

IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2011 4761

**FINDING INTO DEATH WITH INQUEST**

*Form 37 Rule 60(1)*  
*Section 67 of the Coroners Act 2008*

**Inquest into the Death of: XAVIER HART**

Delivered On: 23 August 2013

Delivered At: Coroners Court of Victoria  
Level 11, 222 Exhibition Street, Melbourne 3000

Hearing Dates: 19 April 2013

Findings of: JOHN OLLE, CORONER

Police Coronial Support Unit      Leading Senior Constable Kelly Ramsey, assisting the  
coroner

I, JOHN OLLE, Coroner having investigated the death of **XAVIER CEDRIC HART**

AND having held an inquest in relation to this death on 19 April 2013

at MELBOURNE

find that the identity of the deceased was **XAVIER CEDRIC HART**

born on 30 January 2007

and the death occurred on 21 December 2011

at Monash Medical Centre, 246 Clayton Road Clayton 3168

**from:**

1 (a) HYPOXIC BRAIN INJURY COMPLICATING OUT OF HOSPITAL CARDIAC  
ARREST (UNKNOWN CAUSE)

**in the following circumstances:**

1. Xavier Hart, an infant, was aged four years at the time of his death. He lived with his mother, Sally and brother, Cooper at 17 Fortescue Avenue, Seaford.
2. The coronial brief is comprehensive and has fully addressed the circumstances of Xavier's death.<sup>1</sup>
3. At inquest, the coronial investigator provided a summary of evidence.

#### **Summary of Evidence**

4. On 19 December 2011, Xavier attended his last day at kindergarten. Sally returned Xavier to the kindergarten in the early evening, to perform in a Christmas play.
5. Following the performance, Sally collected Cooper from her mother's house and drove the boys home. Xavier ate dinner and went to bed and read a book before going to sleep at approximately 9.30pm.

#### **Background**

6. Xavier suffered obstructive sleep apnoea and was noted to have adenotonsillar hypertrophy<sup>2</sup>. Symptoms would include periods of pausing in breathing and heavy snoring. Sally would

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<sup>1</sup> A copy of the brief will remain on the court file.

<sup>2</sup> Xavier had been reviewed by a specialist ENT surgeon, and was booked for tonsillectomy and adenoidectomy. However at the time of his death had not undergone a sleep study to ascertain the severity of his disease.

habitually check Xavier at intervals throughout the night. At 10 pm and 11 pm on 19 December, 2011 Xavier was sleeping. When checked at approximately 12.30am the following morning, Sally found Xavier unconscious and not breathing. She immediately contacted emergency services and performed CPR under instruction of 000 until the paramedics arrived.

7. On arrival, paramedics found Sally in a distressed and tearful state. They began performing CPR on Xavier until a second ambulance attended and took over the basic life support. Intensive care intervention was commenced by MICA paramedics. After 29 minutes of treatment, Xavier had a return of spontaneous circulation and was conveyed to the Monash Medical Centre.

#### **Medical Course at Monash Medical Centre**

8. Upon admission, Xavier underwent a CT scan which demonstrated swelling consistent with a severe prolonged ischemic brain injury. Xavier was transferred to the intensive care unit where neuro protective treatment and supportive care continued.
9. A CT angiography of the brain performed on the morning of 21 December 2011 identified a gross cerebral oedema, suggestive of brain death.
10. Xavier was pronounced clinically dead at 5.30pm on 21 December 2011. He remained on life support for the purpose of organ donation.

#### **Post Mortem Medical Examination**

11. On 26 December, 2011, Dr Matthew Lynch, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted a post mortem medical examination. Dr Lynch found the cause of Xavier's death was cardiac arrest.
12. Due to organ donation, Xavier's heart was unable to be analysed. No injury was present to Xavier's nose, mouth, neck or upper limbs.
13. Toxicological analysis of all specimens detected no drugs or poisons.
14. Dr Lynch commented:

“The cause of death in Xavier Hart is hypoxic brain injury which has occurred in the setting of an out of hospital cardiac arrest. The precipitant for the latter was not identified.

Review of medical deposition and police report reveals the following Xavier had a history of obstructive sleep apnoea which manifested as loud snoring at night with

occasional pauses in breathing. He was noted to have adenotonsillar hypertrophy and had been reviewed by a paediatric ENT surgeon and was booked for tonsillectomy and adenoidectomy. He had not undergone a sleep study to delineate the severity of his disease. He also had been noted to have an innocent cardiac murmur and had been assessed by a paediatric cardiologist at the Royal Children's Hospital. ECG and Echocardiogram were normal. In the days prior to his presentation Xavier had been well. He was last seen by his mother at 23:00 hours on 19th December 2011. When she went to check on him in the early hours of the morning she discovered him to be unresponsive and lifeless. He was transported to Monash Medical Centre where he was noted to be acidotic and a CT scan of the brain revealed global loss of grey/white matter differentiation and swelling consistent with severe hypoxic ischaemic encephalopathy. He was transferred to the Intensive Care Unit where neuroprotective treatment (including therapeutic hypothermia) and supportive care was continued. Significant haemodynamic instability and hypotension necessitated moderate doses of adrenaline and noradrenaline. Neurologically Xavier demonstrated no improvement and a CT angiography of the brain was performed on 21st December and this revealed gross cerebral oedema and changes suggestive of but falling short of satisfying the formal criteria for brain death. Death was certified at 17:30 hours on 21st December 2011. Xavier's parents consented to organ donation with heart, kidneys and liver (part) donated.

Review of the medical deposition reveals that the cause of death opined was "Cardiac arrest, unknown precipitant."

At autopsy there was evidence of widespread hypoxic change in the brain in keeping with the history. There was also evidence of widespread confluent bronchopneumonic change within the lungs representing a sequela of the hypoxic brain injury.

The cause for Xavier's out of hospital cardiac arrest is not apparent. His heart was not available for examination as it had been donated. Examination *may* have revealed a pathological process to explain Xavier's cardiac arrest. It is not uncommon however for the heart in such cases to be morphologically normal. I note that Xavier had previously had a normal ECG and echocardiogram. Pathological processes present in the heart which might explain the arrest would include myocarditis and anomalous coronary artery anatomy. Cardiomyopathy is perhaps less likely given the history of the normal echocardiogram. Causes for cardiac arrest in a patient with a morphologically normal

heart include disorders of the cardiac conduction system such as Long-QT syndrome, Brugada syndrome and CPVT (catecholaminergic polymorphous ventricular tachycardia) some of which may be inherited. The *potential* existence of these conditions thus has implications for next of kin and the recipient.”<sup>3</sup>

15. Dr Lynch noted that Xavier was known to have adenotonsillar hypertrophy and had been booked for tonsillectomy and adenoidectomy. He had not undergone a sleep study to delineate the severity of his disease.
16. Dr Lynch was unable to say with confidence whether or not Xavier experienced some form of upper airway obstruction contributing to his cardiorespiratory arrest.
17. Dr Lynch commented that toxicological analysis of antemortem and post-mortem specimens were non contributory.

#### **No suspicious circumstances**

18. On 21 December 2011, police attended the Monash Medical Centre at the request of medical staff. Xavier had been pronounced deceased and a report was prepared for the Coroner. Police commenced a sudden unexpected death of an infant investigation, spending a considerable amount of time with Sally, gathering information. There was no suggestion of suspicious circumstances or criminal elements surrounding Xavier’s death.

#### **Voluntarily attendance at St Kilda Road Police Complex**

19. On 30 May 2012, Sally voluntarily attended the St Kilda Road Police Complex and participated in an interview. During the interview, Sally supplied three versions of events and was unsure as to which version was the truth. All versions detailed attending and leaving Xavier’s Christmas party and returning home.
20. In her initial account, Sally maintained she prepared her sons for bed, read them a book and then put them to bed in separate rooms, after which she watched a DVD. That she checked on Xavier at approximately 10.00pm and 11.00pm and found nothing untoward. At about 12.30am, at the end of the DVD, she again checked Xavier and found him not breathing. She immediately called 000 and under instruction, performed CPR.
21. In another version of events, Sally described attending the Christmas party and being angry and volatile. In contrast, all witnesses described Sally as cheerful that day. She claims she

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<sup>3</sup> Excerpt of Comments section Dr Lynch post mortem report.

put the boys to bed and was extremely restless and angry and could not calm down. That she walked to the bottle shop, leaving the children at home, and purchased a six pack of beer.

22. On returning to the house she sat in the back yard and had a beer and then watched One Flew Over The Cuckoo's Nest on DVD. That she checked on Xavier at 11.00pm. She claimed she was still frustrated, angry and muttering under her breath to herself. That between 11.30pm and 12.30am she returned to Xavier's bedroom, pinched his nostrils and placed a hand over his mouth and counted to 300.
23. Sally's third version described Xavier struggling, requiring her to get on top of him to pin his arms with her knees and covering his mouth and nostrils. Of note, no injuries were observed by ambulance personnel, hospital clinicians or forensic pathologist.
24. Investigators concluded there was no evidence to support Sally's admissions of involvement in Xavier's death. Further, homicidal thoughts were only expressed by Sally, after Xavier's death.

#### **Forensicare Report**

25. Sally suffered a lengthy history of mental health illness. In her Forensicare report, Professor Mairead Dolan, Professor of Forensic Psychiatry at Monash University and Assistant Clinical Director (Research) at the Victorian Institute of Forensic Medicine explained that Sally believes she had no involvement in the death of Xavier. Professor Dolan believes that Sally harboured thoughts of harming Xavier, to draw attention to her difficulties in coping. All thoughts are post the death of Xavier which supports the claim that her admission to killing Xavier is a coping mechanism, to assist Sally deal with the unexplained death of her son.
26. In support of Professor Dolan's opinion, a review of medical records reveals that Sally always sought medical treatment for any concerns she held for Xavier, throughout his life. Further, prior to Xavier's death, Sally had never expressed homicidal thoughts.

#### **All evidence disclosed Ms Hart to be a caring and devoted mother to Xavier and Cooper**

27. The evidence clearly portrays Sally a caring and devoted mother to both Xavier and Cooper.
28. The Homicide Squad conducted a thorough and exhaustive investigation.
29. Factors identified to support that Sally was not involved include:
  - Xavier was diagnosed with large adenoids and tonsils that restricted his breathing;
  - Sally was a caring and devoted mother who had no motive to harm Xavier;

- Sally called emergency services immediately upon locating Xavier not breathing;
- Sally was happy, not angry, on the 19<sup>th</sup> December;
- there was no purchase of Carlton Black beer from the Safeway in Seaford on the night;
- there was no evidence of alcohol, observed by attending paramedics;
- no alcohol was observed to be in the residence by paramedics;
- Sally was not intoxicated;
- There were no injuries identified on Xavier;
- Sally made false admissions to highlight her coping difficulties – Professor Dolan;
- Sally does not believe she was involved in Xavier’s death – Professor Dolan;
- Absent Sally’s admissions, there is no corroborating evidence to inculcate Sally.

30. The Homicide Squad considered that there was insufficient evidence for any charges to be laid.

### **Conclusion**

31. In response to a direct enquiry of the coronial investigator, it was acknowledged:

“There is simply no basis whatever to indicate that this tragic death is anything other than natural causes.”<sup>4</sup>

32. At inquest at the conclusion of the evidence I indicated that Ms Hart:

“There is simply no evidence before me to find that you played any role in respect of the tragic circumstances of Xavier’s death.”<sup>5</sup>

33. The expert opinion of Professor Dolan provides the rationale for Sally to make a false admission to harming Xavier. Further, Professor Dolan explains that Sally does not believe she harmed Xavier. Absent Sally’s false admissions, there is no basis to find that Sally was implicated in the tragic circumstances of Xavier’s death and further, no reasonable basis to find the cause of his death was other than natural causes.

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<sup>4</sup> Transcript, page 9.

<sup>5</sup> Transcript, page 9.

**Finding**

I find the cause of death of Xavier Hart to be hypoxic brain injury complicating out of hospital cardiac arrest (unknown cause).

I direct that a copy of this finding be provided to the following:

Ms Sally Hart

Detective Senior Constable Nathan Toey, Homicide Squad

Monash Medical Centre

Signature:

JOHN OLLIE  
CORONER  
Date: 23 August 2013

