



CORONERS COURT OF NEW SOUTH WALES

Inquest:	Inquest into the disappearance and presumed death of XA
Hearing dates:	7 December 2023
Place of Judgement	Coroners Court of NSW, Lidcombe
Judgement of	Deputy State Coroner, Magistrate David O'Neil
Catchwords	Coronial law; missing person; search
File Number	2023/122609
Representation	Coronial Advocate assisting: (Sgt) Tim O'Donnell

Findings

Identity	The person who died was XA
Time of death	XA died on or about 25 January 2023
Place of death	Unascertained
Cause of death	Unascertained
Manner of Death	Unascertained

Introduction

- 1 XA left his home on the afternoon of the 25th of January 2023. He was reported missing the following day. Despite search efforts and investigation by Police, XA 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 v 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 7 December 2023. A brief of evidence was tendered and became exhibit one in the proceedings. The brief included the statement

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).

of the officer in charge, Detective Senior Constable Adrian Ram, statements from various other police officers, statements from **XA's** wife, his mother and statements from medical practitioners who had been providing medical service to XA prior to his death.

- 6 In addition to the statements there were extensive records relating to the search conducted for XA together with documentation relating to enquiries made with banks, telephone companies and various government agencies.
- 7 All of the evidence within the brief of evidence has been taken into account in coming to the findings set out below.

XA's background

- 8 XA was born on the 18th of January 1987 at Ryde Hospital to his father FA and mother CA. He had an older brother who passed away in 1998.
- 9 XA reportedly had a normal, happy childhood. He did well in school and went on to study medicine at University.
- 10 In June 2010, XA's General Practitioner, Dr Gordon Howard, referred XA to a psychiatrist after he expressed suicidal ideation following a relationship breakdown. He was prescribed medication for anxiety and depression symptoms, and initially referred to psychiatrist Dr Michael Williamson. He changed psychiatrists to Dr Ben Teoh, and eventually Dr Steven Yeates some years later.
- 11 In October 2011, XA met ND, who had just moved to Sydney from the Ukraine. They began a relationship and ND moved in with XA soon after. They married on the 5th of August 2012 and had their first child together in 2013. XA finished studying and began working as a doctor only a few days after their son was born. XA chose to specialise in Psychiatry.
- 12 XA and ND planned on having more children, so decided to take out a loan to rebuild the family home. They began renting while the house was undergoing renovations. Their second child was born in 2014 and they moved back into the rebuilt family home a year later. They welcomed their third child in 2016.

- 13 XA started working at the Royal Prince Alfred Hospital about a year and a half before his disappearance. His work there was difficult for him and very demanding and he started seeing a therapist regularly. He found therapy useful and continued seeing his therapist on an ongoing basis multiple times a week.
- 14 On or around the 26th of December 2022, XA was doing a lot of housework and moving heavy items when he suffered a back injury. He developed back pain with shooting pain developing down his leg that made it hard for him to walk. A couple of weeks later, the pain was getting worse, so he attended the Sydney Adventist Hospital Emergency Department. He received spinal injection steroids to reduce inflammation and was discharged home.
- 15 Dr Gordan Howard, XA's GP, provided a statement which detailed his care and treatment of XA. Dr Howard mentioned that XA put pressure on himself to study medicine because of the qualifying marks he received, and often expressed regret that he didn't study Engineering instead, as this was more aligned with his passion. He often expressed regret and concern over his ability to cope with patients and frequent concerns regarding perceived medicolegal risks. XA had not expressed any suicidal ideation to Dr Howard in the period leading up to his disappearance.
- 16 Dr Howard indicated that XA was using Lyrica and Endone for pain management of his back. After two weeks his pain remained significant, and he was prescribed Oxycodone. XA was given a medical certificate to remain off work until the 22nd of January 2023.
- 17 A statement was provided by Dr Yeates, XA's psychiatrist, who had been treating XA since 2021. At the time of his disappearance, XA was having up to four therapy sessions a week. The last session he had was on the 24th of January 2023, the day before his disappearance. Dr Yeates said that XA initially saw him for difficulties in his current job and wanting to augment his treatment for depression. Doctor Yeates was using psychotherapy to explore the roots of his depression. XA spoke of thoughts of suicide, but only in an historical sense in reference to personal relationships and issues he had with a previous partner over 10 years ago. In the week of his disappearance XA denied suicidal ideation. He also revealed details about his older brother's death in an accident which Dr Yeates described as a 'salient event in XA's life.
- 18 The session on the 24th of January was spent discussing his feeling about his back injury, and it was clear to his therapist that he was still in a lot of pain.

- 19 XA's diagnosis was, treatment resistant major depression in partial remission, avoidant personality traits and ongoing emotional sequelae of issues in his development, such as his brother's death.
- 20 The evidence reveals that XA did not discuss his mental health problems or indeed diagnosis with family members.

The circumstances of XA's disappearance

- 21 On the 24th of January 2023, XA and ND saw a neurosurgeon at Westmead Private Hospital named Dr Li. Dr Li suggested XA's back be operated on as there was inflammation around a disc in his back causing pressure on a nerve. The surgery was booked for the 30th of January 2023. He was reportedly excited about this upcoming surgery.
- 22 When they arrived home, XA and ND discussed XA going to see his GP, and he said he would do it the next day. XA informed Dr Howard of the surgery and scheduled an appointment for the 25th. Later that night, XA was described as being in a good mood and he attended his therapy session online. At that time, XA four sessions a week were online due to his back pain.
- 23 On the morning of the 25th of January 2023, ND woke up in bed and XA was next to her already awake and he looked sad. ND asked him what was wrong, and he said, "there are some work issues, I have received an email and there are some work issues". ND didn't notice anything else unusual about the day. When XA left the house at about 3:30pm that afternoon, he seemed sad but nothing unusual. He hugged ND and walked to the garage. XA left the house in their Silver Hyundai Tucson Station Wagon registered under ND's name.
- 24 Dr Howard received a call from XA stating that his car had broken down and he was unable to attend his 3:45pm appointment. XA failed to attend his therapy session at 5:15pm.
- 25 ND knew XA had his therapy appointment and needed to go to the chemist so she wasn't worried when he didn't come home for a few hours. However, she became worried later that night when he still wasn't home and not picking up his phone.
- 26 The next morning, XA still wasn't home so **ND** called her mother-in-law's husband to come and mind the children while she attended Eastwood Police Station to report XA missing.

The investigation following XA's disappearance

- 27 A missing person's report was taken at the front counter of Eastwood Police Station by Constable Samuel Reeve, who began a police investigation and circulated details of XA and his vehicle throughout the police system.
- 28 Police established the last time XA's phone was active was around 3:43pm on the 25th of January, a few streets away from where XA lived. His vehicle E-Tag was last registered at 3:57pm on the same day travelling southbound on the Military Road exit ramp at Mosman.
- 29 On the 28th of January, police located XA's vehicle in the carpark of Scenic Route, North Head, in Manly. The vehicle was locked and had a parking ticket on it for the 26th of January. The car was towed back to the holding yard and police found XA's mobile phone inside, which had been switched off.
- 30 Over the following days large scale land searches were conducted extending out from the point where XA's car had been found. The land searches were complemented by Marine Command Water patrols covering areas from North Head to Dee Why including the Quarantine Head to Freshwater areas. In addition, Polair searched land and sea along the coastline and from North Head back to Scenic Drive. Subsequently there was a "below cliff line" search on 23 March which included a cadaver dog.
- 31 Police seized numerous electronic devices belonging to XA, including his laptop and phones but were unable to gain access. Efforts were made by police to establish what communication XA may have received from his employer on or about the morning of his disappearance, however, no email communication from his employer was ever found.
- 32 Police conducted all required "sign of life" checks, with no evidence of any activity by XA since his disappearance on the 25th of January.
- 33 XA had accounts with the Commonwealth, ANZ and Westpac Banks and an American Express card. Upon checking there was no suspicious activity on any account after XA's disappearance.
- 34 Inquiries were made of Hospitals throughout Sydney, of the Casino which XA had occasionally attended, and of the Mental Health Service at which he

worked. All those inquiries raised nothing suspicious in relation to XA's disappearance.

- 35 Interpol were fully informed of the circumstances and have not reported anything suspicious to the OIC.

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

- 36 I am able to make a finding based on all of the available evidence that XA 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 XA is deceased.
- 37 I am satisfied that if alive XA would have been in touch with his family and friends in Australia.
- 38 The total inactivity on XA's phone and bank accounts from 25 January onwards suggests he died shortly after leaving his car.
- 39 There were a number of matters troubling XA as at the time of his disappearance. Firstly, he was due to return to work and it is clear that he found his work difficult and demanding. Secondly, he was in significant pain from his recent back injury. Thirdly, something had arisen in relation to his return to work which troubled him. Whilst the investigation had not found any email from XA's employer which referred to any specific work issue, it is clear on the evidence that XA was observed to be happy on the 24th of January but appeared sad on the morning of the 25th of January when he said to his wife "there are some work issues, I have received an email and there are some work issues".
- 40 It is clear on the evidence that the director of the North Shore Ryde Mental Health Service, XA's employer, was aware that XA had a diagnosed mental health condition for which he was receiving treatment. Given XA's privacy in relation to his mental health diagnosis it is likely his employer's knowledge of the diagnosis, complicated XA's work situation.

- 41 Whilst it has not been possible to establish what work issue it was that was troubling XA on the morning of 25 January the fact is his mood had changed significantly from the day before. Tragically such is the nature of mental health conditions that depression can strike without warning.
- 42 Whilst XA had not expressed any suicidal ideations to his psychiatrist in the treatment sessions leading up to the 25th of January, XA was exploring deeply disturbing issues from his past, experiencing significant pain and confronting upcoming surgery during that period. Against that background it seems likely that XA's concerns about his planned return to work tipped him into a depressive state on the 25th of January.
- 43 Whilst I am satisfied XA was in a depressive state when he cancelled his GP appointment on the 25th of January it is not possible to know where it was XA walked to and what led to his death after leaving his motor vehicle at North Head. I therefore am unable to determine the place, manner or cause of XA's death and I return an open finding in relation to those matters.

Is there a need for recommendations?

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

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

<i>Identity:</i>	The person who died was XA
Time of death:	XA died on or about 25 January 2023
Place of death:	Unascertained
Cause of death:	Unascertained
Manner of death:	Unascertained

Conclusion

- 45 I acknowledge and express my gratitude to the Coronial Advocate assisting the Coroner, Mr Tim O'Donnell, for his assistance both before and during the inquest. I also thank the Officer-in-Charge of the investigation, Detective Senior Constable Adrian Ram, for his work in the Police and Coronial investigation.
- 46 On behalf of the Coroners Court of New South Wales, I offer my sincere and respectful condolences to the family and friends of XA.
- 47 I close this inquest.

A handwritten signature in blue ink, reading "David O'Neil". The signature is written in a cursive style with a large initial 'D' and a small 's' in "O'Neil".

Magistrate David O'Neil
Deputy State Coroner
Coroners Court NSW
14 December 2023