

In the Coroners Court of Western Australia

At Perth

In the Inquest into the death of Julieka Ivanna Dhu ('Ms Dhu')

Before State Coroner Ros Fogliani

Outline of Submissions of the Deaths in Custody Watch Committee WA (Inc) ('the Committee') in support of the Family of Ms Dhu's Application for the Public Release of CCTV Footage

1. Introduction

The Committee seeks the Court's leave pursuant to s.41 of the Coroners Act 1996 ('the Act') to make submissions in support of the application by Ms Carol Roe and Ms Della Roe ('Ms Dhu's Family') for the release of the CCTV depicting her treatment in Western Australian police custody and at the South Hedland Health Campus.

The Court has granted the Committee limited leave to file final written submissions dated 19 May 2016 in Ms Dhu's inquest.

The Committee has a special, direct and enduring interest¹ in the public transparency and prevention of the mistreatment and neglect that Ms Dhu was subjected to in police custody and the prevention of further deaths in custody.

The Committee's submissions do not significantly duplicate those made by the Family of Ms Dhu or the media. They are concise, relevant, probative and of assistance to the Court in the determination of the application and thus leave should be granted to accept these submissions and to have them supplemented by brief oral submissions on the 28th September 2016 if these would assist the Court.

The CCTV evidence is the best and most objective evidence of the treatment of Ms Dhu in police custody. It depicts her extreme suffering and abject treatment by the Police.

Evidence given at Ms Dhu's inquest by Constable Matiar indicated that her treatment was not outside the norm of how prisoners were treated and how the lockup at South Hedland operated.²

The Committee is mandated to work to ensure the prevention of deaths in custody in Western Australia, the protection of fundamental human rights and the comprehensive implementation of the three hundred and thirty nine recommendations of the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC').

The CCTV is critical to assessing whether any of the RCIADIC recommendations and findings were being implemented at the time of Ms Dhu's death and understanding how this could remain the reality twenty five years since the final report of the RCIADIC on 15 April 1991, eight and a half months before Ms Dhu's birth.

¹ See *Levy v State of Victoria* (1997) 146 ALR 248

² Transcript page: 1531, Constable Matiar cross-examined by Mr Quinlan QC, Senior Counsel for the Carol and Della Roe.

2. Objectivity of evidence and the public interest

Health staff and police have given testimony in relation to the death in custody of Ms Dhu. Their evidence is “subjective”. It presents the viewpoint of the health staff and police staff who failed to care for Ms Dhu. This testimony is on the public record and, without the CCTV footage released to counter it, this testimony will become the only version available to the public of what happened to Ms Dhu.

The CCTV footage reveals the extent of the degrading treatment she was subjected to. Much of the CCTV footage appears to contradict the health staff and police testimony. If Ms Dhu’s voice is to be heard in this inquest, the CCTV footage must be released.

The Committee submits that the release of the CCTV is fundamental to the public transparency of the coronial investigation and inquest into Ms Dhu’s death. Its release is critical to the Family’s and the wider Aboriginal and non-Aboriginal Community’s confidence in the transparency and integrity of the inquest process.

Only if the CCTV is publicly released can the Aboriginal and broader Western Australian, Australian and International community witness and properly assess the treatment that Ms Dhu was subject to in police custody.

Consistent with the principles of open justice, the release of the CCTV is critical to fully informing and galvanising governments and the wider Western Australian and Australian community to confront and address the systemic structures and factors that culminated in Ms Dhu’s death in custody.

The broadcast on 26 July 2016 of the ABC 4 Corners program: ‘Australia’s Shame’³ extensively utilised CCTV footage from the Don Dale Detention Centre. The immediate instigation of a joint Commonwealth and Northern Territory Royal Commission into the Child Protection and Youth Detention Systems of the Government of the Northern Territory in reaction to the program is testament to the importance of public exposure of the treatment of people in custody everywhere.

It is acknowledged by the Committee that the release of the CCTV footage will not show the South Hedland Police in a positive light. However, the Committee submits that it is only through public exposure that the police in South Hedland will be compelled to address relevant operations and modify them to adopt systems, which have a sufficient level of propriety to engender respect from the community they are charged with protecting.

3. The Protection of Ms Dhu’s Privacy and Dignity

Ms Dhu was subjected to prolonged, cruel, inhumane and degrading treatment and neglect while in the care and custody of Western Australian police (‘the Police’) and care of local hospital staff.

Ms Dhu was never treated consistently with her status as the victim of severe domestic violence who was continuing to suffer from significant injuries that contributed to her death.

³ Available at: <http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm>

Ms Dhu was afforded very little privacy in police custody. She was largely isolated, relentlessly disbelieved and treated with indifference.

At no time did Ms Dhu act contrary to her own dignity.

It was the Police's conduct that caused Ms Dhu's dignity and privacy to be completely violated and disregarded.

The committee submits that the continuing suppression of the CCTV evidence does not protect Ms Dhu's dignity and privacy but instead, it only continues to protect the conduct of the police from full public knowledge and examination.

The Committee submits that it is not in the public interest to keep secret or minimise from the greatest degree of public examination possible, the prolonged conduct of police towards Ms Dhu which is seen in the objective and best evidence available being the CCTV evidence.

4. The Protection of Ms Dhu's Family and Community

Both the Dhu and Roe families, after significant personal consideration, requested that your Honour release the CCTV publicly.

Prior to her death, throughout the coronial investigation and inquest, and since the end of the hearing, Ms Dhu's family have been highly principled and relentless in their defence of Ms Dhu's dignity, her human rights and in their search for truth and answers for her death.

Ms Dhu and her best interests remain at the centre of all their lives.

The Court did not seek or hear evidence that the suppression of the CCTV evidence would in fact protect Ms Dhu's family from future trauma and distress.

The Court did not hear evidence as to the real impacts of the continuing suppression of the CCTV evidence for Ms Dhu's Family, her Yamatji community and the wider Aboriginal community.

Since 23 March 2016, Ms Dhu's family have been clear in respect to the impact of the continuing suppression of the CCTV.

Ms Carol Roe, who raised Ms Dhu from the age of two years, told the ABC Law Report⁴:

Damien Carrick: "How do you think Australians would respond if they saw that footage?"

*Carol Roe: They'd know what we've got to put up with all our life. The whole of Australia, the whole of the world."*⁵

⁴ ABC Radio National Law Report: "Shameful statistics: black deaths in custody", 12 April 2016. Transcript available at: <http://www.abc.net.au/radionational/programs/lawreport/markings-25-years-since-rc-into-black-deaths-in-custody/7315132#transcript>

⁵ See also SBS/NITV: "Release Ms Dhu's final hours on CCTV: Grandmother" - The grandmother of an Aboriginal woman who died in WA Police custody says she wants CCTV footage of her granddaughter's final hours released to the media in its entirety. 21 September 2016. Available at: <http://www.sbs.com.au/nitv/article/2016/09/16/release-ms-dhus-final-hours-cctv-grandmother>

Ms Dhu's uncle, Mr Shaun Harris, has also stated in relation to the suppression of the CCTV⁶:

"It's traumatising yes, but it still needs to be put out there," he said.

"They can't hurt us anymore, but they can traumatise us more by still holding back the truth.

"There will never be any justice unless there is truth and accountability.

"The footage of the CCTV release would not be violent or harsh backlash, it would be deserved attention on the whole issue of my niece and black deaths in custody."

Ms Dhu's family's wishes for the release of the CCTV have also received acknowledgement and support in the Commonwealth Senate by way of a motion that passed on 31 August 2016⁷.

Ms Dhu's Family has sat through the entirety of her inquest hearing, repeatedly viewing and reviewing every aspect of the CCTV evidence. Her close and extended family are intimately aware of the nature of Ms Dhu's degradation portrayed therein. The publication of the CCTV will only confirm to the wider community what Ms Dhu was subject to, and what they as a family have and will continue to endure.

Similarly the larger Aboriginal community, including the Elders of the Community, made up of diverse and sovereign Aboriginal nations and peoples, is acutely and unrelentingly aware of the nature and impact of deaths in custody and custodial violence and neglect. It is an ever-present lived experience, especially in Western Australia, because of the failure to end deaths in custody.

The fact that the hearing of this application is occurring on the thirty-third anniversary of the killing in custody of Mr John Pat by police is powerful testament to the prolonged memory and everyday reality of deaths in custody within the Aboriginal community.⁸

The Committee therefore submits that the public interest in the independent and rigorous examination of Ms Dhu's death, and Aboriginal deaths in custody per se, and their future prevention is served and advanced by the release of the CCTV.

Further, that there is no evidence before the Court that the non-release of the CCTV has operated to protect either Ms Dhu's family nor the wider Aboriginal community from shock and trauma.

It is further submitted by the Committee that the continued suppression of the CCTV holds the very concrete potential to further traumatise and compound the harms that Ms Dhu's Family and the wider community have already suffered.

⁶ ABC News Online: "Ms Dhu's family renews plea for CCTV footage to be released after Four Corners program". 27 July 2016. Available at: <http://www.abc.net.au/news/2016-07-27/ms-dhu-family-renew-plea-for-cctv-footage-to-be-released/7664910>

⁷ See ABC News Online: "Senate supports push for Ms Dhu footage release", 31 August 2016. Available at: <http://www.abc.net.au/news/2016-08-31/senate-supports-push-for-ms-dhu-footage-release/7803382>

⁸ See Parliament of Western Australia Hansard: "Motion of Apology to the Family of John Pat", 25 September 2013. Available at: [http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/7ed648db40bc546248257bfd0010948f/\\$FILE/A39+S1+20130925+p4654b-4661a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/7ed648db40bc546248257bfd0010948f/$FILE/A39+S1+20130925+p4654b-4661a.pdf)

5. Other relevant examples of the release of CCTV footage in inquests

The Committee has identified at least two comparable instances of the release of CCTV footage by Coroners depicting Aboriginal and non-Aboriginal people in custody prior to and/or proximate to the time of their deaths.

Firstly, in the death in custody inquest of Kwementyaye Briscoe the Northern Territory Coroner, Judge Cavanagh [SM] publicly released for broadcast the CCTV of Mr Briscoe's treatment in the Alice Springs Police Watch House custody including images of him being swung by his arms by police into a police counter in front of other Aboriginal men, being dragged repeatedly across the watch house floor by his arms and being left in a prone position on a cell floor for hours until his asphyxiation death was discovered.⁹

The CCTV footage was widely broadcast and reported on. The ABC 7:30 program "*Coroner delivers scathing report on death in custody*", 17 September 2012, is one example of the reporting and use of the CCTV footage released by the Coroner.¹⁰

Secondly, in the inquest into the death in prison custody of Mr Ian Klum, the then New South Wales Deputy State Coroner MacPherson released CCTV and intercom audio recordings within Grafton Prison depicting Mr Klum being forced to crawl from cell to cell across a prison floor after being assaulted by his cell mate.

Again, this CCTV was widely broadcasted and reported with detailed context utilised in the reporting. The ABC 7:30 reports of 19 October 2011, "*Death of traffic offender in custody at Grafton jail*",¹¹ and 4 October 2012, "*DPP referral suspends prison death inquest*",¹² are examples of this reporting utilising the CCTV footage of the events just prior to a death in custody.

The Committee acknowledges that the Court is concerned about cultural protocols regarding imagery of deceased Aboriginal people. The Committee would point to best practice recommendations from the Australian Institute for Aboriginal and Torres Strait Islander Studies that: "cultural protocols surrounding the consumption of historical imagery now involve consultation with appropriate community members, and informed permission for their use."¹³

The request of Ms Dhu's Family for the release of the footage is consistent with these cultural protocols and current best practice.

6. Other examples of the Western Australian Crime and Corruption Commission ('CCC') public release of CCTV demonstrating treatment of persons in Western Australian Police custody:

⁹ See Inquest findings into the death of Terence Daniel Briscoe, 2012, NTMC 032. Findings delivered 17 September 2012 and available at:

https://justice.nt.gov.au/data/assets/pdf_file/0020/208910/a00052012-terrence-briscoe.pdf

¹⁰ Available at: <http://www.abc.net.au/7.30/content/2012/s3592099.htm>

¹¹ Available at: <http://www.abc.net.au/7.30/content/2011/s3343775.htm>

¹² Available at: <http://www.abc.net.au/7.30/content/2012/s3604223.htm>

¹³ See Jane Lydon, 'Photography and the Recognition of Indigenous Australians: Framing Aboriginal Prisoners,' *Australian Historical Studies*, 43:2 (2012), 213.

The appropriate use and public release of CCTV footage of abuse in custody of Aboriginal people has become also become an accepted and integral feature of the work of the CCC in exposing and combating this conduct with similar reasoning being that it is in the public interest to do so.

The following significant inquiries all utilised public release of CCTV footage comparable to that of Ms Dhu's treatment in police custody:

- Report on the investigation of an incident at the East Perth Watch House on 7 April 2013.¹⁴
- Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser[®] Weapons by Officers of Western Australia Police and the Department of Corrective Services on Kevin John Spratt, 16 April 2012¹⁵
- Report on the Investigation of Alleged Public Sector Misconduct by Western Australia Police Officers in Relation to Incidents that Occurred at Broome Police Station on 29 March and 19 April 2013, with accompanying DVD, 23rd December 2013¹⁶

7. Conclusion:

The Committee submits that in the event your honour decides to release the CCTV footage it will essentially be viewed in combination with your Honour's inquest findings, which will provide a detailed factual analysis and findings of fact that will provide context to the CCTV images.

This will ensure that any visual evidence the Court releases will be treated in a thoroughly and transparently investigated and documented evidentiary framework and not in a vacuum.

In all the circumstances of Ms Dhu's Family's application, the Committee therefore submits that not only is it contrary to the public interest to continue the suppression of the CCTV evidence but that there are clear and compelling public interest grounds supporting the release of the CCTV footage.

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¹⁴ Available at:

<https://www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%2007%20April%202013.pdf> Also see published CCTV footage available at: <http://www.couriermail.com.au/news/national/corruption-and-crime-commission-reveals-misconduct-by-police-officers-against-woman-at-east-perth-watch-house/news-story/83c004e93db4d76f04ac2f5dbacc38e1>

¹⁵ <https://www.ccc.wa.gov.au/sites/default/files/Use%20of%20Taser%20Weapons%20by%20WAPOL%20and%20DCS%20Officers.pdf>. See also associated published CCTV footage available at: <https://www.youtube.com/watch?v=MCwH6haU9XM>

¹⁶ Available at:

<https://www.ccc.wa.gov.au/sites/default/files/Incidents%20at%20Broome%20Police%20Station.pdf> See also published CCTV footage available at: <https://www.youtube.com/watch?v=Vzqb6CG65QQ>

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