



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

RefNo: 41/12

*I, Evelyn Felicia Vicker, Deputy State Coroner, having investigated the death of **Dennis John Phillips**, with an Inquest held at Kalgoorlie Coroners Court, Brookman Street, Kalgoorlie, on 12-13 November 2012 find the identity of the deceased person was **Dennis John PHILLIPS** and that death occurred on 8 January 2011 at Kalgoorlie Police Station Lockup, and was Consistent with a Seizure in the following circumstances:-*

Counsel Appearing :

Jeremy Johnston assisted the Deputy State Coroner
Rabia Siddique acted on behalf of the Commissioner for Police
Paul Gazier (instructed by ALS) appeared on behalf of the family of the deceased.

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INTRODUCTION

The deceased, Dennis John Phillips (Mr Phillips), was in Kalgoorlie Police Station Lockup in the early hours of 8 January 2011 after breaching a *Move on Notice* issued to him by police the previous day.

At approximately 3:30am Mr Phillips was heard to collapse in Cell 1 and a police officer summonsed help via the telephone as another detainee called for assistance. Mr Phillips was initially breathing but became pulseless. Police instituted CPR immediately and provided medical care while awaiting the arrival of an ambulance. St John Ambulance officers arrived at approximately 3:45am and instructed police to continue administering CPR while they assessed Mr Phillips. St John ambulance officers determined Mr Phillips was no longer alive at 3:50am hours and advised the police nothing further could be done to revive him.

Mr Phillips was 51 years of age.

The provisions of the *Coroners Act 1996* require the death of a person while in police custody be examined by way of inquest, and the supervision, treatment and care of the deceased while in custody be commented upon.

EVENTS OF 7 JANUARY 2011

The Bega progress note entries indicate Mr Phillips was seen at Bega sometime between 9 and 10am on 7 January 2011.

Ms Waters, clinical manager and a registered nurse, observed him in the waiting room and at that time he was sober and, in her view, “quite fine”.⁶ This is reflected in his clinical observations with a normal blood pressure of 120 over 85, temperature of 36.1°C, respiratory rate of 20 beats per minute, and a blood glucose level – random, of 9 minimols per litre. His status is given as ‘smoker intends to quit later’, however, Ms Waters stated she had not seen Mr Phillips smoking, although she had known him for a long time. He was counselled with respect to his alcohol consumption and he advised the health worker his exercise level was good and he was referred to a dietician. Mr Phillips was not homeless and it was not necessary for Bega to provide him with clothes. He is recorded as requesting to see a GP, however, there is no entry from a GP and we assume he left before he was seen. His wound was dressed and the note indicates his right hand was attended to. The previous Progress Notes for the 4 January 2011 confirm he had his wound dressed, had a shower and was provided with pain relief.

There was nothing in Mr Phillips’ Clinical Observations on the morning of 7 January 2011 to indicate he was unwell, while

⁶ Transcript 190, 13.11.12

accepting he did have chronic illnesses which needed to be monitored and were monitored by Bega.

The next evidence with respect to Mr Phillips is consistent with his having left Bega in McDonald Street, and moved to Brookman Street, where he was observed to be drinking. Constable Stephen Burke and First Class Constable Tony Allen were on patrol and were asked to attend an incident at the entrance to the Red Rooster fast food outlet near Woolworths in Brookman Street. They attended at approximately 11:00am and observed Mr Phillips and Hayden Simms in the drive through of the outlet. Mr Simms was observed to attempt to place a bottle of Tawny port on the ground at the time the police pulled over and spoke with them.

Constable Burke's evidence was he had prior contact with Mr Phillips, and Mr Phillips was frequently intoxicated and could be aggressive, but was usually handle-able by the police. He did not believe Mr Phillips seemed his usual self that morning in that he was grumpy, however, it was early in the day and the police officers were concerned the two men were already drinking to the extent that they had been asked to deal with the issue. Constable Burke indicated that while Mr Phillips was usually arrogant and difficult he did not usually shout or scream, and he just did not see Mr Phillips as being his usual self. Mr Phillips and Mr Simms were complaining they had done nothing wrong, however, the police were concerned they were already intoxicated and wished

them to remove themselves from that vicinity, frequented by many members of the public going about their business.

Mr Phillips was issued with 'Move on Order', number 164973, requiring he not approach within a (100) hundred metres of the Red Rooster/Woolworths shops before 8:00pm that evening. The conduct giving rise to the order was given as 'Consuming liquor contrary to the *Liquor Control Act 1988* s.119'⁷. Constable Burke's evidence was he had given Mr Phillips 'Move on Notices' before and he was satisfied Mr Phillips understood both the content of the move on notice, and the requirements attached to the move on notice.

First Class Constable Allen dealt with Mr Simms in a similar manner. Mr Simms did comply with the order because he later informed police he had gone to Trilby Cooper's place and did not know what had happened to Mr Phillips after he had complied with his move on notice⁸.

Constable Burke and First Class Constable Allen then left the area.

At approximately 12:55pm an off-duty police officer, Ashley Dean, not in a police uniform, was in his personal vehicle in the vicinity of Kalgoorlie Plaza. He observed a man with his pants lowered and urinating against a wall facing the Coffee Club. This is in the vicinity of Woolworths and Red Rooster

⁷ Exhibit 1, Vol 1, Tab 2

⁸ Exhibit 1, Vol 1, Tab 19

toilets. Mr Dean recognised that man as Mr Phillips because of the bandage on his right hand.

Constable Burke had observed Mr Phillips' bandaged right hand, which appeared to have a fresh dressing as it was unusually clean. This is consistent with the evidence Mr Phillips had been to Bega earlier that morning.

Mr Dean stated he had known Mr Phillips for approximately six months and as he drove passed Mr Phillips he had a clear view of him urinating.⁹ Mr Dean parked his vehicle and called the Kalgoorlie Police Station at 12:57pm. Mr Dean spoke to Sergeant Rogers and advised him of Mr Phillips' actions. Mr Dean continued to walk to the entrance of Woolworths closest to Muffin Break and observed Mr Phillips walk passed him and into Woolworths. Mr Dean followed and observed Mr Phillips in the fresh produce section.

The evidence from the Woolworths Store Relieving Manager on that date, Kristian Ruthven¹⁰, is he had contact with Mr Phillips twice in the week preceding that Friday 7 January 2011 and, as a result of his contact with Mr Phillips, he had told Mr Phillips he was not welcome in the Woolworths store because of his behaviour. At approximately 1:10pm Mr Ruthven had been called by staff due to the presence of Mr Phillips within the store. Mr Phillips was arguing with a staff member. This was also observed by Mr Dean who

⁹ Exhibit 1, Vol 1, Tab 25

¹⁰ Transcript.118, 12.11.12

recognised Mr Phillips arguing with a person in the Woolworths' uniform.

Mr Ruthven approached Mr Phillips and observed a member of his staff removing a bag of meat from Mr Phillips and Mr Phillips demanding the return of his meat. Mr Ruthven approached Mr Phillips, who was now standing outside the doorway to the store, and advised Mr Phillips he was not to enter the store again and placed his arm across the doorway.

Mr Ruthven's evidence, given by telephone link, was slightly different from that in his statement of 7 January 2011, however, it is clear Mr Ruthven was concerned about the behaviour of Mr Phillips who was screaming and shouting abuse.

Mr Phillips attempted to push passed Mr Ruthven when Mr Ruthven prevented him from re-entering the store and Mr Phillips told Mr Ruthven, as he spat at him, that he had HIV. Mr Ruthven does not know where the spit landed, but certainly saw it aimed in his direction. Mr Ruthven ordered the doors to be locked. This prevented customers from leaving the Woolworths store but also protected them from Mr Phillips' actions. Mr Ruthven opened the doors to allow a female customer into the store who was unaware of the altercation. Mr Phillips attempted to spit at him again. Once the doors had re-closed Mr Phillips banged on the doors with his bandage.

In response to the telephone call from Mr Dean, First Class Constable Tony Allen and Constable Burke re-attended the Woolworths car park to speak to Mr Phillips. They had been told he had been causing a disturbance. As the two police officers approached the area of the car park they saw a number of people leaving the Muffin Break store and Mr Phillips also exiting, waving his arms, yelling and swearing. As far as they could see Mr Phillips appeared to be in breach of the boundaries of the Move on Notice issued to him by Constable Burke approximately two hours earlier.

First Class Constable Allen spoke with the manager of Woolworths while Constable Burke approached Mr Phillips. Mr Phillips was arrested for breaching the 'Move on Notice' and Constable Burke placed Mr Phillips in the rear of the police van while First Class Constable Allen finished speaking with Mr Ruthven. Once First Class Constable Allen had finished speaking with Mr Ruthven he advised Mr Phillips he was also under arrest for assault, however, he did not have a statement from Mr Ruthven. Arrangements were made for Mr Ruthven to attend the Kalgoorlie Police Station and provide police with a statement of the incident at Woolworths that day. In addition Mr Phillips was to be charged for disorderly conduct in view of the behaviour observed by Mr Dean, which caused the police to be called to the Woolworths area again.

Mr Phillips insisted he had done nothing wrong and became quite verbally aggressive, however, was not physical towards either of the police officers. He did not complain to Constable

Burke or First Class Constable Allen that he was unwell or that he needed to be taken to a doctor.

The police officers conveyed Mr Phillips to the Kalgoorlie Police Lockup. There is CCTV footage of the police van arriving in the sally-port area and the two police officers can be seen exiting the police van and securing the area, while notifying lock-up of the arrival of Mr Phillips. The van doors are then opened and Mr Phillips emerges, unassisted, by himself from the rear of the police van. He is slightly shuffley on his feet but certainly does not fall over or in any way display any difficulty in complying with the police officers instructions.

The court was also in a position to be shown the CCTV of the lock-up area when Mr Phillips was first taken to the counter area and was sat on a bench opposite the desk while the police officers commenced to process him through the lock-up procedures.

The CCTV footage shows Mr Phillips sitting reasonably quietly and compliantly for the initial part of the lock-up process. He is initially compliant with police requests, and it is fairly obvious from the CCTV footage both Mr Phillips, and the police officers involved with him, are engaged in an activity that is not unknown to either party.

Mr Phillips moves down to the search room when requested to do so, and goes out of sight of the CCTV footage, however, it is still possible to hear the police officers speaking with

Mr Phillips and the tenor of his responses. He does not appear to be anything other than mildly grumbley at that stage. He eventually comes back out and sits on the bench opposite the lock-up desk. One of the police officers, apparently First Class Constable Allen, takes some tissues from Mr Phillips and disposes of them, while replacing them with fresh tissues.

Mr Phillips can be heard complaining to police that he is 'a sick man'. There is no direct response from the police officers other than a vague query and Mr Phillips does not elaborate with what he means, other than to say he is, "*On disabilities*".

All police officers giving evidence accepted Mr Phillips suffered from chronic health problems, reflecting their belief he suffered from diabetes as a result of his amputations. None of the police officers believed Mr Phillips was exhibiting any signs of being unwell over and above his level of intoxication. It is apparent from the CCTV footage Mr Phillips is intoxicated during this exchange, however, he is not incapacitated by his level of intoxication to the extent he is unable to physically comply with requests made of him. He just appears to be somewhat irritable and fractious. Police officers familiar with him did not believe his behaviour was at all abnormal during his time in the lock-up.

ADMISSION TO LOCK-UP

Constable James Allan was Lock-up Keeper on Friday 7 January 2011 at the time Mr Phillips was bought into the

lock-up by Constable Burke and First Class Constable Allen. Constable Allan had prior dealings with Mr Phillips and in his opinion Mr Phillips appeared intoxicated. He was familiar with Mr Phillips when he was intoxicated. Constable Allan processed the items bought to him by police officers who searched Mr Phillips. They consisted of cash, a lighter, later a pair of shoes which he can be heard being requested to take off at a later point on the CCTV, and an item which was described by the police as a plastic object or ornament that was similar to a stone.

Lock-up Keepers are required, as part of their duties, to record the lock-up process on a system known as the Custody System. Constable Allan recorded Mr Phillips as an increased risk, due to the warnings and alerts on the police system known for Mr Phillips. His admission process was commenced at 1:29pm. On the CCTV footage various other police officers are heard speaking to Mr Phillips, and Constable Allan can then be heard addressing Mr Phillips with the comment he was now required to answer the, “*usual questions*”.

On the custody handover summary¹¹ the computer print-out refers to an inquiry as to the preferred language of the proposed detainee, and the second question is shown as “*are you asthmatic?*”. Constable Allan gave evidence¹² the order of the questions asked depends upon the screens opened but his recollection of the computer screen he was using at the time

¹¹ Exhibit 1, Vol 1, Tab 15

¹² Transcript pg85, 12.11.12

gave the first question for Mr Phillips as “*are you a prohibited drug user?*” Certainly that is the first question he can be heard to address to Mr Phillips on the CCTV footage.

The response of Mr Phillips to that question can only be described as explosive. When watching the CCTV footage Mr Phillips’ response is quite startling in view of his prior relatively compliant demeanour. He erupts from the bench where he has been sitting and approaches the front of the lock-up counter quite aggressively. He is yelling about being ‘*a sick man*’ and “*on a disability*” and is extremely volatile in his demeanour. I accept he does not attempt to physically assault any of the police officers, his abusiveness is more in his demeanour. Mr Phillips does not say he refuses to answer any of the questions but he effectively makes it impossible, with his actions and speech, to enable any coherent conversation to take place.

It is apparent from the context of the questions which the police officers are required to ask a proposed detainee, the questions are asked from the perspective of the health and welfare of the person. These are questions I am satisfied Mr Phillips would have answered on previous occasions and would have known were aimed at establishing medications and care which needed to be taken during his time in lock-up. Mr Phillips cannot be heard asking to be taken for medical attention, and the police officers accept his statement, “*I am a sick man*” as being an accurate record of his known difficulties. It is apparent from his Bega medical notes he did

require daily medication, however, he certainly did not reflect that in any of the assertions he was 'a sick man'.

It is clear Constable Allan interpreted Mr Phillips response as refusing to answer the questions and the other police officers present, Constable Burke and First Class Constable Allen hustle him to the lock-up cell 1, directly opposite the lock-up desk. Police officers can be heard asking him to remove his shoes, quite assertively, and there is coverage of one of the police officers taking a mattress into the cell to be placed on the bench for Mr Phillips. He appears to be resistant to the removal of his shoes, however, eventually does so. The sounds dissipate to some extent when Mr Phillips is apparently settled into cell 1.

Constable Allan agreed he did not make any further attempt to obtain answers to the health and welfare questions from Mr Phillips. The custody system has recorded answers as "no", there is no evidence as to whether this is an automatic default, however, would clearly be inaccurate in that it was believed Mr Phillips did have chronic medical issues, even though he was not making any specific complaint about those issues at that time.

Sergeant Tipple was the Shift Supervisor and he has ultimate responsibility for lock-up and the consideration of bail for persons lodged in the lock-up.

In evidence Sergeant Tipple explained he was initially aware of Mr Phillips being charged with two offences, one for breach of the 'move on order' and one for disorderly behaviour which related to the observation of his urinating outside Woolworths. When Mr Phillips was first lodged in the lock-up Sergeant Tipple knew it was likely there would be further charges involved, but those could not be completed until First Class Constable Allen had taken a full statement from the manager for Woolworths, Mr Ruthven. He was aware Mr Ruthven was attending the police station in order to complete his statement.

Sergeant Tipple instructed Constable Allan to perform fifteen minute cell checks on Mr Phillips as a result of his assessment Mr Phillips was high risk due to, what he believed were, his known medical conditions and the fact of his level of intoxication. Sergeant Tipple indicated he considered all high risk detainees should be subject to fifteen minute cell checks, and all others to thirty minute cell checks. This was his practice arising out of his experiences in the UK as a police officer.

As the evidence evolved it became apparent the general practice of all shift sergeants in Kalgoorlie was to require fifteen minute cell checks for detainees considered to be at high risk due to their level of intoxication or vulnerability in other ways, although that was not the requirement under the Lock-Up Manual at that time. All police officers appeared to

accept fifteen minute cell checks as the standard for prisoners listed as high risk.

Sergeant Tipple started considering the bail issue for Mr Phillips prior to Mr Phillips being charged with common assault with respect to the incident with the manager for Woolworths. Sergeant Tipple considered the charges for which Mr Phillips had already been charged, the fact he was on a suspended imprisonment order, and his history generally as to whether Mr Phillips would be at risk of further offending if he was released on bail.

Sergeant Tipple did not consider protective custody due to Mr Phillips level of intoxication because he decided, on the relevant information, Mr Phillips would not be released on bail.¹³ Before finalising his decision he also rang Kalgoorlie Court House to ensure there would be a Saturday morning court convened which would be able to consider Mr Phillips' circumstances. Had Sergeant Tipple been unable to confirm a court hearing for the Saturday morning he advised the inquest he may, then, have considered Mr Phillips should be released on bail. It would be at that point Sergeant Tipple would consider Mr Phillips' level of intoxication with respect to his understanding of bail conditions and protective custody issues. Sergeant Tipple's recognition of Mr Phillips' level of intoxication was in his confirmation of Mr Phillips' status as a high risk prisoner and the requirement for fifteen minute cell checks.

¹³ Transcript 133-137, 13.11.12

Constable Allan also conducted supervisor's checks on Mr Phillips to satisfy himself as to Mr Phillips' condition. Mr Phillips was quiet and appeared to be asleep on his own in cell 1. There were two other detainees in cell 2, one of which was Mr Simms who had not been with Mr Phillips on the second occasion police responded to a call with respect to Mr Phillips' intoxication.

By the time Sergeant Tipple ended his shift he was satisfied the Aboriginal Legal Services (ALS) had been notified Mr Phillips was in custody and had been refused bail. The police officers dealing with Mr Phillips were of the view he was too intoxicated to understand any bail condition and, therefore, would have been in danger of breaching bail. The Magistrates' Court would be in a position to hear from Mr Phillips in the morning and there was no evidence Mr Phillips was unwell or in need of medical attention. He appeared to be sleeping peacefully in cell 1.

OVERNIGHT IN LOCK-UP

At the end of his shift Sergeant Tipple handed over to the next shift sergeant, Sergeant Shanahan. He advised him he had refused Mr Phillips' bail and showed him the form 5. Similarly Constable Allan handed over to the lock-up keeper, Constable Blake. Constable Allan believed he would have verbally handed over any issues to Constable Blake such as the requirement for fifteen minute observations.

Constable Blake does not recall being informed Sergeant Tipple had required fifteen minute checks, however, he was aware Mr Phillips was considered high risk and the practice was for fifteen minute checks. At the time Constable Blake commenced as lock-up keeper Mr Phillips was in cell 1, alone, and appeared to be sleeping.

The lock-up records indicate Constable Blake provided a meal to Mr Phillips at 6:30pm. Mr Phillips thanked him for the meal and began to eat. Mr Phillips did not appear to be intoxicated. Mr Phillips was provided with toilet paper on request, and later Constable Blake heard Mr Phillips snoring in his cell. He visually checked on him every thirty to forty minutes, however, he could hear him between those times.

Constable Blake conducted physical checks by looking through the window in the cell door and observing Mr Phillips' chest rise and fall. All his checks were in the custody system. None of Constable Blake's cell checks are recorded as remote, they are all recorded as physical cell checks. Constable Blake stated he followed the Standard Lock-up Manual for checks on detainees with respect to twenty to forty minute intervals as per the decision as to whether they were high or low risks.

Constable Blake was aware that Mr Phillips had been refused bail and he also faxed the advice form to the ALS about detainees in the lock-up. Mr Phillips did not request any medication of Constable Blake at any stage and he handed over to First Class Constable Wiringi at 9:00pm. He advised

First Class Constable Wiringi Mr Phillips was remaining in the lock-up as his bail had been refused, and he was in good spirits. It was noted Mr Phillips was high risk on the whiteboard. The two prisoners in cell 2 had been bailed prior to First Class Constable Wiringi beginning his shift.

Mr Phillips was the only person present in lock-up and was in cell 1, when First Class Constable Wiringi commenced his shift as lock-up supervisor. First Class Constable Wiringi knew Mr Phillips was considered a high risk detainee because his usual presentation was when he was intoxicated, but he had not been given any specific direction at hand-over for fifteen minute observations. This is consistent with Constable Blake's evidence. First Class Constable Wiringi indicated he personally choose to routinely check prisoners every fifteen minutes as his preference when he was lock-up keeper. First Class Constable Wiringi stated in evidence he was always concerned about prisoners in lock-up and routinely did fifteen minute observations, either physically or remotely, although he accepted they may not be exactly fifteen minutes apart.

Senior Constable Wiringi's evidence was he considered it to be a physical check when he had direct visibility of a prisoner, either by going up to the cell window and observing the prisoner, or being able to see into cell 1 from the lock-up desk by looking through the window. If he was physically in the same space as a prisoner and could see them, that was a physical cell check.¹⁴ When asked about breathing he

¹⁴ Transcript 152, 13.12.12

indicated it was usually the case you could hear prisoners in cell 1 from the lock-up keeper's position at the desk.¹⁵ There is an open grating in the lower half of the door which allows sound to travel to the lock-up desk.

First Class Constable Wiringi indicated, and it was confirmed by the shift sergeants, the monitor to the left of the lock-up desk provided a view into the cells and it was First Class Constable Wiringi's evidence the monitor at the time was, he believed, set so it scrolled through the cells. Sergeant Beard later confirmed the monitors could be re-set on a single cell or to scroll through cells, but only the operations room supervisor held a key to the monitoring system.¹⁶ Sergeant Beard could not re-set the system and the system in lock-up showed the same views as the monitors in the operations room. All shift sergeants indicated the monitors in the operations room of events in lock-up could be seen, not only by whoever was in the operations room, but also from the shift supervisor's desk in the sergeant's office. Consequently, at any one time, the monitors in the operations room could be observed by a person who was always in the operations room, a person in the shift sergeant's supervisor's office, or a police officer in the lock-up area itself. A remote cell check was conducted by observing the cells from one of the monitors instead of a direct view into cell 1 itself.

Sometime before 10:00pm Mr Phillips' cousin, Clayton Walker, was processed through lock up and placed into cell 1 with

¹⁵ Transcript 179, 13.11.12

¹⁶ Transcript 179, 13.11.12

Mr Phillips, at Mr Walker's request. Mr Walker gave evidence by telephone from South Australia. He informed the inquest he had attempted to take some of the food left in Mr Phillips container but Mr Phillips had told him to ask for his own food, which he did. Mr Phillips then went to sleep but warned him not to come and take his food.

Mr Walker said that after he had eaten he went straight to sleep and was woken up later by Mr Phillips slamming on the door and speaking to the police. Mr Phillips then fell down and Mr Walker banged on the door and hit his arm to get attention from the police.¹⁷

On the occasions First Class Constable Wiringi was not directly inputting into the custody system he would note the results of his observations on the computer when he returned to the custody system. He would note whether his check had been physical or remote, but he reiterated physical did not mean he physically went to the cell, rather he could physically observe or speak with the person in front of him through the cell window. The CCTV footage of the lock-up is apparently motion activated, but sensitive, and picks up minor motion in the areas it covers.

First Class Constable Wiringi did not note admission welfare had not been completed, nor was he advised of that at hand-over from Constable Blake. It is apparent Constable Blake had not noted that matter.

¹⁷ Transcript pg 217, 13.11.12

The fact Mr Phillips had said he was a, “*sick man*” had not been passed on. There is no record of Mr Phillips indicating he wanted medical attention, and the only reference to Mr Phillips saying he was a sick man was when police attempted to determine his welfare status at the time of admission for the custody system.

First Class Constable Wiringi cannot recall conversations with Mr Phillips. He accepts the CCTV footage of 8 January 2011 shows that at 3:26am he returned from a twenty-seven minute break, during which time he was in the operations room, and had a brief conversation with Mr Phillips as recorded on the CCTV footage. He agreed he returned from his break to find Mr Phillips at the door to cell 1. First Class Constable Wiringi can be heard to ask Mr Phillips, “*What’s up?*” but the reply is incoherent. First Class Constable Wiringi can be heard to say, “*Four o’clock*” and Mr Phillips is seen to move away from the cell window, out of the view of the CCTV camera of the lock-up area, while First Class Constable Wiringi sits down at the computer. In evidence First Class Constable Wiringi explained he was in the process of bringing up the custody system to enable him to record the cell checks over the previous twenty-seven minutes.¹⁸

It is while First Class Constable Wiringi is seated at the console a thud can be heard followed by a groan. First Class Constable Wiringi can be seen to look up, perplexed as to the

¹⁸ Transcript 155, 13.11.12

source of the sound. He explained in evidence sound can sometimes be heard from the breathalyser room or other areas of the lock-up.

First Class Constable Wiringi then gets up from the console and is seen to be looking around before going to stand directly in front of the monitor and staying there for a few moments. In evidence First Class Constable Wiringi said he was waiting for the monitor to scroll through the cells and when the monitor showed the interior of cell 1 he could see Mr Phillips fitting.

The CCTV footage shows First Class Constable Wiringi reaching for the telephone, dialling, and then pausing, presumably while the phone rings and he waits for a response.

It is during that time Clayton Walker can be heard calling out to First Class Constable Wiringi, "*In here*" and First Class Constable Wiringi, who still has the telephone to his ear, can be heard to ask for the sergeant to attend lock-up.

The shift sergeant by then is Sergeant Beard. He advised the court that as First Class Constable Wiringi asked for help, so he checked on the monitors in the operations room from his desk, and saw Mr Phillips, fitting, in cell 1. Sergeant Beard told First Class Constable Wiringi he could see what was happening and First Class Constable Wiringi puts down the telephone and says to Mr Walker, "*ok*". First Class Constable Wiringi asked Mr Walker to roll Mr Phillips onto his side

because he could see bubbles coming from his mouth as he fitted. First Class Constable Wiringi then walked towards cell 1 starting to pull on gloves. As First Class Constable Wiringi enters cell 1, which he is not supposed to do unaccompanied, so the CCTV footage of the lock-up area shows other police officers coming into the lock-up to assist.

First Class Constable Wiringi stated he rolled Mr Phillips onto his side because Mr Walker was unable to touch him. He noticed blood on the floor and Mr Phillips' head. First Class Constable Wiringi attempted to protect Mr Phillips' head until the fitting stopped, and Sergeant Donaghy reminded him he should be wearing his gloves. First Class Constable Wiringi then left the other police to deal with Mr Phillips while he took Mr Walker out of the cell. He advised the inquest Mr Walker was quite distressed. Mr Walker confirmed this when he gave evidence.

After some difficulties the court heard evidence from Mr Walker via telephone link to South Australia late on the afternoon of 13 November 2012. It was suggested Mr Walker would be unable to participate in the giving of evidence due to the fact English is not his first language. While Mr Walker was a little hesitant with his evidence initially, it is certainly not the case he was unable to communicate effectively in English. He advised the court he had requested to be placed in cell 1 with Mr Phillips, "*His cousin*", and there was no difficulty with allowing him to share a cell with Mr Phillips.

Mr Walker confirmed he had fallen asleep after he had his own feed and he was awoken later by the noise of Mr Phillips banging on the door and then collapsing. Mr Walker was quite clear he did not jump up until Mr Phillips had collapsed and he had been shocked and frightened and called out to the police, "*What's happening here?*" He confirmed he had not looked at Mr Phillips because he was frightened. He said the police officer who came into the cell first was the one who took him out of the cell after two white police officers had commenced CPR.

The CCTV footage of the incident records the time lapse between the audible thud of Mr Phillips collapsing and First Class Constable Wiringi responding to the call by calling for assistance as twenty seconds. The image of First Class Constable Wiringi is consistent with his evidence he was looking for the source of the sound and then stood at the monitor until he could see what was happening. The CCTV footage shows he had the telephone in his hand and to his ear prior to Mr Walker calling out for attention for Mr Phillips.

Although the view from the CCTV camera is somewhat elongated it can be seen that police assessed Mr Phillips, and the audio records they are stating Mr Phillips is still breathing. He then stops fitting and stops breathing and the police officers commence CPR. Sergeant Beard can be heard to ask for an oxy-viva. The actions of the police officers from then on are both visible and audible on the CCTV and there can be no issue with the police attempts to resuscitate Mr Phillips. The

CCTV records the arrival of the St John Ambulance Paramedics and those officers confirmed Mr Phillips' death at 3:50am.

He never regained consciousness.

INTERNAL INVESTIGATION

A death in police custody requires an inquest and independent police officers from Police Internal Affairs always attend and investigate these deaths on behalf of the coroner. While there are some discrepancies in the timings given between the CCTV footage, and the lock-up records, these are consistent, and can be accounted for by a different timeline on the monitoring system.

Independent police officers, not attached to the Kalgoorlie Police Station, attended Kalgoorlie to investigate the matter and interviewed all police officers on video. While Constable Blake's cell checks were not as regular as those of Constable Allan or First Class Constable Wiringi there can be no issue with the fact no complaint was received from Mr Phillips about his statement he was 'a sick man'. Mr Phillips made no complaint to Mr Walker on his admission to cell 1 there was anything wrong with him. He was quite clear he wished the remains of his meal to be left for him, and that Mr Walker should obtain his own food from the police. Similarly, First Class Constable Wiringi's checks were not precisely at the times recorded in the custody system because he entered them when in lock-up, rather than the operations room. There are no entries for Mr Phillips from the time First Class Constable Wiringi can be seen returning to the lock-up area. That is, the evidence is entirely consistent with the CCTV footage.

The medical history of Mr Phillips experiencing seizures during alcohol withdrawal, and the post mortem examination findings, confirm the reality of the seizure experienced by Mr Phillips and indicate it could not have been predicted with any reliability by police. There would have been no symptom or sign upon which the police could realistically present with Mr Phillips to an emergency department or doctor with the information they had, or indeed was available to them.

CONCLUSION AS TO THE DEATH OF MR PHILLIPS

I am satisfied Mr Phillips was a 51 year old aboriginal male with a serious medical history related to his alcohol consumption. It also contributed significantly to his offending behaviour. While police were aware of the fact Mr Phillips was a high risk detainee due to his consumption of alcohol, they had no information he suffered seizures related to alcohol withdrawal.

On 7 January 2011 Mr Phillips appears to have become adversely affected by alcohol soon after leaving Bega. He became affected very quickly. As a result of his conduct he was issued with a 'Move on Notice' by police which he breached within two hours, by continued drunken behaviour. He was arrested.

Once placed in lock-up he was reasonably compliant with instruction, but resistant to providing details as to his medical condition. He stated he was '*a sick man*' which the police officers accepted as true for his believed chronic conditions. He did not complain of any particular symptoms at that time, nor was he asked to clarify that statement.

On the occasion he was asked a specific question, which he knew was a standard question, he reacted very aggressively. The police took this as symptomatic of his intoxication, rather than any illness, and concentrated on settling him into a cell as pragmatically as possible. He showed no signs of illness inconsistent with his intoxication and made no complaints.

Mr Phillips was appropriately monitored and provided with necessities. He was not given medication because the police were unaware of the fact he had not waited for his medication at Bega that morning.

A person known to Mr Phillips was placed in the cell with him some eight hours after his lodgement and he made no complaint to that person about either his health or treatment. The lock-up keeper could hear Mr Phillips breathing in the cell at times he could not see him.

Sometime around 3:00am on 8 January 2011 First Class Constable Wiringi left the lock-up area for a break and went to the operations room where he could still monitor cell 1, the only cell with any occupants at that time. Neither he nor Sergeant Beard noticed anything untoward on the monitors.

On his return to the lock-up First Class Constable Wiringi saw Mr Phillips standing at the door to Cell 1. Mr Walker believed Mr Phillips had been banging on the cell door at the time which woke him, however, that is not apparent on the CCTV footage of the events.

There is a very brief exchange between Mr Phillips and First Class Constable Wirngi but only First Class Constable Wigini's words can be made out. The meaning of the exchange is not apparent from the one sided conversation and seems

nonsensical, however, it is not consistent with Mr Phillips asking for any medical input or making any complaint.

Mr Phillips can be seen to move away from the door and First Class Constable Wiringi can be seen to seat himself at the computer console.

Shortly thereafter Mr Phillips is heard to collapse and the events as described earlier occur. The whole of those are captured on CCTV; it is apparent there was prompt and competent medical intervention which was not able to revive Mr Phillips. Dr White confirmed CPR was necessary to establish a heart rhythm and without that no other intervention was going to be effective.

It is apparent Mr Phillip suffered a seizure consistent with his alcohol withdrawal. His naturally occurring cardiac disease exacerbated the effects of that seizure and he suffered a fatal cardiac arrhythmia. He died while still in the lock-up.

I find death arose by way of Natural Causes.

COMMENTS ON THE SUPERVISION TREATMENT AND CARE OF MR PHILLIPS

Without knowledge of Mr Phillips' predisposition to experience seizures as a result of alcohol withdrawal there was no way for the police to predict Mr Phillips was likely to experience a

seizure, while in custody, which would result in a fatal arrhythmia and his death.

In the circumstances of this case the supervision and treatment of Mr Phillips was entirely appropriate. I am also of the view that, as it transpired, the care of Mr Phillip's was also adequate.

However, on the evidence, there were one or two issues with respect to care which it is possible to improve. I do not believe those improvements would have altered the outcome for Mr Phillips, but believe it prudent they be addressed because they may make a difference to a similar set of circumstances in the future. The death of a detainee while in lock-up or police care is extremely traumatic for all concerned and it is preferable simple precautions which can be instituted, be instituted, to minimise adverse outcomes for those involved in the criminal justice system with all its related difficulties.

Firstly, it needs to be understood medical information with respect to any individual is confidential. While police need good medical input to care for people in their care appropriately, generally that information needs to be voluntarily obtained. This can place those caring for people in a difficult position.

In the case of Mr Phillips he was well known to police, and they understood he had medical issues, and issues they needed to deal with at a community level. They did not know

precisely what his medical conditions were, but understood he needed close observation due to his perceived medical problems and known intoxication.

Hence the requirement police conduct a health and welfare check at each lock-up admission. Police need to be told about a detainee's status because the only person who can give that information is the detainee.

With respect to Mr Phillips' known seizures, as a result of alcohol withdrawal, there was no police knowledge. On the evidence it is likely Mr Phillips did not fully appreciate that aspect of his intoxication himself. He certainly appears to have done nothing to reduce the risk of those seizures. In reality, his presence in the lock-up on this occasion probably afforded him more immediate first aid than would have occurred in the community.

On this occasion, and I am sure there are others, the lock-up keeper was unable to obtain specific information he could use with respect to Mr Phillips' health and welfare, due to Mr Phillips' conduct. A number of issues arise from that event, not the least of which is intoxication and un-wellness often make people appear aggressive. It can be an indication, of itself, all is not well.

I would consider it prudent the following matters be considered where there is a failure to obtain coherent, current, welfare information on admission to lock-up.

If there is genuine refusal to provide information it be noted as a refusal. It needs to be a real refusal or inability to comply, not a default entry in the custody system.

Where there has been an inability to obtain current information due to circumstances:-

I recommend:

1. A reference to previous admissions to ascertain whether there are likely welfare needs, such as routine medications, which need to be addressed.
2. There be follow-up when circumstances have changed, or the detainee has settled, to re-address the issue of specific current concerns, especially where a detainee has made a vague reference to being a 'sick man'.
3. There is a clear indication at shift handover as to the specific reason for a detainee's high risk status, and a request a lack of information be followed-up with the detainee if no welfare information has been provided for that admission.

In addition, I suggest there be negotiation between senior police and health providers in regions such as Kalgoorlie which would allow for communication between those parties as to health and welfare concerns for detainees. Many of the

people passing through lock-ups in those areas are seriously intoxicated, or simply not fully aware of their own medical problems.

Currently lock-ups in those areas provide notification to ALS of having their clients in custody to facilitate legal representation and court attendance. It would seem to be equally as desirable to notify Bega, or an equivalent health provider, or for ALS to do so, provided appropriate confidentiality issues can be addressed. It may be notification alone is reasonable.

However, I note, it is impossible to compel compliance with medication. If a person held in custody refuses necessary medication, police are not in a position to compel compliance. This needs to be well documented.

EF VICKER
DEPUTY STATE CORONER

January 2013