



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Frederick Alfred McGregor
Hearing dates:	25-28 November 2014
Date of findings:	9 December 2014
Place of findings:	State Coroners Court, Glebe
Findings of:	Deputy State Coroner C. Forbes
Catchwords:	Coronial Law-death in custody- custody in court complex cells- death caused by known person
File number:	2011/388886
Representation:	Mr J Harris, Counsel Assisting instructed by Ms C. Lee, Crown Solicitors Office Mr M Spartalis representing NSW Police Force Mr L Katsinas representing Commissioner of Corrective Services Mr S Wilkinson representing Sergeant R Dunn.
Findings:	I find that Frederick Alfred McGregor died on 25 February 2011 at Liverpool Hospital, NSW. He died as a consequence of a head injury he sustained, while he was in custody in the Liverpool Court Cells, from a known person.
Recommendations:	To the Commissioner of Police I recommend that the Commissioner of Police give consideration to disseminating electronically a state-wide memorandum reminding custody managers:

- a) To read the custody management record, Form 7 and any other custody documents in full,**
- b) To check all warnings for persons in custody, and**
- c) The reasons why this is important.**

REASONS FOR DECISION

INTRODUCTION

1. This inquest concerns the tragic death of Mr Frederick McGregor, who died at Liverpool Hospital on 25 February 2011, aged 69.
2. He died as a result of head injuries he received on 15 February 2011 when he was seriously assaulted in the cells at Liverpool Courthouse by a prisoner who was housed in the same cell. The prisoner, Mr Kaewklom, was convicted of his murder and is serving a 20-year sentence.
3. As the charges relating to the death have now been finally determined this Inquest has commenced pursuant to s. 79 (a) Coroner's Act 2009.
4. Section 23 of the Coroner's Act 2009 requires an Inquest to be held into any death that occurs in custody.

“The purposes of a s.23 Inquest are to fully examine the circumstances of any death in which Police (or Corrective Services...) have been involved, in order that the public, the relatives and the relevant agency can become aware of the circumstances. In the majority of cases there will be no grounds for criticism, but in all cases the conduct of involved officers and/or the relevant department will be thoroughly reviewed, including the quality of the post-death investigation. If appropriate and warranted in a particular case, the State or Deputy State Coroner will make recommendations pursuant to s.82.”¹

5. The role of a Coroner is to make findings as to:
 - (a) the identity of the deceased;

¹ Waller's *Coronial Law & Practice in New South Wales*, 4th Edition, page 106

- (b) the date and place of the person's death;
 - (c) the physical or medical cause of death; and
 - (d) the manner of death, in other words, the circumstances surrounding the death.
6. A secondary role is that a coroner can make recommendations as are deemed necessary or desirable in relation to any matter connected with the death.
 7. Inquests are not criminal investigations or trials, nor are they civil liability proceedings intended to determine fault or lay blame on persons involved in the incident. They are independent judicial investigations. This Inquest has been a close examination of the circumstances surrounding Mr McGregor's death and pursuant to s.37 of the Coroner's Act a summary of the details of this case will be reported to Parliament.

FREDERICK MCGREGOR

8. Mr McGregor was born on 14 February 1942. He had a difficult upbringing. He was the second of seven children. His father died when he was around 13 years old, and Mr McGregor and his siblings moved onto farms or did odd jobs to earn money. As a result, the sibling group became separated.
9. He never married or had a family of his own. In his younger life he worked as a truck driver in Melbourne, before moving to Sydney to live with his mother.
10. Mr McGregor had a long-standing problem with alcohol. At the time of his death he had no fixed address, and he was staying in the Campbelltown area.

THE ISSUES

11. The question of the manner or circumstances of Mr McGregor's death raises a number of issues.
12. Counsel Assisting, in his opening statement outlined a number of questions that go to the issues. They were as follows:
 - 1) *The appropriateness of housing Mr McGregor and Mr Kaewklom in the same cell at Liverpool Court House.*

- 2) *The circumstances which led Mr Kaewklom to believe that the deceased was a sex offender, and in particular:*
- (i) whether one or more police officers revealed to Mr Kaewklom that the deceased was a sex offender;*
 - (ii) if so, whether that officer or officers intended Mr Kaewklom to know that the deceased was a sex offender; and*
 - (iii) the consequences, if any, flowing from the above.*

MR MCGREGOR'S CRIMINAL HISTORY

13. Mr McGregor had a number of criminal convictions recorded against him. Many were related to his alcoholism. They included offensive language and behaviour, assaults against police and breaches of bail.
14. He also had a sexual offence against a child on his record. On 12 June 2008 he was charged with Aggravated Indecent Assault and was ultimately convicted and sentenced to 10 months custody.
15. As a consequence of this conviction, Mr McGregor was placed on the Child Protection Register for 8 years. He was required to report any changes of address to police.
16. Mr McGregor was convicted for failing to comply with those reporting requirements in 2009, and was imprisoned. He was released on 29 September 2010.
17. Police became aware that he was not residing at the Campbelltown address that was recorded on the register.
18. On Friday 11 February 2011 Green Valley Police attended his sister Beverley Peachey's address in Ashcroft. Mr McGregor had actually called police himself, in relation to a dispute with a neighbour. Police discovered that Mr McGregor was wanted for breaches of his reporting obligations. He was arrested, charged and brought before Campbelltown Local Court, where he was released on bail.
19. The conditions of bail are significant. They included a requirement to notify Campbelltown police of his current address within 12 hours of his release, pursuant to his reporting obligations on the Child Protection Register.
20. Mr McGregor entered bail at around 5pm on Sunday 13 February.

21. The next day, Monday 14 February 2011, was Mr McGregor's 69th birthday.
22. At about 7.40am he reported to Campbelltown police station. However, he did not advise police of his current address, as he was required to do.
23. At 3pm Detectives Dews and Adams of Green Valley police attended Ms Peachey's address. Police spoke with Ms Peachey, who said that Mr McGregor was not staying at her address, although he visited during the day, and she did not want him to stay there, due to his behaviour when he was drunk.
24. Police asked Mr McGregor for his address, but he refused. As a result, Mr McGregor was arrested.

POLICE CUSTODY

25. He was initially taken to Green Valley police station, arriving at 3.45pm. The custody management record from Green Valley states that he was well affected by alcohol. He was very aggressive and uncooperative, he refused to give his name or his next of kin, he banged on the cell door. He was issued with a court attendance notice for breach of bail, to appear at Liverpool Local Court the following day, and was refused bail.
26. At about 6.30pm Mr McGregor was transferred to Cabramatta Police Station, where he was to remain overnight. He entered custody there 7.40pm.
27. Shortly before 11pm, Mr Kaewklom was brought into custody at Cabramatta Police Station. He had attended at the police station voluntarily regarding an allegation that he has seriously assaulted his ex-girlfriend four days earlier. He was arrested, interviewed, charged with grievous bodily harm and bail refused. He was 18 years old and it was his first time in custody.
28. The custody management records and police officers who have provided statements do not reveal any interaction between Mr McGregor and Mr Kaewklom during the whole time they were at Cabramatta police station. They were housed in separate cells.
29. The custody management records and the police officers who have provided statements describe Mr McGregor as being very disruptive during that night that he was in police

custody. He was “shouting”, “swearing”, “being abusive”, “banging the cell doors”, “being annoying” and “it went on for hours”.

30. Mr Kaewklom was described as a model prisoner. He was very quiet.

LIVERPOOL LOCAL COURT

31. At 9.15am police transported the two prisoners to Liverpool Local Court.

32. Corrective Services Officer Lisa Barrett received them into custody. She recognised Mr McGregor because he had been in custody there before.

33. Mr Kaewklom was strip-searched in cell 1 and left to get dressed. Mr McGregor was stripped-searched in cell 2 and then moved to cell 1 and housed with Mr Kaewklom.

34. A CCTV camera recorded the events in cell 1 (without recording any sound). There is a time stamp on the recording, although it appears to show a later time than that obtained from other evidence, which suggests that the assault occurred at about 10:25am.

35. The recording shows Mr Kaewklom entering the cell at 9:24am. Mr McGregor was placed in the cell at around 9:29am. Mr Kaewklom left the cell at about 9:55am for a legal visit and returned half an hour later. Mr McGregor then left the cell and returned at around 10:33am. Mr Kaewklom can be seen on the footage at this point pacing up and down inside the cell, in an apparently agitated manner.

36. At 10:34:50am Mr McGregor walks slightly across Mr Kaewklom’s path. Mr Kaewklom grabs Mr McGregor by the collar and throws him to the ground. He repeatedly jumps on Mr McGregor’s head and body and kicks him forcefully to the head. The assault lasts 22 seconds.

37. Officer Sapienza, who was in the office with most of his colleagues at the time, heard some noise and went to the cell. The CCTV footage shows he arrived at the cell door about 5 seconds after the assault. He raised the alarm and other officers attended and 000 was called.

38. The response by Corrective Services was entirely appropriate. The officer in charge of the cells, Officer McIlvenny, commenced first aid on Mr McGregor and held him until the ambulance officers arrived in the cell about 11 minutes after the assault.

39. Mr McGregor was taken to Liverpool hospital. He had skull, rib and facial fractures, and significant bleeding to his brain. A craniotomy was performed that day. He was assessed to have a poor chance of recovery, and an EEG on 24 February confirmed this.
40. On 25 February his family was consulted about his condition and ventilation support was withdrawn. He died in the intensive care unit at 11.46am.
41. An autopsy was performed on 27 February 2011 and the cause of death was determined to be a head injury.

WHY WERE THE TWO PRISONERS PLACED IN THE SAME CELL?

42. Corrective Services NSW informed this court that the two prisoners should not have been placed together. Policy material provided by Corrective Services NSW states that any prisoners arriving in custody should have been interviewed in order to complete the admission forms, being the "Lodgement" form and the "Inmate Identification and Observation Form" (IIO) (also called the "PDF"). The Offender Integrated Management System (OIMS) should also have been checked at this time, before a decision was made where to place the prisoners.
43. This procedure was not followed. If it had been, it would have been discovered that Mr McGregor was a convicted sex offender, had a number of alerts on his record and had previously been placed in protective cell placements. Had this been known, he would have been placed in a separate cell.
44. On the day in question the decision as to how to place the prisoners was divided between Officer Barrett and Officer Slywa, who both acted independently of each other.
45. Officer Barrett was the Administrative officer at the front desk. She received the custody bundle from the transfer police. On the available evidence, it appears likely that this bundle included the following documents for Mr McGregor (see Exhibit 5):
 - The police Custody Management Records
 - The Form 7
 - The Transfer Note
 - The Property docket

- A photo of the prisoner
- The Application to Local Court and the facts.

46. Officer Barrett decided to wait until the prisoners saw Legal Aid before she completed the Lodgement, the IIO and interviewed the prisoners. She believed this would mean the prisoners would be “calmer and more cooperative”. She said that she assumed the two prisoners would be placed in separate cells until the interviews occurred. She said she didn’t read the custody bundle documents, other than noting Mr McGregor was on breach of bail, and did not notice that Mr McGregor was on the Child Protection Register. During the time that the two prisoners were in custody, she started to complete an IIO form for Mr McGregor but she did not attend to an IIO for Mr Kaewklom. By the time of the assault they had been in custody at Liverpool Local Court for an hour and ten minutes.
47. In her statement Officer Barrett said that during that time she didn’t check the OIMS system either. However, it became apparent during the course of her giving evidence at this Inquest that she must have checked OIMS as the little information she did record on Mr McGregor’s IIO form could not have been obtained elsewhere. It is surprising and disappointing that despite having access to the custody bundle of documents and despite looking on OIMS she did not notice that Mr McGregor was on the Child Protection Register. That fact was noted throughout that material. She did not need to wait for an interview with Mr McGregor to find it out.
48. Officer Slywa directed the prisoners past the office and to the cell area. He directed that the two prisoners be held in cell 1 after the strip searches. He agreed that he was aware the interviews had not taken place and he had not discussed placement with Officer Barrett. He said that he assumed that as the prisoners arrived together in the one police truck that it would be appropriate to hold them in the one cell. This assumption was misguided and ignored the prevailing policy.
49. I am informed that Liverpool Court cell complex has been demolished and rebuilt since this incident. I am also informed that the process for deciding how to house prisoners has been changed. The current system is that the custody bundle of documents is faxed to the court cells from the police so that these can be reviewed and the OIMS checked before the prisoner arrives. The prisoner is then interviewed and a decision is made as to which cell a prisoner will go into before they are taken to any of the cells.

50. The IIO form actually requires the admission officer to confirm that they have read the Police Custody Management records.
51. I note that in May 2014 the Assistant Commissioners sent a memorandum to all Court Cell security staff reminding them that the IIO form must be completed on every offender who enters custody. In the memorandum it is stated:
- “This becomes the first risk assessment completed on fresh custody inmates when they enter CSNSW and is always the first document scrutinised following incidents or deaths in custody”*
52. Also, I am told that the OIMS system has been changed so that a warning that a person is a sex offender remains active and does not “expire”. Accordingly, this fact should be readily apparent to any person who checks the OIMS.
53. The relevant Corrective Services NSW policy does not explicitly state that sex offenders should always be placed in separate cells. There is policy which relates to the decision to place prisoners separately, although this policy does not mandate separate placement and leaves the decision to the relevant officer. Inspector Steven Murphy gave evidence during the Inquest. He stated that he could see some benefit in a policy which requires sex offenders to be always placed separately. However, I accept that the safe placement of sex offenders within Corrective Services NSW custody is a complex issue. The circumstances of this death do not suggest that a recommendation to that effect is required.
54. I accept the submission that adequate policy is now in place for this not to have occurred and that measures have been taken to address the oversight and try to ensure it doesn't happen again in the future.
55. Mr Katsinas, counsel for the Commissioner of Corrective Services, stated that the department takes in 30,000 prisoners per year. Since this incident there have been no similar deaths arising from cell placement.

WHAT CIRCUMSTANCES LED MR KAEKLOM TO BELIEVE MR MCGREGOR WAS A SEX OFFENDER?

56. Straight after the assault Mr Kaewklom was taken out of cell 1 and placed in cell 2 by Officer Sapienza. Officer Sapienza asked Mr Kaewklom: "what did you do that for?"

Mr Kaewklom replied: "He's a paedophile"

Officer Sapienza said: "how do you know this?"

Mr Kaewklom replied: "the boys in the cell last night said so."

57. Mr Kaeklom has always maintained that he was informed of this fact by police in the cells at Cabramatta Police Station. He described his night at the police station in his evidence in these proceedings. He said that he turned himself in to the police station to answer grievous bodily harm charges against his ex-girlfriend. He was interviewed and led into the cells. He said that he was aware that another prisoner was banging on the wall and that everything echoes in the cells. The sounds were amplified and there were loud thuds, kicking and yelling. He said he didn't say anything and he didn't have much sleep as the sounds carried on and off. He said that this was his first time he had been through the legal system, the first time he was in custody and he was frightened, angry, depressed, confused and didn't know what was going on. He was 18 years old.

58. He said that in the morning he was taken to the dock and placed beside Mr McGregor who was still being noisy. He said that there was one police officer, Sergeant Dunn, who he hadn't seen before. Police were bagging out Mr McGregor and called him a "rock spider". Mr Kaewklom said that he didn't know what that was and asked the officer and that the officer replied that it's a child molester. He said they were then taken in the truck to Liverpool Courthouse.

59. There are inconsistencies in Mr Kaewklom's account as to the circumstances that led to him believing Mr McGregor was a sex offender. He gave different accounts in court, in his ERISP, in his three psychiatric assessments and in the agreed set of facts that were prepared for his sentence on the murder charge. In light of these inconsistencies, I am not able to accept Mr Kaewklom's account.

60. Sergeant Dunn, the custody manager at the police station, said that he had not read Mr McGregor's custody records, other than noting he was on a breach of bail, and did not know that Mr McGregor was on the Child Protection Register (at least not until he was preparing the documents for Court). He gave evidence that he went to check the cells at about 5.45am, soon after he commenced duty. At that point Mr McGregor launched a tirade of abuse against him, and made a comment about Sergeant Dunn's children.

Sergeant Dunn stated he may have said “shut up rock spider” in response. He accepted that Mr Kaewklom may have overheard him from his cell, although he appeared to be asleep at this time. I prefer this account, and it explains how Mr Kaewklom came to believe Mr McGregor was a sex offender.

61. Sergeant Dunn denied having a conversation with Mr Kaewklom about what a rock spider meant. Whilst it is surprising that Mr Kaewklom would have made up this conversation, and whilst it is understandable that a young man in custody for the first time may not know what a rock spider is, I am not in a position to make a finding that the conversation took place as Mr Kaewklom described in Court. There are too many versions in his accounts as to when and where that conversation took place. The fact that many of those accounts were given at a time when he was being treated by psychiatrists and on medication and states that he was not in touch with reality does not assist with the reliability of any of his accounts.
62. Sergeant Dunn’s behaviour was unprofessional and improper. It does not appear to be consistent with the NSW Police Code of Conduct and Ethics, which requires an officer to treat everyone with respect and courtesy.

WHAT CONSEQUENCES FLOWED FROM MR KAEKLOM BECOMING AWARE THAT MR MCGREGOR WAS A SEX OFFENDER?

63. The representatives for the NSW Police Force, the Commissioner of Corrective Services and for Officer Dunn, all submitted that Mr Kaewklom’s knowledge that Mr McGregor was a paedophile played no part in his reason for attacking Mr McGregor. It was submitted that Mr Kaewklom had a short fuse, was volatile and was prepared to engage in gratuitous violence when it suited him. They submitted the real reason he attacked Mr McGregor was because he was being annoyed by him.
64. In this court Mr Kaewklom gave evidence that there were two reasons why he snapped and attacked Mr McGregor. He said that after he had been told that Mr McGregor was a rock spider he didn’t want to know him and despised him. When they arrived at Liverpool court cells they were searched and placed in a cell together. He said there were no words between them. He said they were both taken out for Legal Aid. He said that Mr McGregor was making loud sounds and banging. He said that while he spoke to Legal

Aid there were loud sounds going on and he was frustrated. He said he had put up with it for hours and it was really getting on his nerves and he was getting angry. He said he started pacing and that was when he grabbed Mr McGregor.

65. Directly after the attack Mr Kaewklom expressed his dislike of Mr McGregor because he was a paedophile to both Corrective Services Officer Sapienza and later in the day in his ERISP with police. He has maintained that position ever since. He has however wavered in his opinion as to whether that was the reason he attacked Mr McGregor.
66. I accept his current evidence that it was a factor in his extreme reaction to Mr McGregor's annoying behaviour which I find was the predominant reason for the attack.

WHAT LESSONS CAN BE LEARNED?

67. Neither of the two police custody managers at Cabramatta Police Station realised that Mr McGregor was on the Child Protection Register, at least until Sergeant Dunn began preparing the documents for transfer to Court. That information was clearly available to them on the documents that arrived with Mr McGregor from Green Valley police station. The evidence of Sergeant Chand and Sergeant Dunn was that, although they would have seen the Form 7, Application to Local Court and other documents, they did not appreciate Mr McGregor was arrested for a breach of bail which related to his obligations under the Child Protection Register. I find this evidence surprising.
68. I find it hard to accept the submission from Mr Spartalis that custody managers do not need to read those documents in order to discover why a person is in custody. It seems to me that the reason why prisoners are in custody is relevant to ensure their safety in custody.
69. It is possible that, had Sergeant Dunn known that Mr McGregor was on the Child Protection Register, he may have been more restrained in his response to Mr McGregor when facing the tirade of abuse he described. He may not have used the term "rock spider", had he known it to be true.
70. Mr Spartalis suggested that the problem might be cured if I were to make a recommendation that the Commissioner of Police consider disseminating a memorandum reminding custody managers to check all warnings for persons in custody. A document

within Exhibit 5 (the COPS Person Details or “PerFind” document) demonstrates that, in this case, a check of the warnings would have revealed that Mr McGregor was wanted in relation to his obligations under the Child Protection Register.

71. I can see no reason why a custody manager should not be required to avail themselves of all available information on the prisoners in their care. It seems to me that there would be merit in the Police Commissioner reminding all custody managers that they must read the custody documents in full when a prisoner arrives into their custody.

FINDINGS

I find that Frederick Alfred McGregor died on 25 February 2011 at Liverpool Hospital, NSW. He died as a consequence of a head injury he sustained, while he was in custody in the Liverpool Court Cells, from a known person.

RECOMMENDATIONS

To the Commissioner of Police:

I recommend that the Commissioner of Police give consideration to disseminating electronically a state-wide memorandum reminding custody managers;

- a) To read the custody management record, Form 7 and any other custody documents in full,**
- b) To check all warnings for persons in custody, and**
- c) To remind custody managers of the reasons why this is important.**

Magistrate C Forbes

Deputy State Coroner for NSW

9 December 2014

