

IN THE CORONERS COURT
LIDCOMBE
NSW

Section 81 Coroners Act 2009

REASONS FOR DECISION

Introduction

1. This is an inquest into the death of Bosco Toufalous who was 35 years old when he died. He was born in South Sudan in 1982. He was the youngest child of Ana Ayura and Pius Onguti Teppi. The deceased had an older brother, James Okwera born in 1978. His parents died when he was very young and at about the age of 2 years he lived with his aunty and uncle and their three children. When war broke out in South Sudan in 1986, he moved to a refugee camp in Uganda with his aunty and uncle and cousins.
2. In 2005 he immigrated to Australia and initially lived with his family who also immigrated with him in Merrylands. He initially worked but due to his alcohol consumption he lost his job and later he became unemployed due to a restructure at the factory where he worked for a short time. In 2009 he moved to 38 /17 Parkside Drive Lalor Park where he resided up until the time of his death. His excessive drinking over the last few years resulted in approximately 20 admissions to hospital for severe intoxication and/or injuries sustained due to that intoxication.¹
3. The complex of units where he lived had a neighbouring complex at 11 Parkside Drive Lalor Park. They are public housing, with each complex comprising of 2 “L-shaped” buildings; each building was two stories with an external walkway and stair case at either end. The units were studio units with separate bathroom/laundry and kitchen.
4. Bosco was regularly drunk and didn’t really eat very much food. After drinking a small amount of alcohol he wasn’t able to walk properly. When he drank a lot of alcohol, he allegedly couldn’t stand up at all and had to be lifted up by others.² Bosco would often have friends over to his unit and they would all drink alcohol

¹ Megan Oxley 24.10.18 at para 10.

² Saad Adam 11.04.18 at para 5.

and act in a disorderly manner by arguing with each other and smash objects, a regular occurrence in the complex.³

5. Bosco had friends who lived in the other complex. One is Saad Adam who lives in unit 1 which is downstairs and in the building closest to the complex 11-13 letterboxes. The other friend is Anuar Sabasio who lived in unit 16 which is upstairs and at in the opposite end in the other building furthest from the letterboxes.
6. Both Saad and Anuar were from South Sudan as were most people who drank with Bosco. Anuar has a mental illness and like Bosco would excessively consume alcohol. He and Bosco were very close and spent a lot of time together. Saad worked but on the day of Bosco's death was not at work and had people at his place drinking. Two of those people had stayed the previous night at Saad's place with him. They were a man called Jimmy and his girlfriend Viviana who were also South Sudanese; though Jimmy was referred to as Caucasian by some witnesses this was because he had albinism. They too were apparently heavy drinkers.

Circumstances of Death:

7. At about 8.00pm 10 April 2018 Bosco was found lying on his left side with his face or neck resting on the lower rail of the walkway veranda near the top of the stairs outside Anuar's unit.⁴ He had some blood on his mouth and nose. There were no other signs of injury.
8. The ambulance was called immediately arriving at 8.19pm when officers moved him onto this back and checked for signs of life. The cardiac monitor confirmed he also was asystole. The deceased was confirmed life extinct. At about 8.20pm police arrived on scene in relation to a concern for welfare.
9. An examination of the scene identified property belonging Bosco outside Anuar's unit. There was a thong outside his door and another on the opposite side of the veranda and at the foot of a pole of the veranda rail was Bosco's opal card and house keys. There was a blanket over the railing.
10. Police attempted to speak to Anuar but he refused to open his door and produced a hollow metal pole at his window threatening police by stating, *"If you come in I'll take your guns and shoot you"*. The police moved away from the unit and attempted to talk to him from outside number 17. After a period of time he appeared to fall asleep evidenced by loud snoring from within the unit.

³ Statement of Phillip Drew 11.04.18 at para 5.

⁴ Megan Oxley statement 23.04.18 at para 4.

11. A crime scene warrant was issued and executed at 2.30am in the morning. Upon entry Anuar armed himself with a metal pole and was removed by force from his unit. Police heard Anuar state, *'you don't understand what's happened'*.⁵
12. Police commenced an interview with Anuar but it was evident he was mentally unwell, so the interview was stopped and he was conveyed to hospital where he was admitted to a psychiatric ward and remained in hospital for 2 months.
13. When he was well, Anuar was interviewed by the police and he said that Bosco had arrived at his unit in the evening and they drank wine. He said that he had asked Bosco to leave as he was drinking too much of the wine too quickly. He said that Bosco consumed 3-4 large glasses very quickly. He asked Bosco to leave which he did. Anuar said there was no argument and that he did not push Bosco.
14. Anuar said some time after Bosco left, Anuar went out of his unit to obtain a blanket that he had over the veranda railing and it was then that he saw Bosco lying on the landing with his neck and head hanging over the railing. Anur said he thought Bosco was asleep. He explained that he didn't go to Bosco because he didn't want to have to walk him back to his own unit – something that he had had to do previously.

Witnesses

15. The police investigation has involved the interviewing of numerous people, most of whom were under the effects of alcohol as they had been consuming such during the day. The reliability of the sequence of events and times of events is particularly poor but the police did obtain some CCTV footage from various locations which has assisted in determining a semblance of a time line.
16. At about 8.30 am Anuar borrowed \$10 from a neighbour Mr Chalker. At 9.22 am Anuar attended a nearby bottle shop which is about a 5-10 minutes' walk from the complex. He has purchased a 4L cask of wine. He took the wine to Bosco's house where he and Bosco commenced drinking. Jimmy and Viviana went to Bosco's at which time Anuar was cleaning which included moving furniture out of Bosco's unit but Bosco was laying on the mattress and intoxicated.
17. About this time Saad dropped into the unit and saw that Bosco was highly intoxicated. He then went to Lalor Park Hotel with friends Mohammad and Vinny. Viviana made some soup which Bosco consumed. Bosco gave Anuar some money to buy more wine and a packet of cigarettes. Anuar left the unit and probably went to his own unit and had something to eat before returning to Bosco's unit with the second cask of wine.

⁵ Megan Oxley statement 24.10.18 at para 38.

18. Whether they consumed more together or whether Bosco was asleep is unknown but at some stage, either as a result of an argument or Bosco falling asleep Anuar returned to his own unit with the remainder of the cask of wine. Anuar was likely in the company of another man called Myan who had also apparently been at Bosco's at some stage of the day.
19. Saad, Mohamad and Vinny returned to Saad's unit shortly after 3 pm having purchased more alcohol at the bottle shop. Jimmy and Viviana left Bosco's and joined the drinking at Saad's unit as did Anuar and Myan. Vinny left after about 20 minutes annoyed that they were all drinking alcohol that they hadn't paid for.
20. At about 5 pm a man called Tyson arrived in his car. As he was walking into the complex he saw Mariam and Biar who were going to Saads'. Tyson says he saw Bosco out on the grass. Tyson says he told Bosco that he was going to visit Anuar and Bosco replied that Anuar wasn't answering his door. Mariam says that she saw Bosco as they were leaving and he was heading in the direction of Saads. It is more likely that Mariam saw Bosco when she was arriving rather than leaving the complex and she is mistaken in this regard.
21. In any event, Mariam says that shortly after arriving at Saad's, he asked Anuar to leave because he was being aggressive and disrespectful.
22. Jimmy and Myan took Anuar back to his apartment and neighbours heard Anuar yelling from the railing near his unit out across the complex to those at Saad's unit. His yelling and shouting was ignored by all and Myan and Jimmy took Anuar back inside his unit and it was quiet. Jimmy returned to Saad's and Myan left with Tyson, Biar and Mariam and told Mohammad and Jimmy he would come back and drive them somewhere.
23. It is likely that Bosco had arrived at Anuar's unit shortly after Jimmy and Myan had left Anuar there. Mohamad said that he was on the phone to his friend at about 7.15 pm at which time Jimmy left to go to Bosco's unit. This time is unlikely to be correct because Tyson says he was only gone for about 40 minutes and Mariam said they had left so she could be somewhere at 6 pm. That would mean Tyson likely arrived back before 7 pm. Jimmy had said that he had gone back to Bosco's unit around 4 pm to hang his washing out. That might be the case but given that he helped Anuar back to his unit and he was unable to travel with Tyson due to too many people in the car, he had likely returned to Bosco's unit around 5.30-5.45 pm.
24. When Jimmy went to the unit Bosco was not there. He was likely in Anuar's unit. Anuar says that he thought the time Bosco arrived was between 7 and 8 pm but this is not likely. By his description that Bosco was drinking 4 large glasses of wine very quickly means Bosco was not there long before he was asked to leave.
25. Bosco's thongs were outside Anuar's unit consistent with him having taken them off to enter the unit. The location of the opal card and keys could indicate they

were either left or dropped there. Whether he left them because he was so intoxicated is highly probable.

26. Peter Plant who lives in the complex walked to the nearby shops at 6.45 pm and purchased some milk. On his return, which would have been around 7 pm he saw Bosco laying on the landing. Mr Plant thought Bosco was asleep. An hour later he discovered that Bosco was in fact deceased.
27. Anuar says that he went out to get his blanket and saw Bosco with his head on the railing hanging over the balcony. I note that the blanket was still there when the police arrived but there is no evidence if this was the blanket he was referring to or another or whether he failed to collect it because of his level of intoxication.

Anuar's Behaviour

28. At about 5.10am on Wednesday 11th April 2018 Anuar was taken to a police interview room at Blacktown Police Station and participated in an ERISP interview.
29. Whilst in the custody area and when he was provided with a copy of his Part 9 rights, he stated, "*I have the right to defend myself, if anybody comes to my house I will defend myself and kill them. I'll use magic on them*".⁶
30. During the interview with police Anuar became worked up acting in aggressive manner. He accused police of using magic as they opened the interview door without a key. He continued to rant about the government and people stealing his property.
31. Investigators tried to bring the conversation back to Bosco asking what happened. Anuar said, "*Yeah, I squish him, he was using magic, yeah. We'd been fighting with him; he's not....fighting, yeah. I defeat him. That's why I kill him, yes*".⁷ Due to Anuar's behaviour the interview was suspended.
32. An interim forensic procedure was applied for and granted. A police medical officer obtained a number of forensic items from Anuar which consisted of swabs of his hands, nail clippings and a sample of blood and urine. The clothing he was wearing was also seized. This included a white singlet that he had been

⁶ Megan Oxley statement 24.10.18 at para 41.

⁷ Megan Oxley statement 24.10.18 at para 42.

wearing which contained a small amount of blood around the collar. It was tested and later found to be Anuar's blood.⁸

33. All the nail clippings were DNA tested. One of the fingernail clippings returned a positive same for blood however there is no evidence that it was Bosco's blood.⁹

POST MORTEM:

34. A Post Mortem was conducted by Dr Kendall Bailey on 13th April 2018. The cause of death was listed as '**unascertained**'.

A summary of her significant findings were the following:

1. INJURIES

- a. *Multiple areas of bruising and abrasion*
- b. *Face*
- c. *Left posterolateral scalp*
- d. *Right ear*
- e. *Right anterior neck*
- f. *Shoulders*
- g. *Left clavicle*
- h. *Right elbow and hand*

2. Layered neck dissection:

- *Multifocal small intramuscular haemorrhage*

3. NEUROPATHOLOGY

- evidence of mild blunt force head injury*
- mild ventriculomegaly*
- cavum septum pellucidum*
- uncomplicated haemangioma*
- atrophy of the superior anterior vermis and right cerebellar hemisphere*

4. TOXICOLOGY

- Blood Alcohol Level 0.293 g/100mL*
- Urine Alcohol Level 0.391 g/100mL*

5. MEDICAL IMAGING

- Subarachnoid haemorrhage*
- possible traumatic subluxation of the craniocervical junction*

In her 'report summary', Dr Baily noted that the deceased was found with blood on his face and was reported to have his head resting at an awkward angle against a railing'.

⁸ Ibid para 39. Apparently, he received minor injuries when arrested with force.

⁹ Megan Oxley statement 24.10.18 at para 44

Based on the autopsy findings, including evaluation of the toxicology report, and examination of the brain by a neuropathologist and review of the post mortem CT scans by a specialist radiologist, the cause of death remains unascertained.

While there is possible bony injury and subarachnoid haemorrhage around the base of the brain, examination of the brainstem and cervical junction did not identify injury which would be considered fatal. This does not exclude ligamentous neck injury as a potential mechanism for death, and may be related to brainstem dysfunction due to traction injury or potentially commotio medullaris (brainstem concussion) effect.

It is also possible that the cause of death relates to a positional asphyxia on a background of potential alcohol intoxication and blunt force head injury. The injuries observed may have resulted in altered consciousness and a decreased ability to protect the airway from obstruction relating to head and neck position or occlusion by soft tissues such as the tongue. Likewise the effects of alcohol may have contributed to decreased consciousness and subsequent positional asphyxia”.

Fall or an assault

i. Fall:

In relation to this possibility, there are many witnesses who have described the deceased as being highly intoxicated on the day of his death. His blood alcohol concentration was 0.293 g/100mL. His urine concentration was slightly higher.

35. The high alcohol concentration is consistent with the evidence of numerous witnesses who saw Bosco that day. I note that Viviana says that she and Jimmy shared a glass of wine which was the last of the cask being consumed in the morning at Bosco’s unit. Given he was asleep for part of the day, Anuar’s report of the consumption of 3-4 glasses later that day is consistent with the alcohol level remaining very high. It is also consistent with Bosco requiring to hold onto railings and the wall to mobilise to get to Anuar’s unit let alone leave it.
36. Saad stated that before he went to the Lalor Park Hotel (CCTV shows this was at 1.45 pm) he saw that Bosco was heavily intoxicated and unable to control his movements. He said Bosco he was very drunk and could not speak properly. He does not know how he got to the top of the stairs as he was surprised he could walk due to his intoxication.¹⁰
37. Similarly, Jimmy also said that for the last four days before his death, the deceased had been drinking heavily. He said when he was drunk he couldn’t even walk.¹¹ Viviana fed Bosco some soup and said he was heavily intoxicated, mumbling his speech and unable to keep his balance.¹² She said you couldn’t

¹⁰ Saad Adam 10.04.18 para 18.

¹¹ Statement of Ramino Makki (Jimmy) 10.04.18 at para 13-14.

¹² Megan Oxley statement 24.10.18 at para 15.

get any sense out of him.¹³ It was also suggested he required assistance to go to the toilet as he could not stand.¹⁴

38. In contrast, a resident Mr Kenneth Constable, didn't believe Bosco was drunk on this day and said he was walking normally when he saw him sometime between 4.00pm and 5.00pm.¹⁵ Mr Constable said that he was watching TV at about 3 pm and saw Jimmy and Anuar leaving Bosco's unit and then saw Bosco leave and return an hour or so later and that he was walking normally and that when he was drunk Bosco can't walk a very long distance without falling over. He described Bosco wearing a red and white checked shirt. Bosco was not wearing a red and white checked shirt so I am not confident that Mr Constable has correctly identified that the man he saw was in fact Bosco or he is reliably recalling the event.¹⁶

39. Mariam notes that when she saw Bosco he needed to hold onto the wall to walk. A BAC of 0.293 g/100mL Bosco would have been very unsteady on his feet and susceptible to a falling.

ii. Assault

40. Given the finding of Bosco's thongs, opal card and keys outside Anuar's unit and Anuar's aggressive and agitated behaviour earlier in the afternoon and again when the police arrived, it was suspected he may have assaulted Bosco. Witnesses had heard him yelling outside his unit to persons at Mr Saad's unit saying, *'I am going to kill you, I will see you on the streets and I am going to fuck you up'*.¹⁷ However, there is no evidence at all that Bosco was there or that any of that aggression was directed at Bosco. However, reports from residents indicate that Anuar often yells and shouts.

41. Anuar was highly agitated and aggressive towards police on the night he was spoken to and said, *'If you come in I'll take your guns and shoot you'*¹⁸ and during the ERISP on 11 April 2018 he told police *"I squish him, he was using magic. 'I've been fighting with him, it's not the first time, I defeat him, that's why I kill him. What do I do when someone wants to fight me with magic"*.¹⁹

42. Medical records show that Anuar made comment to a doctor *"I know him from my country, I filled the paper that he used to come to Australia, since he came to this country he has been using black magic on me, he said he went to TAFE but I believe he went to TAFE to learn black magic. I did not use any weapon, I hit him with my bare hand, he fell down, I went to my house. I don't know if he is alive or*

¹³ Viviana Abol statement 11.04.18 at para 13.

¹⁴ Megan Oxley statement 24.10.18 at para 15.

¹⁵ Kenneth Constable 12.04.18 at para 6.

¹⁶ Mr Constable says that Anuar and Jimmy were also throwing furniture and items of Bosco's over the balcony and this was between 5-6 pm. This is likely to have occurred in the morning when they were helping clean up Bosco's flat.

¹⁷ Megan Oxley statement 24.10.18 at para 25.

¹⁸ Megan Oxley 23.04.18 at para 9. Megan Oxley 24.10.18 at para 4.

¹⁹ Megan Oxley 24.10/18 at para 5.

dead.²⁰ He again recounted events to another doctor at Cumberland Hospital that day. *'I squash him, I busted him with my hand'*.²¹

43. Jimmy apparently told Saad after he had been interviewed by the police that Anuar and Bosco had an argument at Bosco's unit after which Anuar took Bosco's box of wine back to his own unit.²² This would explain why Bosco went to Anuar's unit to drink which according to Anuar was unusual as they would normally drink in Bosco's unit - which makes sense given Bosco's poor mobility.
44. The comments made by Anuar to the doctors whilst mentally ill are not compelling. There were no injuries to suggest that Bosco had been squished or busted by a weapon or a hand. The injuries to Bosco were consistent with him having fallen and hitting his face on the railing and remaining in situ. The older injuries were consistent with the bumps and falls of an alcoholic. None of the blunt force injuries observed in the post mortem examination led to Bosco's death.
45. Detective Oxley is of the opinion that Bosco attempted to return to his own unit via the rear stairs and due to his intoxication and injury to his left knee he likely lost his balance and fell striking his head on the railing and was unable to get up due to his intoxication and remained in an awkward position with his neck on the lower railing for approximately an hour before any one checked on his welfare at which point he was found cold to touch (deceased).²³
46. Witnesses said that it was not uncommon to see Bosco lying or slumped somewhere because he was intoxicated. Many residents commented that the deceased often required assistance getting upstairs and it was not uncommon to see him slumped in locations for a period of time. I note Anuar said he could see the back of Bosco and he did not see any blood on him which is consistent with him not having approached Bosco.²⁴

Manner and Cause of Death

47. Dr Bailey gave evidence in the inquest and was shown a number of photographs of the scene. She spoke to her report and agrees that there were no injuries inconsistent with falls both recent and not so recent. There were no acute injuries consistent with Bosco having been assaulted and the blood on his mouth was consistent with it having been caused by falling onto the railing and dripping from that location. There was no evidence to suggest bleeding having at any other location.

²⁰ Megan Oxley 24.10.18 at para 47

²¹ Megan Oxley 24.10.18 at para 48

²² Saad Adam 110.04.18 at para 13.

²³ Megan Oxley 24.10.18 at para 69-70.

²⁴ Megan Oxley 24.10.18 at para 66.

48. Having heard from Dr Bailey I am satisfied that Bosco Toufalous died of the combined effects of positional asphyxiation and intoxication. His intoxication caused him to be unstable on its own but as he had a pre-existing injury to his knees this instability was amplified. Bosco had a long history of falls, and a history of lying where he fell only to extricate himself either with assistance or after sleeping off his inebriation. The way he fell and left his head and neck resting on the lower railing compromised his breathing and he was, due to his intoxication, unable to protect his airways.
49. There is no reliable evidence he was engaged in any argument with Anuar or that he was pushed or assaulted by any person.

Accordingly the findings are as follows:

Identity	Bosco Toufalous
Date of Death	10 April 2018
Place of Death	13 Parkside Drive, Lalor Park NSW 2147
Cause of death	Combined effects of positional asphyxiation and intoxication
Manner of death	Misadventure – due to fall whilst intoxicated

Magistrate E Truscott
Deputy State Coroner
6 November 2020