹.

On 4 January 2007 I was retained by the Attorney General to review the material considered by the Director of Public Prosecutions, the evidence given to the Coroner's Inquest and the Finding of that Inquest and to determine:

¹ *Director of Public Prosecutions Act 1984, s.10, Attorney General Act 1999, s.7(1)(a).*
233 Macquarie Street Sydney 2000 Australia

1. Whether sufficient admissible evidence exists to support the institution of criminal proceedings against any person with respect to the death of Mulrunji; and
2. Whether a reasonable prospect of conviction before a reasonable jury exists in the event a prosecution is brought against any person.

My answers to these questions, for reasons that I shall develop, are:

1. Yes, sufficient admissible evidence exists to support the institution of criminal proceedings against Senior Sergeant Christopher Hurley for the manslaughter of Mulrunji; and
2. Yes, there is reasonable prospect of conviction before a reasonable jury.

Before I proceed to recount the narrative and to state my reasons it is important to make it abundantly clear that it is not within my province to determine any question of guilt. Constitutionally that is the exclusive province of the criminal justice system. My task is quite rightly and necessarily limited to the question, shortly expressed, of whether Senior Sergeant Christopher Hurley should be put on trial before a jury for manslaughter². It is also not my function to sit in judgment of the decisions of either the Director of Public Prosecutions or the Acting Coroner.

I turn, then, to the narrative and the reasons for my answers to the two questions asked of me.

The narrative commences with the arrest of Mulrunji by Senior Sergeant Christopher Hurley who had been the officer in charge of the Palm Island Police Station since 22 November 2002. This is substantially non-contentious and I shall quote from the Acting State Coroner's Finding:

"On the nineteenth of November 2004, the day that Mulrunji died, there had been some problems for three indigenous women who lived on Palm Island. Sisters Gladys, Andrea and Anna Nugent claimed Gladys' de facto husband, Roy Bramwell, had assaulted them all. One was so badly injured she was airlifted to the Townsville Hospital for medical treatment.

² Given the absence of any evidence of an intention by Senior Sergeant Hurley to kill or do grievous bodily harm to Mulrunji (Criminal Code s.302), manslaughter is the correct charge.

Senior Sergeant Christopher Hurley, who was the officer in charge on the island, attended the Palm Island Hospital to investigate the women's complaints. At the completion of initial inquiries, Gladys Nugent asked Senior Sergeant Hurley to help her obtain her medication from the Bramwell house in Dee Street and drop both sisters home. She was fearful of more confrontation and the risk of injury at the Bramwell house...

Senior Sergeant Hurley agreed to assist Gladys Nugent and together with Police Liaison Officer Lloyd Bengaroo, he drove her to Dee Street in the police vehicle. The vehicle was a Toyota dual cabin Hilux with a modified security cage at the rear. Both men were in police uniform.

Gladys Nugent went inside to retrieve her medication. A young man, Patrick Bramwell, was outside the house and clearly intoxicated. He was swearing at the police and his grandmother complained to the police about his behaviour. Senior Sergeant Hurley arrested him.

Police Liaison Officer Bengaroo told investigating police that Mulrunji had been walking past when Patrick Bramwell was being arrested. The two men knew each other. Mulrunji commented directly to Lloyd Bengaroo, challenging him as to why he should help lock up his own people. The indication was that Mulrunji was intoxicated. Lloyd advised him to walk down the road or he too would be locked up. When Senior Sergeant Hurley got back to the car he asked Bengaroo what the person had said – he clearly had not heard the conversation. When Bengaroo's account was given, Hurley's response was that he would lock him up. The only additional "event" was that having walked off down Dee Street, Mulrunji turned and swore at the police officers. Senior Sergeant Hurley then drove down to where Mulrunji was standing and arrested him...

After dropping off Gladys Nugent, Senior Sergeant Hurley drove to the garage area at the rear of the police station with Lloyd Bengaroo in the passenger seat. Patrick Bramwell and Mulrunji were in the rear cage area..."

From this point on the narrative of the course of events is clouded to some extent by conflicting recollections but the main sequence is established by admissible evidence of adequate cogency and clarity to be reasonably put before a jury.

Mulrunji was intoxicated and had resisted being placed in the back of the police van. Whilst locked in the back of the police van he had been angrily

asserting his innocence of any conduct justifying Senior Sergeant Hurley arresting him. After pulling up in the garage area Senior Sergeant Hurley alighted from the police vehicle and opened the rear door of the cage to bring Mulrunji out. In the meantime Lloyd Bengaroo had opened the door leading into the police station from the garage area so that Senior Sergeant Hurley could bring Mulrunji inside. Mulrunji refused to leave the cage voluntarily and Senior Sergeant Hurley and Sergeant Leafe, who had come to assist, had to forcibly drag him out. This further angered Mulrunji and he struck Senior Sergeant Hurley in the face. It was not a hard blow but Senior Sergeant Hurley said it surprised him.

What happened next could well be regarded by a jury as of some significance. A woman standing nearby, Mrs Florence Sibley, gave a description in a statement dated 21 November 2007. Mrs Sibley gave evidence at the inquest and was strongly cross examined. Her account is plainly admissible and could well be regarded by a jury as significant. I quote from her statement to police:

"I then saw Lloyd BENGAROO and Chris get out of the police car and I saw Chris open up the cage of the police car. When he opened up the cage I saw that Cameron was swearing and very abusive towards Chris. He was drunk. When Chris opened up the cage of the police car I saw Cameron punch Chris in the face and then Chris grabbed Cameron and pulled him out of the car. He pulled him out of the car by grabbing onto his feet 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.

When 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. I saw that Chris punched Cameron one in the side near his hip area. The punch hit Cameron on his right side near his hip area. The two police then dragged Cameron into the police station through the door near the police car and dragged him inside. I can not remember who opened the door. When they got Cameron in the police station the door was closed and I did not see anything else. I do not know who closed the door. When the police were dragging Cameron into the police station he was yelling out to "Fuck off" and swearing at the police..."

The Acting State Coroner commented on the oral evidence given by Mrs Sibley at the Inquest:

"The overall impression was that she was truthful. She clearly displayed a negative reaction to the fact that Mulrunji was resisting the police officer and did not appear to be showing bias against the police. She stated the language she heard Mulrunji use to the police officer. She stated she did not see whether Senior Sergeant Hurley had formed a fist when she says he hit Mulrunji. There was variation in the exact description of the contact she says was initiated by Senior Sergeant Hurley to Mulrunji. The first description had been a *"jab to the hip"* whereas under cross examination she responded to Mr Zillman that it was more an underarm motion. Despite some persistent questioning and her obvious physical and emotional discomfort in giving evidence, she maintained that Mulrunji was *"....standing up when Chris hit him"*.

She also maintained that Mulrunji had been making a hell of a noise before he was hit by the Senior Sergeant and that she heard nothing from Mulrunji after that blow. She clarified that she heard him singing out again after he was inside. Mr Callaghan SC, for the family, asked Mrs Sibley about Senior Sergeant Hurley's reaction when Mulrunji hit him. She said Chris must have got wild *"...cos Cameron punched him in the face"*.

She went on to explain, *"Cause I can seen Chris' face, he – you know, he wasn't happy after Cameron hit him in the face, you know. I just seen what I seen."*

It is of course a jury question to determine what happened including assessing Mrs Sibley's credit. The Acting State Coroner's comments justify my attaching relevance to it as material that can responsibly be put before a jury. It is open to a jury to conclude that Senior Sergeant Hurley struck Mulrunji near his right hip after dragging him from the police vehicle and in the course of being dragged into the police station.

A jury could well conclude that a blow as described by Mrs Sibley was struck by Senior Sergeant Hurley but the medical evidence negates such a blow as a possible cause of the fatal sundering of Mulrunji's liver. At the same time, if it occurred, it is a relevant, but not indispensable, element in an overall continuous physical encounter between Senior Sergeant Hurley and Mulrunji, commencing when Mulrunji, whilst physically resisting, was placed in the police van, continuing when he was forcibly dragged out of it, escalating when the two men struck each other, and culminating when, after being dragged through the door of the police station, there was an interaction that caused the two men to fall to the floor.

The Acting State Coroner's report in the extract I have quoted notes that Mulrunji "had been making a hell of a noise before he was hit by the Senior Sergeant and that she heard nothing from Mulrunji after that blow" until after he was inside. A jury might conclude that the blow, if it was struck, temporarily silenced Mulrunji perhaps by winding him. The matter is one for a jury whose province it is to consider what, if any, significance attaches to it. I repeat the blow, if it occurred, is ruled out by the medical evidence as playing any causative part in the fatal injury. But a jury could well find that the blow, if it occurred, manifests a degree of anger or animosity on the part of Senior Sergeant Hurley and also that it was effective to silence Mulrunji temporarily.

I come then to the critical, final incident in this continuing chain of physical interaction commencing with the arrest and ending in the fatal injury sustained by Mulrunji. At this point the medical evidence could be regarded as of crucial significance. It is conveniently summarized in the DPP's memorandum entitled "The Case Against Chris Hurley For The Death Of Cameron Doomadgee". I quote together with footnotes from the section headed The Liver Injury but the footnote numbers follow sequentially from earlier footnotes in this report:

- All doctors agree that the one application of force could have both fractured the ribs and torn the liver and the portal vein. Dr Lampe went so far as to say that a single blow was in fact the most likely scenario³.
- The most common cause of liver rupture is a blow or kick⁴ but in Mr Doomadgee's case the absence of surface injuries meant there was no physical indication of stomping or punching or any direct force.⁵ (The absence of physical evidence however does not exclude the possibility of punching or stomping).
- Penny Sibley and Roy Bramwell refer to a punch or punches thrown by Hurley. Impact punches are an unlikely explanation for the injuries⁶. Dr Ranson went even further to assert that those witness descriptions of assault do not account for the fatal injuries⁷.

³ Transcript 635.20. See also Ranson's statement at P8[16]; "Dr Lynch observed that a single forceful blow to the lower ribs while the back was immobilized could have caused both the liver and rib injuries, if Mr Doomadgee was on his back or left hand side.", Lynch's statement P6; Transcript P648.12.

⁴ Ranson's statement P9.20.

⁵ Lampe's autopsy report p8; Ranson's report p 5 (j).

⁶ Ranson's statement 17[46]; Lampe Transcript 638.15.

⁷ Ranson's statement 15 [41]; 17 [44].

- All three doctors called at the inquest favoured a knee over a fist as the mechanism for the fatal injury. This was because of the concentrated force that could be brought to bear on the knee if the weight of the body was brought down fast upon it.⁸
- The fatal injury could have been caused by a knee deliberately applied in a dropping motion; or it could have been accidentally inflicted if a knee was caught up in the two men's fall. All three doctors agreed that a complicated heavy fall by the two men, with Hurley connecting hard onto Mr Doomadgee, could have caused the liver injury.⁹
- Dr Lampe concluded under cross-examination at p 634: *'I believe that he sustained his injuries as part of this fall involving both parties at the watch house. I sort of came to that conclusion at the time of the autopsy and really my opinions haven't particularly changed at this point in time.'*...
[emphasis in original]

It is clearly open to a jury to conclude that the fatal injury was suffered by Mulrunji contemporaneously with or shortly after finishing up prone with his back immobilized on the concrete floor. If that is so then the fatal injury has in fact been caused by Senior Sergeant Hurley as he was the only person present. The critical question is whether there is evidence capable of proving that the fatal injury was inflicted by a deliberate blow by Senior Sergeant Hurley¹⁰ so as to justify a charge of manslaughter against him. It should be noted that Dr Lampe's conclusion¹¹ was reached without reference to Senior Sergeant Hurley's interviews referred to later.

There is no direct, eyewitness account of his inflicting on Mulrunji the fatal injury. Constable Steadman provides some evidence that after the fall in the police station Senior Sergeant Hurley appeared to be on top of Mulrunji but this hardly explains how Senior Sergeant Hurley's knee caused the damage. The case against him is circumstantial. In interviews between investigating police and Senior Sergeant Hurley in the days following the death Senior Sergeant Hurley denied falling upon Mulrunji and denied assaulting him. The interviews contain no explanation as to how Mulrunji, while in the custody of Senior Sergeant Hurley, was so very seriously injured. A jury could well find that the only rational inference that can be drawn as to the fatal injury is that it was inflicted by Senior Sergeant Hurley deliberately kneeling Mulrunji in the upper right abdominal area immediately after the fall while Mulrunji was lying on the concrete floor. As

⁸ Lampe T 638; Ranson 646; Lynch 646. Other references were made to the size of the area of injury assuming the ribs and liver damage were caused simultaneously, and the absence of bruising.

⁹ Lynch T646.22, Lampe 646, Ranson statement 5 [4] (f), (g).

¹⁰ Such that accident (Criminal Code s.23) can be negatived.

¹¹ The passage set out above from the DPP's memorandum.

a straw in the wind it might be noted that a deliberate punch by Senior Sergeant Hurley in this area of the body outside the police station had been effective to silence Mulrunji temporarily.

In summary the course of the narrative, of which there is credible admissible evidence, encompasses a related sequential series of events manifesting an increasing degree of physical conflict between Senior Sergeant Hurley and Mulrunji culminating in the death of Mulrunji. The series was:

- (a) the arrest of Mulrunji by Senior Sergeant Hurley and, against his resistance, placing him protesting vigorously in the cage in the back of a police van.
- (b) on arrival at the police station the forcible removal by Senior Sergeant Hurley of Mulrunji, still protesting and struggling to resist being taken out of the cage.
- (c) Mulrunji striking Senior Sergeant Hurley in the face.
- (d) Senior Sergeant Hurley striking Mulrunji above the right hip.
- (e) Mulrunji still protesting and struggling being dragged across into the police station by Senior Sergeant Hurley.
- (f) when inside the police station the two men falling to the floor.
- (g) contemporaneously with or immediately after his hitting the floor Mulrunji sustaining a heavily compressive force in the upper right of the abdomen breaking four ribs, tearing his liver nearly in half and tearing his portal vein causing a fatal hemorrhage into the abdomen.

A jury could well conclude that the injury was inflicted by Senior Sergeant Hurley's knee and that there is no reasonable hypothesis of how the injury was sustained that is consistent with innocence, that is, an accident.

In view of the importance of the elements that could be accepted by a reasonable jury as reasonably making a circumstantial case for manslaughter against Senior Sergeant Hurley I shall set out a list of the relevant elements. Although repetitive in some respects of what I have written out above, this list will assist in bringing together strands in the narrative relative to a case of manslaughter.

List of Circumstantial Elements

1. Mulrunji resented Senior Sergeant Hurley arresting him in Dee Street; he resisted being forcibly placed in the police vehicle and there was animosity between them.
2. Once at the police station Mulrunji resisted Senior Sergeant Hurley's attempts to drag him from the police vehicle and to take him into the station.
3. During the struggle Mulrunji struck Senior Sergeant Hurley in the face. This annoyed Senior Sergeant Hurley and also surprised him.
4. Senior Sergeant Hurley punched Mulrunji in the side of his body and temporarily quietened, but did not subdue, him.
5. The struggle continued to the door of the police station and when inside the door both Senior Sergeant Hurley and Mulrunji fell to the floor.
6. Only Senior Sergeant Hurley and Mulrunji witnessed what occurred in the police station when they fell to the floor¹².
7. The medical evidence establishes:
 - (a) Mulrunji's death was caused by an injury caused by a very significant application of force to Mulrunji's upper abdomen;
 - (b) The injury was most probably caused by Senior Sergeant Hurley's full weight behind his knee;
 - (c) The injury was sustained in the short period between the entry into the police station and Leafe seeing Mulrunji passive on the floor;
 - (d) The injury was consistent with a fall (provided that in the fall Senior Sergeant Hurley's knee fell forcefully into Mulrunji's upper abdomen), or a deliberate kneeing almost contemporaneously with Mulrunji hitting the floor.
8. Logically then, the only two possible causes of the injury are:

¹² There are difficulties relying upon the evidence of Roy Bramwell, and while a prosecutor may call him at any trial, I need not refer to his evidence.

- (a) an accidental application of force by Senior Sergeant Hurley's knee in the fall; or
 - (b) A deliberate kneeing by Senior Sergeant Hurley contemporaneously with or immediately after the fall.
- 9. Constable Steadman saw the feet of Senior Sergeant Hurley and Mulrunji immediately after the fall and believes that Senior Sergeant Hurley was on top of Mulrunji.
- 10. The evidence of Constable Steadman does not explain the injury as it does not explain how Senior Sergeant Hurley's knee came to impact upon Mulrunji's abdomen.
- 11. There was opportunity for Senior Sergeant Hurley to knee Mulrunji deliberately either contemporaneously with or in the period immediately after the fall and before Sergeant Leafe's arrival and in that period of time there were no other credible witnesses with a view of the area inside the door.
- 12. As Senior Sergeant Hurley was the only other participant in the events in the police station immediately after the fall, the circumstances call for explanation¹³.
- 13. Within days of the death Senior Sergeant Hurley gave two (admissible) interviews in which he:
 - (a) Gave a detailed account of the fall and in which he said that he did not fall onto Mulrunji;
 - (b) Denied applying any force which could explain the injury to Mulrunji.
- 14. If Senior Sergeant Hurley's evidence that he did not injure Mulrunji in the fall is accepted as true, then the jury can infer that he otherwise deliberately kneed Mulrunji immediately after the fall.
- 15. If Senior Sergeant Hurley fell with his full weight kneeing Mulrunji in the abdomen then Senior Sergeant Hurley would have known that fact.
- 16. Senior Sergeant Hurley's interviews, to the extent that they deny any contact between him and Mulrunji capable of inflicting the injury:

¹³ Weissensteiner v R (1993) 178 CLR 217; Azzopardi v R (2001) 205 CLR 50.

- (a) Are factually incorrect; and
 - (b) Could be considered by a jury to be untruths told out of a consciousness of guilt and fear of the truth¹⁴.
17. Senior Sergeant Hurley did not know when he participated in the two interviews that the medical evidence was such that the injury must have been sustained between the time he and Mulrunji entered the police station and the time when Sergeant Leafe saw Mulrunji passive and on the floor.
 18. An overall circumstantial element that a jury could take into account is that Senior Sergeant Hurley had overpowered Mulrunji and dragged him into the police station where, while under the physical domination of Senior Sergeant Hurley, but nevertheless still struggling and protesting, Mulrunji fell on to the concrete floor where he received a massive thrust in his upper abdomen which inflicted a fatal injury and which silenced and disabled him so that he was able to be put into a cell without further difficulty. A jury might think it strange that Senior Sergeant Hurley was so totally lacking in concern as to the reason for this sudden change in Mulrunji unless Senior Sergeant Hurley had consciously and deliberately caused it to subdue him – possibly by winding him.
 19. The circumstantial case leads to the inference that Senior Sergeant Hurley kned Mulrunji when the two fell in the police station probably to subdue him (which was probably also the intention of the blow witnessed by Mrs Sibley) and Mulrunji was thereby fatally injured by the time Sergeant Leafe saw him in a passive state on the floor in the police station. The jury could draw this conclusion simply by accepting as true Senior Sergeant Hurley's statements that Mulrunji was not injured in the fall, thus leaving open an unexplained application of severe force by Senior Sergeant Hurley as the only rational inference. Alternatively, a jury might draw the inference against him because his interviews do not at all explain the very serious injuries which were obviously suffered while Senior Sergeant Hurley was present with Mulrunji in custody.

Determination

For the foregoing reasons my findings, as stated earlier in the Report, are:

¹⁴ *Edwards v R* (1993) 178 CLR 193 and *Zoneff v R* (2000) 200 CLR 234.

1. Yes, sufficient admissible evidence exists to support the institution of criminal proceedings against Senior Sergeant Christopher Hurley for the manslaughter of Mulrunji; and
2. Yes, there is reasonable prospect of conviction before a reasonable jury.

In conclusion I should like to place on record my appreciation of the professional assistance I have received from Senior and Junior Counsel and the administrative support that has been made available to me by the Deputy Crown Solicitor (Public Law) and his staff.

DATED this 25 day of January 2007

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Sir Laurence Street AC KCMG QC

Counter Signed

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Peter Davis, SC

.....
Jonathan Horton, Barrister