

2024 CarswellOnt 7040

Ontario Coroner

Elliot, Re

2024 CarswellOnt 7040

Inquest into the Death of Jayson Elliot

Selwyn A. Pieters Presiding Officer

Judgment: February 27, 2024

Docket: None given.

Counsel: Peter Napier — Inquest Counsel
Tiffany Elliot, Family of Mr. Elliot, for themselves
Cathy McKnight, Family of Mr. Jayson Elliot, for themselves
Larissa Easson, for Ministry of the Solicitor General

Subject: Civil Practice and Procedure

Related Abridgment Classifications

Judges and courts

VII Coroners

VII.2 Coroner's inquest

VII.2.b Practice and procedure

VII.2.b.iv Evidence

Headnote

Judges and courts --- Coroners — Coroner's inquest — Practice and procedure — Evidence

Table of Authorities

Cases considered by *Selwyn A. Pieters Presiding Officer*:

Gentles v. Ontario (Regional Coroner) (1998), 1998 CarswellOnt 3899, (sub nom. *Gentles v. Gentles Inquest (Coroner of)*) 165 D.L.R. (4th) 652, (sub nom. *Gentles v. Gentles Inquest (Coroner of)*) 129 C.C.C. (3d) 277, (sub nom. *Gentles v. Béchard (Coroner)*) 114 O.A.C. 245, 22 C.R. (5th) 343 (Ont. Div. Ct.)

Statutes considered:

Coroners Act, R.S.O. 1990, c. C.37

Generally

s. 44(1)(b)

***Selwyn A. Pieters Presiding Officer*:**

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Brief Facts

1 On May 11, 2021, Mr. Jayson Elliot was housed in his cell with one other cellmate, Mr. Shane Bullis at the Ottawa-Carleton Detention Centre (OCDC). According to the written statement of Mr. Bullis, Mr. Elliot began "gasping" for air and tried to knock for help so he, Mr. Bullis, got up and ran to the door as Mr. Elliot fell to the ground hitting himself off the wall. Mr. Bullis continued to bang on the cell door and saw the Sergeant walking and yelled to her for help.

2 OCDC staff who initiated a medical emergency response. Correctional officers and registered nurses attended the cell and found Mr. Elliot unresponsive.

3 Later, after Mr. Bullis had been removed from the cell, he was assessed by Nurse Collicot in the presence of Sargeant. Siroski. Sargeant Siroski recorded what was said by Mr. Bullis in an occurrence report. According to Sargeant Siroski, Mr. Bullis told Nurse Collicot that he could hear Mr. Elliot trying to clear his throat because he was choking on something. Mr. Bullis thought he was choking on a muffin from his supper. He stated that Mr. Elliot started to bang on the cell door, stating he couldn't breathe and then fell down, hitting his head off the bunk or the floor and was unconscious. Mr. Bullis himself began to bang on the door to get the attention of staff.

4 OCDC medical staff and correctional officers attempted to resuscitate Mr. Elliot. Mr. Elliot had no vital signs. Emergency medical services were requested via 911. Rescue actions included attempts to clear his airway, cardiopulmonary resuscitation, placement of an oropharyngeal airway and bag-mask ventilation.

5 Most of the witnesses that you have heard from at this inquest testified before you virtually. This is known as oral testimony.

6 Because witnesses testified before you, you could hear their testimony and observe and assess the witnesses' demeanor when they were giving their evidence. Most importantly, witnesses who testified are subject to cross-examination, and their evidence can be tested under cross-examination so that you, the jury, may fully evaluate that testimony and determine, based on your evaluation of that evidence, what weight, if any, to give that evidence.

7 Shane Bullis is an unavailable witness. He did not testify before you and was not subject to cross-examination. This is because Inquest Investigators took all reasonable steps to find Mr. Bullis to secure his attendance but they could not locate him.

The Law

8 The *Coroner's Act* provides that I may admit any oral testimony, document or other thing that is relevant to the inquest if that evidence meets the "standard of proof commonly relied upon by a reasonably prudent person in the conduct of their own affairs."¹ The *Coroners Act* also provides that I may comment on the weight to be given to any particular evidence.²

Application of the Law and Caution

9 I have admitted as evidence at this inquest the written statement of Shane Bullis, which has been filed as exhibit 6 in the Exhibit Binder. In addition, you have also heard what Shane Bullis said to Sargeant Doug Siroski shortly after the incident, as recorded in Sargeant Siroski's occurrence report and which he testified to before you today. I will refer to this evidence as "pre-recorded statements.

10 Although the pre-recorded statements have been admitted at this inquest, you must decide what weight to give this evidence.

11 Generally, you should assess all pre-recorded statements the same way that you would if the witness testified before you. There are, however, some important additional factors that you should consider when determining what weight you should give to that evidence.

12 First, as you consider any pre-recorded evidence, please keep in mind that we did not have the benefit of that important tool of cross-examination to test the reliability of the pre-recorded statements. Because of this, you are entitled to give less weight to some or all of the pre-recorded evidence; however, you are not required to do so.

13 Second, you are also entitled to weigh the pre-recorded evidence against any other evidence to see if the other evidence is consistent or inconsistent with the pre-recorded evidence.

14 Third, you may also wish to consider not just the information contained in the pre-recorded statement but the circumstances under which the statement was made:

1. Were the statements made shortly after the incident when memories are fresh or much later when, for example, memory can fade, and details can become confused?
2. Are there other reasons to doubt the reliability of the pre-recorded statement, such as a motive by the statement maker to fabricate the statement?
3. Was the statement recorded on audio or video?
4. Is the statement given under oath?
5. Was the statement reduced to writing either by the statement maker themselves or by another witness who recorded what that witness said to them?

15 Ultimately, the decision as to what evidence to accept is yours and yours alone, and you may accept all, some or none of the evidence the pre-recorded evidence in this case.

16 As the *Coroner's Act* provides, however, I am permitted to comment on the weight that should be given to certain evidence, including pre-recorded statements.

17 In this case, the pre-recorded statements of Mr. Bullis do appear to have some hallmarks of reliability, and you may accept them for this reason if you choose to do so. For example:

1. The statements are consistent with the actions and observations of other witnesses at the time of the incident. We see, for example, Sargeant Baric responding to Mr. Bullis calling out from behind the cell door.
2. The statements are also consistent with what you have observed on the independent video of the events, keeping in mind that Mr. Bullis had not seen the video prior to providing his statements. You see the cell door shaking, consistent with someone banging on the door. This happens twice after a short interval of time, as Mr. Bullis describes, and shortly before Sargeant Baric is seen arriving at the cell door.
3. A number of correctional officers have testified that when they initially looked into the cell, they saw Mr. Elliot lying on the floor of this cell. This is also consistent with what Mr. Bullis said in his pre-recorded statements.
4. There is no evidence of a motive for Mr. Bullis to fabricate this evidence. The post-mortem confirms that Mr. Elliot died as a result of choking on food, which is also consistent with what Mr. Bullis describes in his statement.
5. The statements Mr. Bullis made were recorded a short time after the incident occurred.

18 As I have indicated, for all of these reasons, the above creates a pathway for you to navigate the issue and you may choose to accept as true all of the evidence contained in the pre-recorded statements of Mr. Shane Bullis, a key witness who is now unavailable.

19 However, I emphasize that the decision of what you choose to accept as true is entirely up to you, keeping in mind these guiding principles that I have just discussed.

Footnotes

- 1 Section 44(1)(b) of the Coroners Act, RSO 1990, c C.37 and *Gentles v. Gentles Inquest (Coroner of)*, 1998 CanLII 19472 (ON SCDC).
- 2 *Ibid.*, s. 44(1)(b).

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