



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

Inquest: Inquest into the death of Steve Fesus

Hearing dates: 9 June 2022

Date of Findings: 9 June 2022

Place of Findings: Coroner's Court of New South Wales, Lidcombe

Findings of: Magistrate Derek Lee, Deputy State Coroner

Catchwords: CORONIAL LAW – death in custody, cause and manner of death

File number: 2020/305849

Representation: Ms K Mackay, Coronial Advocate Assisting the Coroner

Mr H Norris for Justice Health & Forensic Mental Health Network

Ms C Moore for the Commissioner of Corrective Services New South Wales

Findings: Steve Fesus died on 24 October 2020 at Prince of Wales Hospital, Randwick NSW 2031. The cause of Mr Fesus' death was metastatic atrial sarcomatoid tumour. Mr Fesus died from natural causes, whilst in lawful custody serving a sentence of imprisonment.

Non-publication orders: See Annexure A

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1. Introduction

- 1.1 In 2016 Steve Fesus was diagnosed with a rare type of cancerous tumour. He was later convicted of a serious offence and sentenced to a term of imprisonment. In April 2020, whilst Mr Fesus was still in custody, a metastases of the earlier tumour was discovered. Mr Fesus was referred for appropriate treatment in an attempt to delay the progression of this disease.
- 1.2 However, Mr Fesus' disease progressed rapidly and his condition deteriorated so that by June 2020, Mr Fesus was advised of his poor prognosis and his limited life expectancy. A further deterioration in Mr Fesus' condition resulted in his admission to hospital in October 2020. This admission was focused primarily on providing Mr Fesus with comfort care. On the morning of 24 October 2020 Mr Fesus deteriorated suddenly and ceased breathing. In accordance with Mr Fesus' wishes, no advanced life support was provided and he was later pronounced life extinct.

2. Why was an inquest held?

- 2.1 Under the *Coroners Act 2009* (**the Act**) a Coroner has the responsibility to investigate all reportable deaths. This investigation is conducted primarily so that a Coroner can answer questions that are required to answer pursuant to the Act, namely: the identity of the person who died, when and where they died, and what was the cause and the manner of that person's death.
- 2.2 When a person is charged with an alleged criminal offence, or sentenced after being convicted of a criminal offence, they can be detained in lawful custody. By depriving that person of their liberty, the State assumes responsibility for the care of that person. Section 23 of the Act makes an inquest mandatory in cases where a person dies whilst in lawful custody. In such cases the community has an expectation that the death will be properly and independently investigated.
- 2.3 A coronial investigation and inquest seeks to examine the circumstances surrounding that person's death in order to ensure, via an independent and transparent inquiry, that the State discharges its responsibility appropriately and adequately. This type of examination typically involves consideration of, where relevant, the conduct of staff from Corrective Services New South Wales (**CSNSW**) and Justice Health & Forensic Mental Health Network (**Justice Health**). It should be noted at the outset that the coronial investigation did not identify any evidence to suggest that Mr Fesus was not appropriately cared for and treated whilst in custody.

3. Mr Fesus' life

- 3.1 Inquests and the coronial process are as much about life as they are about death. A coronial system exists because we, as a community, recognise the fragility of human life and value enormously the preciousness of it. Understanding the impact that the death of a person has had on those closest to that person only comes from knowing something of that person's life. Therefore, it is important to recognise and acknowledge the life of that person in a brief, but hopefully meaningful, way.

- 3.2 Mr Fesus was born and raised in Wollongong and was the eldest of three boys. As an adult, Mr Fesus worked in various jobs, most recently as a security guard.
- 3.3 In around 1995 Mr Fesus formed a relationship with his future wife. They had a son together and later married in 1997. Mr Fesus' wife also had a daughter from a previous relationship.
- 3.4 Following an incident in which Mr Fesus' wife was reported to be missing (see further below), Mr Fesus continued caring for his son and stepdaughter. Mr Fesus later formed a new relationship and his daughter was born in 2002.
- 3.5 Regrettably, little else is known about Mr Fesus' personal history prior to his incarceration. However, there can be little doubt that those loved ones most affected by Mr Fesus' passing still feel his loss most deeply.

4. Mr Fesus' custodial history

- 4.1 On 13 August 1997, Mr Fesus reported to police that his wife was missing. On 14 September 1997 an anonymous caller provided police with certain information that led to Mr Fesus' wife's body being found buried in a shallow grave at Seven Mile Beach. It was determined that Mr Fesus' wife had been strangled although the police investigation initially did not result in criminal proceedings being commenced against any person.
- 4.2 In 2013 Mr Fesus was arrested and charged with his wife's murder. A first trial commenced in December 2015 and resulted in a hung jury. A second trial commenced in October 2016 but was aborted after only three days when Mr Fesus was diagnosed with cardiac cancer which required surgery, chemotherapy and radiation therapy. After Mr Fesus was later deemed to be in remission and medically fit to stand trial, a third trial commenced in August 2017. On 3 October 2017 the jury returned a guilty verdict and Mr Fesus was remanded into custody.
- 4.3 On 23 February 2018 Mr Fesus was sentenced to a term of imprisonment of 22 years with a non-parole period of 16 years and 6 months and an earliest release date of 24 April 2033.
- 4.4 Whilst in custody, Mr Fesus was housed at a number of correctional centres including Parklea Correctional Centre and South Coast Correctional Centre before being transferred to Long Bay Hospital on 9 April 2020.

5. Mr Fesus' medical history

- 5.1 Mr Fesus had a rare primary malignancy of the heart, namely a myxofibrosarcoma of the left atrium that was removed during cardiac surgery on 17 October 2016. Following this, Mr Fesus was placed on an active surveillance program where he was reviewed regularly by oncologists, initially every three months and later every six months. In July 2017 Mr Fesus' oncologist documented that with the treatment that Mr Fesus had received the medium survival period reported in medical literature was approximately four years due to the poor long-term prognosis of the cancer that Mr Fesus had been diagnosed with.

- 5.2 After entering custody Mr Fesus was transferred to Long Bay Correctional Centre on a number of occasions so that he could attend specialist medical appointments at Prince of Wales Hospital (**POWH**). Justice Health medical and nursing staff facilitated appropriate investigations (such as CT scans and other imaging) and made referrals for Mr Fesus to be reviewed by cardiologists and oncologists.
- 5.3 Mr Fesus had a long standing chronic infection of the left great toe. He was initially treated conservatively with antibiotic therapy but later referred to POWH for pre-surgery work up with elective wedge resection surgery taking place on 9 October 2019. Following this, Mr Fesus was referred for post-surgery review and between November 2019 and January 2020 Mr Fesus had regular treatment for post operative wound complications.
- 5.4 On 11 February 2020, Mr Fesus attended a Justice Health clinic to collect his medication complaining of difficulty with, and pain whilst, urinating. Mr Fesus was assessed by a primary health nurse and a urine analysis was completed which showed no abnormalities detected. Mr Fesus remained in the clinic for monitoring and observations, which were found to be within normal limits, and an appointment was made for follow up by a general practitioner (**GP**). Mr Fesus was reviewed again by a primary health nurse the following day when his observations were again found to be within normal limits.
- 5.5 On 26 February 2020, Mr Fesus was seen by a primary health nurse for a pre-appointment check before attending to specialist appointments scheduled in Sydney on 12 March 2020. Mr Fesus refused to attend these appointments and they were cancelled in accordance with his instructions.
- 5.6 On 1 March 2020, Mr Fesus was seen in a Justice Health clinic after having complained of vomiting/nausea and constipation. A GP was contacted and Mr Fesus was kept at the clinic for observation. During two further reviews later that day, Mr Fesus showed improved symptoms and was returned to his pod with arrangements made for follow-up review by a GP the next day.
- 5.7 On 9 and 10 March 2020, Mr Fesus was again seen by a primary health nurse for pre-appointment checks, and again he refused to attend his scheduled appointments on 12 March 2020. Mr Fesus later completed a patient cancellation form regarding these appointments, expressing the view that the appointments were not required as he was cured from cancer.
- 5.8 On 1 April 2020 Mr Fesus made a request to cancel all medical appointments including with his specialists and appointments for imaging investigations. Despite being advised by a nurse that there may be a delay in rescheduling any cancelled appointments and that his health could deteriorate in the meantime, Mr Fesus completed a patient cancellation form stating that the reason for the cancellation was due to his concerns regarding the COVID-19 pandemic.
- 5.9 On 2 April 2020, Mr Fesus was reviewed by a primary health nurse complaining of ongoing symptoms including anaemia, unintentional weight loss and intermittent left-sided abdominal flank pain. Arrangements were made for Mr Fesus to be reviewed by a GP on 6 April 2020, who ordered pathology tests and encouraged Mr Fesus to attend appointments in Sydney so that a follow up CT scan could be conducted and he could be reviewed by oncology and gastroenterologist specialists.

- 5.10 On 8 April 2020, a GP contacted the Justice Health clinic to raise concerns regarding Mr Fesus' pathology results. Mr Fesus was brought to the clinic for review and after a GP was consulted, a decision was made to send Mr Fesus to Shoalhaven District Memorial Hospital. Once there a CT scan of the abdomen revealed a mass in the left retroperitoneum which was suspected to be a metastases from the earlier cardiac tumour. Mr Fesus' previous oncologist, Associate Professor Craig Lewis, was notified and arrangements were made for Mr Fesus to be transferred to POWH.
- 5.11 Associate Professor Lewis reviewed Mr Fesus on 13 April 2020 and arrangements were made for a cardiac echo and a PET scan to be performed. A conclusion was reached that the PET scan showed features "*in keeping with a skeletal metastasis and the appearances are highly suspicious for further sites of metastatic disease in the left ilium posteriorly and right proximal femur*". Following review by a sarcoma multidisciplinary meeting on 17 April 2020, it was recommended for Mr Fesus to have palliative surgical resection of the left retroperitoneal mass, including left nephrectomy, adrenalectomy and splenectomy.
- 5.12 On 4 May 2020, the left retroperitoneal tumour was resected, including en bloc resection of the left kidney, left adrenal gland and left diaphragm, distal pancreatectomy and splenectomy, and repair of the left hemidiaphragm. The tumour mass was subsequently reported as a malignant sarcomatoid tumour and consistent with being secondary from the previous cardiac sarcoma.
- 5.13 On 22 May 2020, Mr Fesus' case was discussed at the sarcoma multidisciplinary meeting, his pathology results reviewed and recommendations were made for his treatment. On 25 June 2020, Mr Fesus was seen by his treating oncologist, Dr Yeh Chen Lee, who explained his diagnosis and the metastatic nature of his disease, for which the goal of treatment was to improve quality of life and delay disease progression. Dr Lee subsequently advised Justice Health that Mr Fesus' prognosis concerning his relapse sarcoma was "*in the matter of long months but short years*" depending on his response to treatment.
- 5.14 On 30 June 2020, Dr Lee discussed with Mr Fesus the possibility of palliative referral for symptomatic pain management and targeted therapy using pazopanib (anti-cancer medication). During July 2020, Mr Fesus underwent cycles of radiotherapy treatment for pain management. In August 2020, Mr Fesus underwent specialist palliative care review by a nurse practitioner. On 28 August 2020, Mr Fesus spoke with Dr Lee during a tele-health consultation. Dr Lee informed Mr Fesus that his disease had already progressed to stage IV and that he had already outlived expectations for a patient with a cardiac sarcoma. Dr Lee also informed Mr Fesus that his prognosis would be less than 12 months.
- 5.15 On 9 September 2020, Mr Fesus had a discussion with a nurse practitioner and stated his understanding of his limited prognosis and what would occur in the event that his condition deteriorated. On this basis, Mr Fesus made a request to be transferred to hospital and treated for reversible issues and indicated his understanding that once he reached the terminal phase of his condition, the focus would be on comfort care with no invasive treatments, no intensive-care intubation and no resuscitation.

5.16 Further discussions regarding advanced care planning with Mr Fesus took place on 21 September 2020. From these discussions, Mr Fesus confirmed that he only wanted comfort supportive measures, and no resuscitation, if his terminal condition meant that he was unable to move or communicate. On 25 September 2020, Dr Lee advised Justice Health that he had a frank discussion with Mr Fesus regarding a report from a CT scan which indicated that it appeared Mr Fesus' disease was progressing.

6. What happened in October 2020?

6.1 On 8 October 2020, Mr Fesus was admitted to POWH with nausea, vomiting and worsening abdominal pain. A CT scan revealed a partial small bowel obstruction in the context of Mr Fesus' progressive metastatic sarcomatoid cardiac tumour with involvement of the retroperitoneum and bone. The scan also showed evidence of cancer progression.

6.2 Dr Lee reviewed Mr Fesus on 9 October 2020 and explained the CT findings and that it was unlikely that Mr Fesus would benefit from cancer treatment. Accordingly, a decision was made to stop use of pazopanib. During two discussions on 9 October 2020, Dr Lee explained to Mr Fesus that given his current presentation and the rate of disease progression, if his bowel obstruction did not resolve, his prognosis was very poor and short. Dr Lee asked Mr Fesus if he would like for the treating team to inform his family, however Mr Fesus indicated that he preferred to talk to his family instead.

6.3 Accordingly, the treating team made enquiries to see whether Mr Fesus was permitted to make phone calls to his family. The treating team also prepared a letter to support compassionate visits by family members and a compassionate release request, noting that there may be restrictions due to the COVID-19 pandemic and that the release request may not be successful.

6.4 Mr Fesus' condition continued to deteriorate during his admission and he was co-managed by the palliative care team. On 16 October 2020, Mr Fesus was visited by his aunt, Cheryl Hogbin. Three days later on 19 October 2020, Mr Fesus' condition deteriorated and he decompensated significantly. Dr Lee reviewed Mr Fesus and considered that he had entered the pre-terminal phase of his condition. Mr Fesus reported that he accepted at the prognosis and declined an offer to speak to his aunt. Mr Fesus also declined an offer for his treating team to contact Ms Hogbin *"stating that doing so would scared [sic] her, and this is not what he wanted"*. Following this review, it was decided that Mr Fesus' treatment would focus on comfort measures.

6.5 On 20 October 2020, approval was given for Mr Fesus to receive special visits due to his limited life expectancy. Ms Hogbin was contacted and advised of this, however she indicated that she was unable to visit Mr Fesus until 24 October 2020.

6.6 On 23 October 2020, Mr Fesus made a request for his pain medication to be reduced so that he would be more mentally alert during the anticipated visit by his aunt the following day. Later that evening, Mr Fesus repeatedly complained of being hot, despite having a fan directed towards him. On at least one occasion during the evening, Mr Fesus attempted to get out of bed to go to the bathroom but nursing staff prevented this from occurring given Mr Fesus' weak and deteriorating condition, and instead provided him with appropriate assistance. During the course of the evening,

nursing staff recognised Mr Fesus' limited prognosis and contacted his aunt to enquire whether she would be able to visit Mr Fesus any sooner. Unfortunately, Ms Hogbin indicated that she was unable to attend any earlier.

- 6.7 At around 8:45am on 24 October 2020, a member of the nursing staff was attending to another patient when she heard Mr Fesus calling for help. The nurse immediately attended upon Mr Fesus and found him in a distressed state, having aspirated. Fluid was suctioned from Mr Fesus' mouth to clear his airway and as this was occurring Mr Fesus ceased breathing. In accordance with the advance care directive that was in place, no resuscitation efforts were initiated. A medical officer attended to examine Mr Fesus and subsequently pronounced him to be life extinct at 9:25am.

7. What was the cause of Mr Fesus' death?

- 7.1 Mr Fesus was later taken to the Department of Forensic Medicine where a postmortem examination was performed by Dr Elise Burger, forensic pathologist, on 28 October 2020. Postmortem imaging showed an apparent tumour mass in the area where the left kidney had previously been removed, and another tumour in the left side of the abdomen overlying the psoas muscle. The appearance of bowel loops in the abdomen was in keeping with small bowel obstruction and the antemortem diagnosis of bony metastases was also confirmed.
- 7.2 In the autopsy report dated 9 June 2021, Dr Burger opined the cause of death to be metastatic atrial sarcomatoid tumour.

8. Care and treatment provided to Mr Fesus

- 8.1 The coronal investigation primarily focused on whether Mr Fesus was provided with appropriate care and treatment whilst in custody. In particular, the coronial investigation addressed the following issues:
- (a) Discussions with Mr Fesus regarding his prognosis and likely life expectancy: As described above, Mr Fesus' treating clinicians had a number of frank conversations with him to advise of his prognosis. Relevantly, during Dr Yee's first consultation with Mr Fesus on 25 June 2020, he explained that Mr Fesus' condition was incurable and that his prognosis would likely be "*long months to short years*" depending on Mr Fesus' response to treatment. On 28 August 2020, Dr Yee openly discussed with Mr Fesus that his prognosis was shorter than anticipated as he had clinically deteriorated and experienced side effects from the pazopanib. Finally, when Mr Fesus was admitted to POWH on 8 October 2020, Dr Yee explained to Mr Fesus that his prognosis was very poor and short.

Following a visit by Mr Fesus' aunt on 16 October 2020, the treating team offered to speak with her but Mr Fesus declined this offer. It appears that Ms Hogbin was not made aware of Mr Fesus' extremely limited life expectancy until 20 October 2020 when she was advised of the possibility of a compassionate visit. Confirmation of this extremely limited life expectancy was again provided to Ms Hogbin on 23 October 2020.

- (b) Timeliness of provision of medication to Mr Fesus: There is no evidence to suggest that Mr Fesus was not administered medication in accordance with his prescriptions and in a timely manner. Indeed, the evidence indicates that this medication was dispensed to Mr Fesus when he attended upon the Justice Health clinics and provided to him during his admissions to hospital. Relevantly, Mr Fesus' treating clinicians had a number of discussions with him regarding the use of pazopanib and its later cessation when it was considered that he would not benefit from further cancer treatment.
- (c) Diary kept by Mr Fesus: It has been suggested that Mr Fesus kept a diary in which he recorded alleged complaints regarding the care and treatment provided to him. The coronial investigation did not identify any evidence of such a diary. Instead, the contemporaneous medical records indicate that Mr Fesus' treating clinicians had numerous conversations with him regarding the different aspects of his care, specifically his prognosis, the transition to a palliative care pathway and advanced care planning.
- (d) Administration of medication on 23 October 2020: The available indicates that Mr Fesus' treating clinicians had an appropriate discussion with him on 23 October 2020 regarding the administration of any pain relief medication. The evidence also indicates that it is appropriate for patients to have such discussions and to make decisions themselves regarding their preference for the administration of such medication without necessarily consulting with a next of kin.

- 9.1 Having regard to the relevant records from CSNSW and Justice Health regarding Mr Fesus' period in custody, and the findings from the postmortem examination, it is evident that Mr Fesus died from progression of a natural disease process.
- 9.2 Overall, the available evidence indicates that Mr Fesus was provided with appropriate medical care, to address and treat his medical conditions, whilst in custody. In particular, once Mr Fesus' pathology results were found to be abnormal on 8 April 2020, he was appropriately referred for review and subsequently transferred to hospital. Once the metastases from Mr Fesus' previous sarcomatoid tumour was confirmed, he was appropriately referred for surgery. Following this, Mr Fesus was provided with appropriate treatment to manage his symptoms and prevent disease progression. Once it became apparent that Mr Fesus' condition was deteriorating and that he was approaching the terminal phase of his disease, there were appropriate discussions regarding his management, transition to comfort care and advanced care planning to respect his wishes and preserve his dignity.
- 9.3 There is no evidence to suggest that any action could have been taken by CSNSW or Justice Health staff to potentially alter the eventual outcome. It is evident that Mr Fesus' condition was incurable and that his later treatment was appropriately focused on providing comfort care. There is also no evidence to suggest that any aspect of Mr Fesus' medical care, or the care provided by CSNSW and Justice Health staff, contributed in any way to his death.

10. Findings

10.1 Before turning to the findings that I am required to make, I would like to acknowledge, and express my gratitude to Ms Karissa Mackay, Coronial Advocate, for her assistance both before, and during, the inquest. I also thank Plain Clothes Senior Constable Mark Franklin for his role in the police investigation and for compiling the initial brief of evidence.

10.2 The findings I make under section 81(1) of the Act are:

Identity

The person who died was Steve Fesus.

Date of death

Mr Fesus died on 24 October 2020.

Place of death

Mr Fesus died at Prince of Wales Hospital, Randwick NSW 2031.

Cause of death

The cause of Mr Fesus' death was metastatic atrial sarcomatoid tumour.

Manner of death

Mr Fesus died from natural causes, whilst in lawful custody serving a sentence of imprisonment.

10.3 On behalf of the Coroners Court of New South Wales, I offer my sincere and respectful condolences, to Mr Fesus' family and loved ones for their loss.

10.4 I close this inquest.

Magistrate Derek Lee
Deputy State Coroner
9 June 2022
Coroners Court of New South Wales

Inquest into the death of Steve Fesus

File Number: 2020/305849

Annexure A

1. Pursuant to section 74(1)(b) of the *Coroners Act 2009* (the Act), the following material contained within Exhibit 1 is not to be published:
 - (a) The names, Master Index Numbers (MINs) and any other identifying information of inmates other than Steve Fesus.
 - (b) The names, Visitor Index Numbers (VINs), telephone numbers, residential addresses, and any other identifying information of any member of Steve Fesus' family, friends and/or visitors, other than legal or professional visitors.
 - (c) The direct contact details of Corrective Services NSW (CSNSW) staff and staff from external service providers that are not publicly available.
 - (d) CCTV footage stills of cell 2 in the Secure Annex of the Prince of Wales Hospital, located in Tab 19 of the brief of evidence.
 - (e) All Transfer to Hospital Orders located in Tab 23 of the brief of evidence.
 - (f) Inmate accommodation journals dated 23 October and 24 October 2020, located at Tab 26 of the brief of evidence.
 - (g) Portions of the Custodial Operations Policy and Procedures (COPP) sections 13.1 and 13.3 that are not publicly available, located at tabs 27 and 28 of the brief of evidence.
2. Pursuant to section 65(4) of the *Coroners Act 2009* (NSW), a notation be placed on the Court file that if an application is made under section 65(2) of that Act for access to any CSNSW documents on the Court file, that material shall not be provided until CSNSW has had an opportunity to make submissions in respect of that application.

Magistrate Derek Lee
Deputy State Coroner
9 June 2022
Coroners Court of New South Wales