



CORONERS COURT OF NEW SOUTH WALES

Inquest:	Inquest into the disappearance and suspected death of Fraser Bruce Ewan
Hearing dates:	23 February 2023
Date of judgment:	6 March 2023
Place of judgment:	Coroners Court of NSW, Lidcombe
Judgment of:	Deputy State Coroner, Magistrate David O’Neil
Catchwords:	CORONIAL LAW – missing person – boat travel – no suspicious circumstances
File number:	2019/304802
Representation:	1) Advocate assisting: Mr Kai Jiang

Introduction

- 1 On 29 July 1966, Mr Fraser Bruce Ewan set out from Pittwater in the “Sea Call”, 28 foot long motor sailing boat. On board with Mr Ewan were Ransom (Joe) Gaunt and Dudley Carver. They were headed for Mosman Bay where the Sea Call would stay for winter for easier access for maintenance. It was expected that the trip would take about three hours.
- 2 The boat left Pittwater at about 11:30pm. The boat was not fitted with any lifelines or railings. The weather was not ideal for sailing. There were squalls of rain and southerly winds of 15-20 knots. The sea was choppy and rough.
- 3 After the boat rounded Barrenjoey Head it was agreed that the men would take three one hour turns at keeping watch. Mr Ewan took the first watch whilst the other two slept in the cabins below deck.
- 4 At about 3:00am on 30 July 1966 Mr Carver woke up, realised that he had overslept the agreed changeover time and went on deck only to be unable to locate Mr Ewan.
- 5 When Mr Carver and Mr Gaunt had retired, Mr Ewan had been at the wheel of the boat. Mr Carver and Mr Gaunt headed back to Palm Beach hoping to find Mr Ewan on the way but they neither saw him nor heard any noises such as shouts for help during their journey back to Palm Beach.
- 6 A search was undertaken but, tragically, Mr Ewan was never located.

The role of the Coroner and the scope of the Inquest

- 7 The role of the Coroner in a case such as this is to make findings firstly as to whether the missing person is actually dead and only if that can be established, to make further findings as to the date and place of death and the manner and cause of death.¹
- 8 The decision about whether a person is dead is considered a threshold question in a missing person case.² Given the seriousness of the finding it is well established that the Court should apply the Briginshaw Standard.³ The proof of death must be clear, cogent and exact. At common law, there is a presumption in favour of a continuance of life,⁴ however, it is not a rigid presumption and the circumstances of any given case must be carefully examined before a finding of death can be made.
- 9 In addition to deciding these questions at the conclusion of proceedings, the Coroner may, if appropriate, make recommendations in relation to matters

¹ s81, *Coroners Act 2009* (NSW).

² Dillon H and Hadley M “*The Australasian Coroner’s Manual*”, Federation Press 2005 at p.15.

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁴ *Axon v Axon* (1937) 59 CLR 395.

arising directly from the evidence if they have the capacity to improve public health and safety in the future.⁵

The evidence

- 10 The inquest took place on 23 February 2023.
- 11 A brief of evidence was tendered including affidavit evidence from Mr Ewan's widow, Bernyce's, Supreme Court probate application, statements from police officers and some paper clippings from the time of Mr Ewan's disappearance.

Mr Ewan's background

- 12 Mr Ewan was born on 15 February 1922. At the time of his disappearance, he was 44 years of age. He and his wife had three sons and three daughters. The marriage was a happy marriage. Mr Ewan was a loving, caring father and a successful businessman without any financial troubles.

The search for Mr Ewan

- 13 Once Mr Carver and Mr Gaunt reached Palm Beach and contacted local police Detective Sergeant Robert Mair from Collaroy Police Station was placed in charge of the missing person report.
- 14 Extensive search efforts were made over a number of days in an attempt to find Mr Ewan. Assistance was sought from the Water Police from Sydney Harbour, Pittwater and Brooklyn to search all surrounding waters. The entire coastline from Gosford to Sydney was combed by police.
- 15 A Neptune bomber jet of the Royal Australian Airforce was sent from Williamtown Air Base to conduct a full aerial search of the same area. A request was made to the Department of Civil Aviation for any aircraft flying within the area to keep a lookout for Mr Ewan. A helicopter from Helicopter Utilities Pty Limited was also deployed from Bankstown Airport to search from Narrabeen and again cover the entire search area.
- 16 In addition, private aircrafts, boats and motor vessels including all crafts from the volunteer coast patrol joined the search. Despite all these efforts Mr Ewan was never found.
- 17 Detective Sergeant Mayer concluded through his investigations and enquiries that there were no suspicious circumstances surrounding the disappearance of Mr Ewan.
- 18 No one has seen or heard of Mr Ewan since 30 July 1966. No one sought to use Mr Ewan's bank account after his disappearance. There does not appear to be anyone who had any motive to harm Mr Ewan at any time.

⁵ s82, *Coroners Act* 2009 (NSW).

Report to the Coroner

- 19 A report was made to the Coroner around the time of Mr Ewan's disappearance. There is a record of the matter being mentioned at the Sydney Coroners Court on 12 January 1967, however, after a thorough search no records of any findings by the Coroners Court were located. In addition, the family of Mr Ewan have advised that no Certificate of Death was ever issued.
- 20 On 12 June 2020 the discovery of a human jawbone washed ashore at Umina Beach sparked a renewed enquiry into the disappearance of Mr Ewan. DNA profiles were obtained from Mr Ewan's remaining family and descendants, however, after comparison there was not a match.
- 21 When it was found that no formal findings had been made regarding Mr Ewan's disappearance, Detective Senior Constable Jennifer Ross from the Marine Area Command was allocated as the Officer in Charge to conduct fresh enquiries into Mr Ewan's disappearance.
- 22 As Officer in Charge Detective Senior Constable Ross made the following enquiries:
- Interstate police searches – these revealed no interstate records for Mr Ewan
 - Medicare and PBS searches – these revealed no records were found after Mr Ewan's disappearance
 - Centrelink Searches – these revealed Mr Ewan was not receiving any benefits and no claims had been made under his name after his disappearance
 - Dental records search – no dental records were found for Mr Ewan
- 23 Detective Senior Constable Ross was unable to discover any fresh evidence or leads into Mr Ewan's disappearance.

Is it possible to say when, where or in what circumstances Mr Ewan died?

- 24 I am able to make a finding based on all of the available evidence that Mr Ewan is deceased. Whilst his body was not recovered there is no other plausible explanation. Mr Ewan was last seen on deck in difficult sea conditions on a sailboat which had no lifelines or railings around its side.
- 25 Two investigations have failed to reveal any suspicious circumstances and there is no evidence at all to suggest Mr Ewan is still alive. There were extensive searches conducted in the days immediately following his disappearance. The only plausible explanation is that Mr Ewan fell from the sailing boat.
- 26 There is no evidence to support a finding of Mr Ewan having any reason at all to take his own life. He was happy and successful. Equally, there is no evidence to suggest that he was a victim of foul play.

Is there a need for recommendations?

- 27 Given the age of this matter there is no need for any recommendations to be made. I do note that the lack of safety equipment at the time was likely a contributing factor to Mr Ewan falling overboard, however, lack of safety measures at the time of Mr Ewan's disappearance does not have any current relevance and consequently no recommendations will be made.

Findings pursuant to s81 *Coroners Act 2009 (NSW)*

<i>Identity:</i>	The person who died was Fraser Bruce Ewan.
<i>Time of death:</i>	29 or 30 July 1966
<i>Place of death:</i>	Ocean between Barrenjoey Head and Harbord Beach, NSW
<i>Cause of death:</i>	Unascertained
<i>Manner of death:</i>	Misadventure

Conclusion

- 28 Finally, I express my sorrow to Mr Ewan's surviving family. His daughter and granddaughter attended the Inquest. It must have been a terrible shock to all of the family when Mr Ewan passed away at the age of 44, as a happily married, loving father of six children.
- 29 Mr Ewan's wife is now also deceased.
- 30 I thank Detective Senior Constable Ross for undertaking the recent investigation into this matter and Sergeant Kai Jiang for the preparation of this Inquest.
- 31 I close this inquest.



Magistrate David O'Neil
Deputy State Coroner
Coroners Court NSW
6 March 2023