



**CORONERS COURT
NEW SOUTH WALES**

Inquest:	Inquest into the death of Mr Patrick FISHER
Hearing dates:	19-20 August 2019
Date of findings:	23 August 2019
Place of findings:	NSW State Coroner's Court, Lidcombe
Findings of:	Magistrate C Forbes, Deputy State Coroner
Catchwords:	CORONIAL LAW-Death as a result of a police operation-evading arrest
File number:	2018/41984
Representation:	<p>Dr P Dwyer, Counsel Assisting instructed by Mr S Hogan, Crown Solicitors Office</p> <p>Mr D Evenden, instructed by Legal Aid NSW, representing Mrs C Williams (Mr Fisher's mother)</p> <p>Mr P Madden, instructed by Walter Madden Jenkins Solicitors, representing Sergeant R Veltman</p> <p>Mr R Hood, instructed by Office of the General Counsel New South Wales, representing the Commissioner of Police and the New South Wales Police Force</p>
Findings:	<p>I find that Patrick Fisher died on 7 February 2018 at the Sir Joseph Banks Building, 249 George Street, Waterloo, NSW as a result of multiple injuries he received when he fell from a 13th floor balcony.</p> <p>Methylamphetamine intoxication was a significant condition that contributed to but did not cause his death.</p>

REASONS FOR DECISION

Introduction

1. This is an inquest into the death of Mr Patrick Fisher who died on 7 February 2018, after falling from a 13th floor apartment balcony. Mr Fisher slipped while he was trying to climb to the balcony below to avoid being arrested by NSW Police Officers who were knocking at the door.
2. The role of a Coroner as set out in s.81 of the *Coroner's Act 2009* ("the Act") is to make findings as to:
 - i. the identity of the deceased;
 - ii. the date and place of the person's death;
 - iii. the physical or medical cause of death; and
 - iv. the manner of death, in other words, the circumstances surrounding the death.
3. The Act also requires a Senior Coroner to conduct an inquest where the death appears to have occurred "*as a result of police operations*". (s.23, s.27).

"The purposes of a s.23 Inquest are to fully examine the circumstances of any death in which Police 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."

4. This inquest is not a criminal investigation, nor is it civil liability proceedings intended to determine fault or lay blame on persons involved in the incident. This Inquest has been a close examination of the police actions on the morning of Mr Fisher's death and pursuant to s.37 of the Act a summary of the details of this case will be reported to Parliament.

Mr Fisher

5. Mr Fisher was the youngest of nine siblings. His father died when he was just twelve years old. He is dearly missed by his family and in particular his mother who had a deep connection with him. She described him as being well liked, with good manners and a sense of respect. She said that as a young boy he was a successful and keen footballer and a natural leader who became the school captain of his primary school. She said that he was the sort of person who loved and believed in other people and that when you were with him you gained an insight into yourself.
6. Mr Fisher was a father to three children, who were aged 14, 11 and 8 at the time of his death.
7. I received a statement from Carly Bianca White, who is the mother of two of Mr Fisher's children. She writes about how the grief is still very raw and that they all miss him very much. The boys are receiving counselling at school to help them manage their grief.
8. Sergeant Ross Veltman of Redfern Police had opportunities to meet and talk with Mr Fisher prior to his death. He described him as a nice person to talk to, who was athletic and lively and talked openly about himself, chatting about his children and other things that were important to him.

Background

9. From an early age, Mr Fisher struggled with alcohol and drugs. He revealed to Police and medical teams, that he had developed an alcohol problem between the ages of 12 until he was 14. He started smoking cigarettes at the age of 12 and cannabis at the age of 13. He then used cocaine at the age of 13, and heroin at the age of 14.
10. Mr Fisher's record on the NSW Police Force database (COPS) includes 280 events and 118 Intelligence Reports. The COPS entries are for a range of offences including larceny, robbery, assault, malicious damage, resist/hinder/assault police. The intelligence reports include issues of being armed, street crime and larceny.
11. There were 21 warnings on Mr Fisher's 'Police profile', including, "may assault police", "known prohibited drug user", "may carry weapon", "may become violent when intoxicated", "POI has threatened to kill any Redfern Police officer whilst on or off duty- warning should be taken seriously", "approach with caution", "consideration should be given to handcuffing whilst speaking to POI for Police officer safety", "self-admitted ice user", and perhaps most relevantly "May escape or attempt to escape; May resist arrest".

12. Mr Fisher's juvenile criminal history is recorded from 24 February 2000 (first charge date) until 25 August 2003. There are 15 convictions recorded during his juvenile period and he served one period of incarceration in 2003 with a control order of 7 months for the offences of Malicious Wounding and Robbery in Company.
13. His adult criminal history extends from 4 February 2005 until 5 November 2017. There are 45 convictions recorded during his adulthood and he served a number of custodial sentences, with the last release date being 29 March 2016. He was given a further suspended sentence of 7 months on 17 May 2017.
14. Police records show that Mr Fisher had avoided or attempted to avoid police on 44 occasions. These included 20 occasions of running from police when there was no offence detected, nine times when he ran when there was an arrest warrant, 11 times when he ran from police and was apprehended and four motor vehicle pursuits.
15. On two occasions, Mr Fisher fled Police and jumped over a balcony to escape;
- i. On 8 March 2007 Police attended 39 Eveleigh Street Redfern to arrest a person. During this arrest police observed Mr Fisher to be hiding under a bed in an upstairs bedroom. When discovered by police he crawled out, but after a short struggle with Police fled over the first floor balcony. Police had hold of his shirt, and Mr Fisher was dangling from the balcony whilst being held. Due to his struggling, police lost grip of Mr Fisher who dropped to the footpath and escaped. He was later arrested inside a neighbouring premise and charged (H28787834).
 - ii. On 13 June 2010, Mr Fisher and a co-accused climbed an awning of a shop at 34 Redfern Street, Redfern, and gained access to an adjoining premise at 36 Redfern Street, where they stole property through a window of a room. The occupants called police who attended and saw Mr Fisher on a balcony on the third floor of this building. He then leapt over the balcony and hung onto the railing, then let go of the balcony railing and fell to the ground. Mr Fisher produced a knife, ran, but was chased by police and subsequently arrested and charged (E41472473).
16. On 3 November 2017, Mr Fisher was charged with Assault Occasioning Actual Bodily Harm. He was charged with punching a member of the public and breaking their jaw. He failed to appear at the Downing Centre Local Court on 8 December 2017 for that charge. He was also due to appear at court on that day in relation to offences of Destroy/Damage Property and Larceny for which he had been placed on s.12 bonds.

17. In his absence he was convicted of the Assault Occasioning Actual Bodily Harm offence and the court issued a warrant for his arrest pursuant to section 25 (2) *Crimes (Sentencing Procedure) Act*. As a consequence of the conviction, the bonds were 'called-up' and a warrant was also issued in relation to the s 12 Bonds pursuant to section 98 I A (a) of *Crimes (Sentencing Procedure) Act*.
18. It was these warrants that police planned to execute when they arrived at the apartment on 7 February 2018. The section 12 Bonds related to suspended sentences that he was facing serving in custody once arrested.

Undisputed Factual outline

19. Following the issuing of the two warrants, the Redfern Police Local Area Command updated their intelligence bulletin to include the information that Mr Fisher had outstanding arrest warrants. The 'Intelligence bulletin' is a weekly summary of individuals at large or wanted for questioning, any particular crime trends or hot spots and some general information relating to the relevant local area command. It is a protected internal document circulated to all police.
20. The bulletin is emailed to police officers in the command and is also uploaded as a rolling slide show on monitor screens within the command, such as the muster room or meal room, so that police may be kept up to date with local crime trends and local individuals wanted by police.
21. In January 2018 Mr Fisher was identified as a suspect in steal from motor vehicle offences in the Sydney City Police Area Command and on 24 January 2018 his profile was added to the Redfern Police Area Command's morning briefings as being wanted for those offences. He also appeared in the Sydney City Police Area Command's intelligence bulletin for these offences.
22. Police attended Mr Fisher's mother's residence in Redfern in an attempt to arrest him. Senior Constable Broadfoot searched the unit, but Mr Fisher was not there.
23. Police also attended the security office of the Sir Joseph Banks Building and showed the Security Concierge for the building, Mr Mir Rana, a photograph of Mr Fisher. Mr Rana recognised Mr Fisher as being a person who had visited Naomi Dixon in unit 1312 on occasions over the last year. The police told Mr Rana to contact either the security control room or Redfern Police Station if he saw Mr Fisher.

24. Police also attended the security office at 3 Phillip Street Redfern. They spoke with security officer Samir Rafrat and asked him to call the police station if he saw Mr Fisher. Mr Rafrat confirmed that he knew who Mr Fisher was.

25. In his interview after this incident, Sergeant Veltman, the officer who was in charge of the attempt to execute the warrants on Mr Fisher, explained that:

"... we have a very good relationship with them [building security] and it's quite common that, um, that we, that we get some photographs are left or something and we will act on the information ... and, um, I've arrested hundreds of people [in] those blocks over my eleven years and it's always found to be accurate".ⁱⁱ

7 February 2018

26. At about 10.40am on Wednesday 7th February 2018, Mr Fisher went to the outside of the Sir Joseph Banks Building at 249 George Street, Waterloo. A male by the name of Anthony Weldon, who has known Mr Fisher since he was a child, stopped and spoke to him outside the building. Mr Weldon later told Police that he thought Mr Fisher was 'on something'ⁱⁱⁱ because his speech was rapid and movements were jerky. During the conversation Mr Fisher told him that he had no place to stay or go.

27. Mr Weldon walked away as another male, Brett Jennings, arrived on his push bike. Both Mr Jennings and Mr Fisher banged on the front door to the building and asked Mr Rana, the concierge/security officer, to let them into the foyer, which he did. Mr Rana recognised both men from photographs provided by police in the weeks prior. Brett Jennings refused to sign the visitor book and Mr Fisher signed a false name, before they both went to the lift.

28. Shortly afterwards, Mr Fisher and Mr Jennings entered unit 1312. Peter Williams was already in the unit with Naomi Dixon. Mr Williams saw Mr Fisher and Mr Jennings enter the unit, Mr Williams was dozing off on the lounge after their arrival^{iv}.

29. After Mr Fisher got in the lift Mr Rana contacted the security control room at 3 Phillip Street Redfern and continued to watch the CCTV of Mr Fisher's movements. Mr Rana spoke with Security Officer Mr Rafrat and advised him that Mr Fisher had exited lift number one on level 13. Security Officer Mr Rafrat reviewed the CCTV footage and confirmed it was Mr Fisher and Mr Jennings in the lift. He called Mr Rana back and advised him to continue to watch the lift and fire exit cameras to see if Mr Fisher left the building.

30. Security Officer Mr Rafrac called Redfern Police Station and recalls asking a male police officer if police still wanted Mr Fisher, as he was on level 13 of the Sir Joseph Banks Building. The police officer advised they would send someone shortly.
31. Constable Edward Archbold-Digby received the phone call from Mr Rafrac. He consulted with Leading Senior Constable Carter, who advised him to check COPS to confirm that FISHER was still wanted on a warrant and if so, put the job on as a check bona fides.
32. About 10:54am Constable Archbold-Digby created a job on the NSW Police Force Computer Aided Dispatch (CAD) system.
33. Within two minutes of the creation of the CAD job, Sergeant Veltman acknowledged the job and requested assistance. In his interview he described himself as responding
- "let's go, arrest him as soon as possible, cause, I'm aware that several police have been in four pursuits with him the last couple of weeks and I, myself, I keep patrolling where he lives, um, I've been looking for him with other police, um, for the past, probably six weeks, to two months ... and he's managed to get away every time. And I thought, well, that's good, he's quite contained in there, so we should be able to get him no problem".^v*
34. Sergeant Veltman called for assistance and he and Sergeant Hill made their way to the Sir Joseph Banks Building.
35. Just prior to 11am, CCTV depicts Sergeant Veltman, Sergeant Hill and Constables Kearney and Gardiner arriving at the building and parking their cars. They walked to the security office area of the building where Sergeant Veltman spoke with security officer Mr Rana. Mr Rana told Sergeant Veltman that two men had gone up to level 13 together. Mr Rana showed Sergeant Veltman a photograph of one of the men he had seen entering the building. Sergeant Veltman thought he recognised this man as someone else who he thought was also subject of a warrant.
36. The four police got into a lift and made their way up to level 13.
37. Outside on George Street, Detective Egan and Detective Smith were arriving in their police car after hearing a report of the job on the police radio. Over the radio Detective Sergeant Egan told Sergeant Veltman he had arrived and stated that he thought Cherie Jackson, wanted for armed robbery, might also be in the apartment.
38. Sergeant Veltman requested Constable Lockwood take a position downstairs with a view of the Western side of the building in case someone tried to climb down the balcony.

39. He requested another officer make their way up to level 13 to assist, because, he said:

" ... I know that Mr Fisher does usually bung it on ... "^{vi}

40. Constable Switzer, who had just arrived, made his way up to level 13 while Constable Lockwood took up a position outside on the Western side of the building with a view of the thirteenth floor balcony

41. On level 13, Sergeant Veltman, Sergeant Hill and Constable Kearney and Gardiner waited for Constable Switzer to arrive.

42. Constable Switzer arrived and knocked on the door. The voices within went quiet. A female voice said "who is it?" Constable Switzer replied, "It's the police, open the door". There was silence. Sergeant Veltman kicked the door a number of times. Different police officers had a different estimate of the time that passed, somewhere between 10 and 30 seconds after police had first knocked, and after Constable Switzer kicked the door more than once, Naomi said that she was coming and she opened the door. At that time a number of police entered. Sergeant Veltman was first through the door.

43. As he entered the apartment Sergeant Veltman heard Ms Dixon say that Mr Fisher had gone over the balcony. Sergeant Veltman quickly made his way to the open balcony door. He looked down and saw Mr Fisher on the ground below.

44. Constable Lockwood immediately attended upon Mr Fisher. She described that she was looking up towards the balcony of the unit from the car park below. She watched as Mr Fisher walked out onto the balcony and swung one leg, and then another over the railing, and it looked like he lost his footing. She heard him say "oh fuck" before he fell.^{vii}

45. Justin Flanagan, a resident of the same building, who was returning to the building with his dog, also saw Mr Fisher fall. In his interview, he told police

" ... he moved his body over the side of the balcony so that he was holding onto the brick ledge on the outside of the balcony. I could see his body dangling over the balcony ... he crouched down ... I watched him at this point bounce or lean back. He lost his grip from where his hands were positioned on the ledge ... the man fell ... "^{viii}

46. Police and paramedics attended on Mr Fisher. Detective Sergeant's Egan and Smith who were patrolling the area immediately responded after Mr Fisher came to rest on the ground and commenced performing CPR.

47. A call was received by the NSW Ambulance Service at 11:10am and paramedics arrived at the scene at 11:16am. Tragically there was nothing that could be done to save his life. He was pronounced deceased at 11:20am.
48. At autopsy the forensic pathologist determined that his cause of death was multiple injuries and that Methamphetamine was a significant condition that contributed to but did not cause his death.^{ix} Dr Farrar, consultant forensic pharmacologist, is of the opinion that the concentration of methamphetamine in his blood indicates he was in the process of smoking methamphetamine just prior to his death. He stated that the concentration is associated with profound behavioural change and that there would have been deficits in cognitive and psychomotor performance, reduced judgement and decision making ability and a propensity for increased risk taking activities.^x
49. Brett Jennings, who was up in the apartment with Mr Fisher, participated in an electronic interview with Police. He said:

"Four coppers come to the door. I didn't know at first. They're knocking on the door. Two times. So four times they knocked. Like one, two, four. You know what I mean. Anyhow fucking, they knocked then he started booting on the door, Mister Swelter or whatever his name is and said police and all this and that and then Pat's run out and I don't know, slipped to his death. That's as far as I know."^{xi}

Issues

50. It is not in dispute that the Police had the power to enter the unit to execute the warrants.^{xii} It was necessary for them to find Mr Fisher as soon as they could as he was wanted for the court warrants and also for questioning in relation to further offences it was alleged he was committing while at large. It is not in dispute that in climbing over the balcony and attempting to swing onto the balcony below Mr Fisher slipped and fell. It is not in dispute that the police were either still knocking on the unit door or just entering the door when Mr Fisher fell.
51. The issue that remains for this inquest to consider was whether anything should have been done differently by the police in light of the fact that the police were aware that Mr Fisher had a history of trying to escape police, including climbing over balconies, and were also aware he used 'ice' and may act irrationally.
52. It is conceded by all parties that containing the building and waiting for Mr Fisher to leave were not realistic. There was no way the police could know how long Mr Fisher would stay, furthermore, the building had five exits to the street and CCTV cameras did not cover the hallways and stairwells within the building.

53. It is not in dispute that there was, however, an onus on the police to properly assess the risk of the situation before they embarked upon the arrest.
54. The representative for Mr Fisher's mother submitted that an outcome of a careful assessment of the risk may have been that further police could have been placed on the balcony in the unit below so that Mr Fisher would have been deterred from attempting to climb over the 13th floor balcony. This may have been a successful idea however it is also fraught with difficulties. In his drug affected state Mr Fisher was not acting rationally. He may have continued to attempt to climb over the balcony or try to climb up to the one above. If police were below there may well have been a greater risk of danger to all. The fact that Mr Fisher was not successful in his attempt to climb to the lower balcony is not because it was not possible. Unfortunately as a result of the effects of the drug or by accident he slipped and fell. I'm not persuaded that having police on the balcony below would have been a safer and preferred approach to undertake the arrest. It is beyond reasonable to expect police to gain access to someone else's apartment and become involved in such a potentially dangerous situation.
55. Sergeant Veltman did undertake a risk assessment before he commenced the arrest. He knew Mr Fisher and he was well aware of the warnings on the police systems. He knew Mr Fisher would try to avoid being arrested. He arranged for extra police to assist him and for Probationary Constable Gardiner to guard the door while the other police went in with him to affect the arrest. He told investigating police that the plan was to rush in and catch them by surprise, Mr Fisher first.
56. He was aware of the possibility that Mr Fisher may attempt to climb over the balcony. He didn't think it was likely as it was a 13th floor balcony and Mr Fisher had only climbed over balconies closer to the ground before. Furthermore, the last time he had climbed from a balcony to evade arrest was eight years earlier. He formed the opinion that if Mr Fisher did try that he would be able to do it successfully. He was an athletic and agile young man and the design of the balconies made it possible. He made arrangements for an officer to remain on the ground to watch the balcony in case that possibility did arise. Sergeant Veltman said that he did not know that Mr Fisher had just been smoking methylamphetamine that morning and didn't foresee the possibility that Patrick would slip and fall.
57. I am satisfied that the assessment of the risks and the preparations that were put in place by police before the warrant was executed were appropriate.

58. Within an hour of Mr Fisher's death a Level 2 Critical Incident was declared. The critical incident guidelines were put in place and an independent investigation was undertaken by Detective Sergeant Babb. I commend him on the excellent brief he prepared for this matter.

59. This was a tragic ending for a man who had great potential. I extend my sympathies to all of his family.

Findings: s 81 Coroners Act 2009

I find that Patrick Fisher died on 7 February 2018 at the Sir Joseph Banks Building, 249 George Street, Waterloo, NSW as a result of multiple injuries he received when he fell from a 13th floor balcony. Methylamphetamine intoxication was a significant condition that contributed to but did not cause his death.

Magistrate C Forbes

Deputy State Coroner

23 August 2019

ⁱ Waller's Coronial Law & Practice in New South Wales 4th Edition, p 106

ⁱⁱ Exhibit 1 Tab 7

ⁱⁱⁱ Exhibit 1 Tab 20

^{iv} Exhibit 1 Tab 18

^v Exhibit 1 Tab 7

^{vi} Exhibit 1 Tab 7

^{vii} Exhibit 1 Tab 10

^{viii} Exhibit 1 Tab 19

^{ix} Exhibit 1 Tab 4

^x Exhibit 1 Tab 53

^{xi} Exhibit 1 Tab 16

^{xii} Section 10 (1) *Law Enforcement (Powers and Responsibilities) Act 2002 No 103*