



CORONERS COURT OF NEW SOUTH WALES

Inquest:	Inquest into the disappearance and presumed death of Ruben Pablo Gardiol
Hearing dates:	14 June 2023
Date of judgment:	23 June 2023
Place of judgment:	Coroners Court of NSW, Lidcombe
Judgment of:	Deputy State Coroner, Magistrate David O’Neil
Catchwords:	CORONIAL LAW – Missing person, search,
File number:	2020/47284
Representation:	1) Coronial Advocate assisting: (Sgt) Kai Jiang

Findings

Identity: The person who died was Ruben Pablo Gardiol

Time of death: Mr Gardiol died on or about 30 October 2020

Place of death: Unascertained

Cause of death: Unascertained

Manner of death: Unascertained

Introduction

- 1 Mr Ruben Pablo Gardiol aged 67 left his home on the morning of 30 October 2020. He was reported missing the following day. Despite search efforts and investigation by Police Mr Gardiol was never found. No one has seen or heard from him since the date of his disappearance.

The role of the Coroner and the scope of the inquest

- 2 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
- 3 The decision about whether a person is dead is considered a threshold question in a missing person case.² The decision is to be made on the balance of probabilities guided by the test determined in the High Court of Australia in the case of *Briginshaw* ³ which requires that the level of satisfaction required to conclude that death has more likely than not occurred should take into account the seriousness of such a finding. 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.
- 4 In addition to deciding these questions at the conclusion of proceedings, the Coroner may, if appropriate, make recommendations in relation to matters arising directly from the evidence if they have the capacity to improve public health and safety in the future.⁵

The evidence

- 5 The inquest took place on 14 June 2023. A four-volume brief of evidence was tendered and became exhibit one in the proceedings. The brief included the statement of the officer in charge, Detective Senior Constable Aaron Nielsen, statements from various other police officers, statements from Mr Gardiol's wife Keny, their son Christopher and Mr Gardiol's brother Mario who is known as Phil. In addition, there was a statement from Wendy Whiteley who had been an employer of Mr Gardiol for about 19 years as well as employing Keny since 1998.
- 6 In addition to the statements there were extensive records relating to the search conducted for Mr Gardiol together with documentation relating to enquiries made with banks, telephone companies and various government agencies.

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.

⁵ s82, *Coroners Act* 2009 (NSW).

- 7 All of the evidence within the brief of evidence has been taken into account in coming to the findings set out below.

Mr Gardiol's background

- 8 Mr Ruben Gardiol was born on 14 November 1952 in Nueva Helvicia, Uruguay. He spent his childhood and adolescent years living on a farm in Colonia Valdense, Uruguay, with his parents, three sisters and two brothers. Around 1978, Mr Gardiol moved to Australia with his brother, Mr Phil Gardiol. About two years after his arrival in Australia, Mr Gardiol met his wife, Mrs Keny Gardiol, who had two children from a previous relationship, Paul and Fran Villegas. The pair married in 1982. On 13 November 1986, their son, Mr Christopher Gardiol was born.
- 9 The family lived in Bondi for about 15 years, before moving to an address in Bligh Street Randwick for about two years, and finally to an address in a unit complex on Clovelly Road Randwick.
- 10 Mr Gardiol was known to be hard working, compassionate, polite, quietly spoken and emotionally sensitive. During his free time, he would spend time with his wife or frequent the local beaches and parks or read the newspapers.
- 11 Mr Gardiol's employer, Mrs Whiteley observed that he had difficulties dealing with both criticism and confrontation when stressed and under pressure. Mrs Whiteley further observed that on occasions the normally placid Mr Gardiol would reach a stage where he would become very emotional to the point of emotional collapse. Following these collapses Mr Gardiol would return to Uruguay for a number of months.
- 12 The family saw Mr Gardiol's trips to Uruguay as being of great benefit to him. Whilst his son Christopher acknowledged it was a chance for his father to remove himself from life's stresses it was also a happy opportunity for him to visit family and friends and attend to property he owned in Uruguay. Mr Gardiol would return to Australia refreshed, relaxed and noticeably calm following these trips.
- 13 Mr Gardiol was a qualified house painter in Uruguay. After arriving in Australia in 1978, he continued his trade with his brother in the Eastern Suburbs of Sydney for several years before he opened and operated his own painting business. Around 1988, the painting company was involved in a worker's compensation lawsuit. The case took a significant toll on Mr Gardiol's mental health. He took a two year break and returned to Uruguay for several months. Mr Gardiol ceased his painting business after this incident.
- 14 Around 2000, Mr Gardiol started volunteering as a gardener or landscaper for Mrs Wendy Whiteley at "Wendy's Secret Garden" at Lavender Bay Sydney. Mrs Gardiol had worked for Mrs Whiteley as a personal assistant from 1998.

- 15 After a period of time, Mr Gardiol became one of two long term paid employees at the garden, with Mr Carrado Camuglia being the other. Mr Gardiol loved working at the garden and took immense pride in his work. He was extremely passionate about the garden which was his “happy place”. He had been in the employment of Mrs Whiteley for about 19 years before he resigned in 2019 due to ongoing disagreements and issues with Mr Camuglia.
- 16 Following his resignation Mr Gardiol returned to Uruguay in November 2019 and stayed until February 2020. Mr Gardiol then resumed his old trade and worked as a painter on a casual basis. Mr Gardiol did not enjoy the work and sporadic working hours left him with more free time than he was used to. Mr Gardiol’s family believed that his passion still lied with working at Mrs Whiteley’s garden and his resignation had deeply saddened him.

Medical history

- 17 Mr Gardiol was a generally fit and healthy person for his age. He was not known to have any major health or physical complications. At the time of his disappearance, he was not on any prescribed medications. He did not take any prohibited substances and was not a big drinker. He was an ex-smoker having stopped in 1968. He had no mental health diagnosis. His GP did not voice any concerns regarding his physical or mental health. The only family medical history was that his father and sister suffered from depression.

The circumstances of Mr Gardiol’s disappearance

- 18 In the week before Mr Gardiol’s disappearance on 30 October 2020 he received news of the death of two of his friends in Uruguay, one on 24 October who committed suicide and the second on 27 October 2020 due to a car accident. These deaths affected him deeply. He was noticeably upset at times and lost his appetite. He was particularly concerned about the son of the friend who died in the car accident.
- 19 Mr Gardiol was unable to visit Uruguay at this time due to the restrictions placed on international travel because of the COVID-19 pandemic.
- 20 On 27 October 2020, Mr Gardiol spoke to his brother Phil over the phone. Mr Gardiol talked about the passing of his two friends and appeared to be upset. This was the last time Phil spoke to Mr Gardiol.
- 21 Around 6:40am on 30 October 2020, Mrs Gardiol left her residence for work. At the time, Mr Gardiol was sitting in the lounge room watching the news on the TV and drinking coffee. This was the last time she saw him. Mrs Gardiol thought

that Mr Gardiol had work later that day. Nothing occurred that morning that made Mrs Gardiol think anything was amiss.

- 22 Mr Gardiol had two vehicles registered in his name, a black Holden Commodore Ute which was for his personal use, and a white Holden Commodore Station Wagon which was used for his casual employment. The vehicles were stored in the underground carpark at Mr and Mrs Gardiol's residence.
- 23 At 7:42am on 30 October 2020 Mr Gardiol drove his black Ute out of the carpark. There is no evidence of Mr Gardiol talking to or having any contact with any family member or friend after he said goodbye to his wife earlier that morning as she headed off for work.
- 24 Mr Gardiol did not return home on 30 October 2020. Around 10:30am on 31 October 2020, Mrs Gardiol reported him as a missing person at the Randwick Police Station.
- 25 When Mrs Gardiol reported him missing to Police, she did not voice any concerns about Mr Gardiol's mental or physical health but stated that his disappearance was out of character.
- 26 After receiving the missing person's report, Police put in place alerts relating to Mr Gardiol and his vehicles. A "job" was broadcasted for Police in the Eastern Beaches Local Area Command to keep a look out for him and his vehicle. Extensive patrols were conducted at local beaches and parks. Mr Gardiol's residence was searched, and his iPad was collected for analysis which revealed little relevant information.
- 27 Mr Gardiol's neighbours, who were spoken to, did not hear or see anything out of the ordinary. His employer, Mr Samia was contacted and confirmed that Mr Gardiol was not scheduled to work on 30 October 2020.
- 28 Police checked with local hospitals and confirmed that there were no records of Mr Gardiol's admission as a patient or as an inpatient to any mental health facilities. Mr Gardiol's Medicare records were accessed and revealed no recent claims or GP visits. His GP was also spoken to who held no concerns regarding his health. The police checks were ongoing from the 31st of October.
- 29 A large-scale search was undertaken by Police. The initial search efforts between 31 October and 5 November were targeted at areas local to Mr Gardiol's residence and the areas he was known to frequent based on information provided by his family and the information from Mr Gardiol's cell tower activation records and call charge records which showed data connections to cell towers in the La Perouse/Port Botany, Little Bay, Taren Point and Kurnell areas. The last connection was at 11:27am on 30 October 2020, to the cell tower at 61 Jennifer Street Little Bay.

- 30 Checks conducted with the Australian Border Force, including on 12 February 2022 indicated that Mr Gardiol was still onshore and his last international travel was when he returned from Uruguay on 20 February 2020.
- 31 Mr Gardiol's family were initially hopeful that Mr Gardiol would return home after being away overnight and didn't authorise a media release until the 2nd of November.
- 32 On 6 November 2020, Police expanded their search areas to Kurnell and at about 2pm on the same day, Mr Gardiol's black Ute was located parked in one of the parking lots opposite to 20 Prince Charles Parade Kurnell. It is believed that the Ute was left unattended and stationary for a number of days as there was a considerable amount of rust build-up on the brakes. Mr Gardiol's son was contacted and attended with a spare key which allowed Police to enter the Ute and search it, however, nothing of interest was located within. The Ute was forensically examined which resulted in nothing of interest being found.
- 33 The search which commenced at 2:50pm on 6 November 2020, included a land, air and sea search of the area surrounding Kamay Botany Bay National Park and its surrounding cliffs:
- At 3:20pm, a Polair helicopter attended and commenced the aerial search, sweeping the bushland and the Kurnell peninsula multiple times with nil find.
 - At 3:30pm, the Police Dog unit was deployed and commenced searching the National Park, with a focus on the coastal areas, with nil find.
 - At 3:45pm, assets from the Police Marine Area Command attended and commenced water patrol of the coastlines south to the Tabbigai Gap and north to the entrance at Towra Point.
 - At 4:14pm, a command post was established and a search by Sutherland Police on foot was conducted of the Caltex Wharf and the surrounding waterline, with nil find.
 - At 5:25pm, crews from the State Emergency Service and National Parks and Wildlife attended and assisted with the search with nil find.
- 34 After locating the Ute Police were eventually able to put together some of Mr Gardiol's driving movements after leaving his premises on 30 October.
- 35 CCTV footage was collected from the Randwick Petroleum at 88 Clovelly Road Randwick and the Duke of Gloucester Hotel which depicted the movements of the black Ute shortly after Mr Gardiol left his residence.
- 36 At 8:53am on 30 October, the black Ute was captured by CCTV to stop on the eastern kerb of Captain Cook Drive Kurnell diagonally opposite to the Kurnell 1770 Bakery and Café. The Ute was captured at various locations along the way from Randwick to Kurnell, however, the exact route taken could not be

identified. Mr Gardiol was the only person inside the Ute. He then exited the Ute, walked into the parkland near the entry to Kamay Bay National Park out of the view of the CCTV camera for about two minutes, before returning to the Ute where he sat in the driver's seat for about seven minutes.

- 37 At 9:04am, Mr Gardiol drove the Ute south on Captain Cook Drive, before he conducted a U-turn in Gannon Street, travelled back past the 1770 café, and continued north on Captain Cook Drive leading to Prince Charles Parade. This was the last sighting of Mr Gardiol on CCTV.
- 38 On 7 November 2020, Sutherland Police canvassed residents on Prince Charles Parade and the local Kurnell area, including checking CCTVs and shops' COVID registers. Police were informed that Mr Gardiol's black Ute had been parked and unattended for several days at the parking spot where it was located. However, Police received no information of any sightings of Mr Gardiol. His son and stepson also attended the area to look for him on their own accord and conducted a letterbox drop of home-made flyers which contained Mr Gardiol's photo and asked that any member of the public with information contact the Police.
- 39 At 8:45am on 9 November 2020, the search for Mr Gardiol resumed. Fifty four personnel including Police officers, SES crews and Park and Wildlife rangers were deployed. Officers searched the Kamay Botany Bay National Park, the Kurnell residential and park areas extending south to Boat Harbour on foot, on horseback, as well as using All Terrain Vehicles and trail bikes. Searching parties were equipped with GPS tracking to trace their search routes. Water vessels searched from Boat Harbour to Captain Cook Bridge, covering La Perouse, Yarra Bay, Silver Beach, Weeney Bay, Quibray Bay, Towra Point, and Woollooware Bay. Polair searched similar areas. The search concluded at 3:15pm and Mr Gardiol was not found despite the extensive search efforts.
- 40 In addition to the search and rescue efforts, Police also established that there were no records from the State Transit Authority of an Opal card registered to Mr Gardiol.
- 41 Requests were made for CCTV footage from the TransDev (which operated the public buses in Kurnell) and OLA Cabs regarding pickups from the Kurnell area without any results.
- 42 Police checked the CCTV camera footages at Bonna Point Boat ramp at the western end of Prince Charles Parade Kurnell. They did not capture anything of interest.
- 43 National Parks rangers informed Police that there were no operational CCTV cameras in Kamay Bay National Park. Requests were previously made for CCTV installation in the area, but that had not occurred at the time of Mr Gardiol's disappearance. Any cameras in the area were not operational and were there for deterrence purposes only.

- 44 Bunnings Warehouse were provided with Mr Gardiol's photos and a search through their facial recognition system did not find any matches.
- 45 Bank records and statements were obtained from the Commonwealth Bank in relation to Mr Gardiol's two bank accounts. The last transaction made before his disappearance occurred on 13 October 2020 from an ATM in Bondi Westfields where he withdrew \$1600 cash. This was considered normal by his family. No other transactions or suspicious financial activities were identified. Mr Gardiol was not in any debt and was not known to have any gambling issues.
- 46 Signs of life checks were conducted on 13 November 2020 which did not reveal any records.
- 47 On 18 December 2020, at the family's request, Water Police conducted a further sweep of the coastline of Kurnell and its surrounding waters, with no results.
- 48 Between 2 November and 23 December 2020 the Police Media Unit made numerous media releases requesting public information regarding Mr Gardiol's disappearance
- 49 On 11 November 2020, a video recorded stand-up press release was made and posted next day on Police Facebook. The video featured a public appeal for information as to Mr Gardiol's whereabouts by his stepdaughter accompanied by the Commander of the Eastern Beaches Police Area Command.
- 50 Media releases and missing person alerts were posted via Police social media profiles on 2, 6, 7, 10, 11, 12, 22 and 23 November and 23 December 2020 and on 21 August 2021.
- 51 Similar postings were made via the Australian Federal Police Missing Persons' website. Several news outlets, including the Sydney Morning Herald and Nine News, published stories regarding Mr Gardiol's disappearance and appealed for assistance from the public.
- 52 Police reviewed the phone records of calls made to and from Mr Gardiol's phone number in the week leading up to his disappearance. Police made further enquiries with the recipients or diallers of those phone calls. However, nothing out of the ordinary was identified regarding the phone calls. No outbound calls were made from Mr Gardiol's phone on the day of his disappearance.

Is it possible to say whether and if so when, where or in what circumstances Mr Gardiol died?

- 53 I am able to make a finding based on all of the available evidence that Mr Gardiol is deceased. Whilst his body has not been located, I am satisfied that the evidence, including the lack of sightings, lack of activity in relation to phone and financial records and lack of contact with any family member or friend, lead to the conclusion that Mr Gardiol is deceased.
- 54 I am satisfied that if alive Mr Gardiol would have been in touch with his family and friends in Australia and in addition that he would have again travelled overseas to visit friends and the property he owned in Uruguay once travel was reintroduced to Australians once restrictions put in place because of the Covid 19 pandemic were removed.
- 55 Mr Gardiol had several setbacks in the time leading up to his disappearance. One of his brothers had passed away approximately three years prior to his disappearance, he had ceased a job which he loved, he had been unable to travel overseas during the COVID-19 pandemic and two friends had passed away in the week leading up to his disappearance.
- 56 There is no doubt that Mr Gardiol was significantly impacted by the combination of these events. It is quite possible that he suffered from undiagnosed depression. Whether or not he was clinically depressed it is extremely likely the impact of the various events played a role in his disappearance. The evidence does not allow me to say whether the disappearance was due to misadventure or otherwise.
- 57 In my view it is significantly more likely than not that Mr Gardiol died on or shortly after the 30th of October. This is because there was evidence his Ute had been in place for several days when it was found on 6 November and that it had attracted brake rust due to not being used. Additionally, the total inactivity on Mr Gardiol's phone and bank accounts from 30 October onwards tends to suggest he died shortly after his disappearance.
- 58 In relation to where Mr Gardiol died it seems possible that he ventured into the Kamay Botany Bay National Park which was nearby to where his black Ute was parked and which Park he had entered and exited shortly before he was last sighted. Mr Gardiol loved spending time in beach areas, and it is not possible to know where it was he walked to and what led to his death after leaving his motor vehicle and possibly entering the National Park.
- 59 I therefore am unable to determine the place, manner or cause of Mr Gardiol's death and I return an open finding in relation to those matters.

Is there a need for recommendations?

- 60 There is no need for any recommendations to be made. On the evidence before me the Police took most thorough steps to find Mr Gardiol and there is nothing relating to their efforts which leads to a need for any recommendations as to systemic improvement.

- 61 At one stage Mr Gardiol's family requested further searches be conducted. I am satisfied that request was appropriately considered. In relation to the request both the Search Co-ordinator and his Co-coordinators when contacted indicated that the area searched was satisfactory taking full account of the circumstances of Mr Gardiol's disappearance. I am satisfied that conclusion was correct.
- 62 The family also requested a further media appeal be performed through social and mainstream media. The Police media unit responded that sufficient media appeals had been undertaken. Again, I am satisfied that conclusion was correct.
- 63 It remains open to the Police to conduct further searches and further media appeals should any new information ever come to light. Police also have the capacity to include reference to Mr Gardiol through the Eastern Beaches Intelligence Unit during Missing Persons Week. This occurred during Missing Persons Week in 2021 and can occur in the future if considered appropriate.
- 64 Based on these reasons my formal findings are as follows:

Findings pursuant to s81 Coroners Act 2009 (NSW)

<i>Identity:</i>	The person who died was Ruben Pablo Gardiol.
<i>Time of death:</i>	Mr Gardiol died on or about 30 October 2020
<i>Place of death:</i>	Unascertained
<i>Cause of death:</i>	Unascertained
<i>Manner of death:</i>	Unascertained

Conclusion

- 65 I acknowledge and express my gratitude to the Coronial Advocate assisting the Coroner, Mr Kai Jiang, for his assistance both before and during the inquest. I also thank the Officer-in-Charge of the investigation, Plain Clothes Senior Constable Aaron Nielsen, for his work in the Police and Coronial investigation.
- 66 On behalf of the Coroners Court of New South Wales, I offer my sincere and respectful condolences to the family of Mr Gardiol.

67 I close this inquest.

**Magistrate David O'Neil
Deputy State Coroner
Coroners Court NSW
23 June 2023**