



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

Inquest: Inquest into the death of Jose Manuel XAVIER

Hearing dates: 7 February 2022

Date of findings: 7 February 2022

Place of findings: Coroner's Court of New South Wales

Findings of: Magistrate Brett Shields, Deputy State Coroner

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

File number: 2019/00281694

Representation: Ms. B Notley, Coronial Advocate Assisting the Coroner

Ms. D. Lekakis, Solicitor, for Corrective Services New South Wales

Ms. N. Szulgit, Solicitor, for Justice Health

Findings:

Identity	Jose Manuel Xavier
Date of death	9 September 2019
Place of death	Prince of Wales Hospital, Randwick, New South Wales
Cause of death	Consequences of metastatic oesophageal carcinoma with the Stanford B dissection thoracic aorta aneurysm contributing to the death but not causing it
Manner of death	Natural Causes

Recommendations Nil

Non-publication orders: See Annexure A

1. Introduction

- 1.1. At the time of his death, Jose Manuel Xavier was 64 years old and in lawful custody at the Corrective Service Unit Secure Ward at the Prince of Wales Hospital in Randwick, New South Wales, serving a sentence of imprisonment.
- 1.2. Early in 2008 Mr. Xavier was found to be involved in the importation of prohibited drugs into Australia from Indonesia, and he was arrested on 3 May 2008 when he voluntarily returned to Australia to face charges of conspiracy to import a commercial quantity of Heroin and related charges. On 13 April 2012, Mr Xavier sentenced to a significant term of imprisonment by the District Court at Darlinghurst.
- 1.3. Mr. Xavier was initially remanded to the Parklea Correctional Centre where he remained until June 2012, when he was transferred to the Wellington Correctional Centre.
- 1.4. In March 2019 Mr. Xavier was seen by a medical practitioner and he reported difficulty with swallowing and nocturia. Mr. Xavier's symptoms continued and he was seen again in July 2019 and then admitted Dubbo Base Hospital for investigations, where he was diagnosed with a metastatic squamous cell oesophageal carcinoma and a chronic type B aortic dissection. On 12 August 2019 Mr. Xavier was transferred from Dubbo Base Hospital to Long Bay Hospital Medical Subacute Unit ('MSU'). He was treated in the MSU until 29 August, when he was transferred and admitted to the Secure Ward at the Prince of Wales Hospital, and he died there on 9 September 2019.

2. Reason for the inquest

- 2.1. The *Coroners Act* 2009 ('the Act') requires a Coroner to investigate a 'reportable death', as that term is defined in the Act, to enable a Coroner to make the findings required by sec. 81 of the Act. The findings concern the identity of the person who died, when and where they died, and the cause and the manner of their death. In this context the manner means the circumstances in which they died.
- 2.2. A person charged with a criminal offence, or who is sentenced to a term of imprisonment upon conviction, can be detained in lawful custody and, in so doing, the State assumes responsibility for the care of that person. Sec. 23 of the Act makes an inquest mandatory in cases where a person dies while in the custody of the State. The open administration of justice requires, and the community appropriately expects, that the death of a person in the custody of the State will be properly and independently investigated to ensure that the State met its responsibility for the care of that person.
- 2.3. The coronial investigation into the death of Mr. Xavier did not identify any evidence to suggest that he was not appropriately cared for and treated while in custody.

3. Mr. Xavier's life and background

- 3.1. Mr. Xavier was born in Hong Kong on 22 January 1955 as the fourth child of Lisbello Xavier and Noemia Batalha. Mr. Xavier's three siblings were Maria, Silvia and Fernando. The family moved to Australia in 1970, when Mr. Xavier was 14 years old, and they lived in Randwick. Mr. Xavier was educated at Marcellin College in Randwick and he spoke English as his first language.
- 3.2. After completing high school Mr. Xavier worked in various jobs in the furniture retail industry. In 1990 Mr. Xavier's first child, Jessica, was born. Not long after Jessica's birth Mr Xavier emigrated to Japara in Indonesia where he started a furniture manufacturing business which exported period reproduction furniture around the world. Mr. Xavier subsequently married Marlina Xavier and they have a son, Dominic Alexander Xavier. Marlina Xavier lives in Jerra, Java, Indonesia.
- 3.3. It is reported that Mr Xavier's furniture business was in financial difficulty before he became involved in the events that led to his arrest, conviction and imprisonment.

4. Mr. Xavier's custodial history

- 4.1. After arrest Mr. Xavier was received into custody at Surry Hills Police Cells and he was then held on remand at the Parklea Correctional Centre, where he apparently remained until he was transferred to the Wellington Correctional Centre in June 2012.
- 4.2. On 13 April 2012, Mr. Xavier appeared before the District Court at Darlinghurst for sentence. He was convicted and sentenced to a term of imprisonment of 23 years commencing on 3 May 2008 with a non-parole period of 15 years. Mr. Xavier's earliest possible date for release was 2 March 2023.
- 4.3. At the date of his death Mr. Xavier was classified as 'C1 Minimum Security'. He had no disciplinary matters in custody, had completed course and educational programs and he was regarded as a model inmate. During his time in custody Mr. Xavier was visited by both family and friends.

5. Mr. Xavier's medical history

- 5.1. Mr Xavier underwent a Reception Screening Assessment when he first entered custody in 2008 and he reported that he had been diagnosed with a gastric ulcer and was being treated with prescription medication. He was subsequently seen by a medical practitioner who also diagnosed hypertension and arranged further testing.
- 5.2. Between 2008 and June 2012 Mr. Xavier attended regular consultations with nurses, medical practitioners and an optometrist for the treatment of his health conditions.
- 5.3. As noted above in March 2019 Mr Xavier saw a medical practitioner and complained about difficulty with swallowing and nocturia. He was seen again in July 2019 and consequently transferred to the Dubbo based hospital for investigations where the diagnosis of metastatic squamous cell oesophageal carcinoma and chronic type B aortic dissection was made. An endoscopy was performed which confirmed a completely inclusive oesophageal lesion and on 27 July 2019 an oesophageal stent was inserted. Mr. Xavier was then transferred from the Dubbo Base Hospital to Long Bay Hospital MSU for palliative management.
- 5.4. On 29 August Mr. Xavier was transferred and admitted to the Secure Ward at the Prince of Wales Hospital for review and palliative management.

6. 9 September 2019

- 6.1. At or about 5:55 a.m. on 9 September 2019 nursing staff were conducting morning observation checks on inmates in the Secure Ward. On arrival in room 2, which housed Mr. Xavier and another inmate, Mr. Xavier was absent from his bed and thought to be in the bathroom. Nursing staff were conducting observations on the other inmate and called out to Mr. Xavier. When he did not respond nursing staff entered the bathroom and found Mr. Xavier lying on the ground. He was warm to the touch with shallow respiration and no palpable peripheral pulse. A code blue alert was activated and a medical team arrived in room 2 at 6 a.m. Oxygen was administered and morphine given subcutaneously however Mr. Xavier was pronounced dead at 6:20 a.m. by a medical practitioner.

7. The cause Mr. Xavier's death

- 7.1. Mr. Xavier was taken to the Department of Forensic Medicine in Sydney where an external post-mortem examination was performed by Dr. Isabella Brouwer, forensic pathologist, on 17 September 2019.
- 7.2. In the autopsy report dated 2 June 2020 Dr. Brouwer opined that the cause of death is the consequences of metastatic oesophageal carcinoma and that the Stanford B dissection thoracic aorta aneurysm was a significant condition contributing to but not related to the condition causing the death.

8. Conclusions

- 8.1. The evidence establishes on the balance of probabilities that the cause of Mr. Xavier's death was the consequences of his incurable metastatic oesophageal carcinoma on a background of the Stanford B dissection thoracic aorta aneurysm.
- 8.2. There is no evidence to suggest that any action could have been taken by CSNSW or Justice Health to alter the outcome of the incurable disease process or that any aspect of the medical care provided to Mr. Xavier while in custody contributed in any way to his death.

9. Findings

9.1. The findings I make under sec. 81(1) of the Act are:

Identity	Jose Manuel Xavier
Date of death	9 September 2019
Place of death	Prince of Wales Hospital, Randwick, New South Wales
Cause of death	Consequences of metastatic oesophageal carcinoma with the Stanford B dissection thoracic aorta aneurysm contributing to the death but not causing it
Manner of death	Natural Causes

10. Closing

- 10.1. I acknowledge and express my gratitude to Ms. B Notley, Coronial Advocate, for her assistance both before and during the inquest. I also thank Detective Senior Constable Justin Bell for his role in the Police investigations and for his work compiling the initial brief of evidence.
- 10.2. On behalf of the Coroners Court of New South Wales, I offer my sincere and respectful condolences to Mr. Xavier's family.
- 10.3. I close this inquest.

Magistrate Brett Shields
Deputy State Coroner
Coroners Court of New South Wales