

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES & GALLOWAY  
AT HAMILTON**

**[2018] FAI 20**

HAM-B722-17

**DETERMINATION**

**BY**

**SHERIFF D A BROWN**

**UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC  
(SCOTLAND) ACT 2016**

**into the death of**

**STEVEN CHESNEY**

Hamilton, 2 May 2018

**DETERMINATION**

The Sheriff, having considered the information presented at the inquiry, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc.

(Scotland) Act 2016 that :-

in terms of section 26(2)(a), Steven Chesney, born 12 February 1983, 20A Biggar Road, Cleland, died on 1 May 2016 at 7.12am in Wishaw General Hospital; and  
in terms of section 26(2)(c), the cause of death was cocaine intoxication.

**RECOMMENDATIONS**

The Sheriff did not consider it appropriate to make any recommendation.

## NOTE

### Introduction

[1] An inquiry under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (“the 2016 Act”) into the death of Steven Chesney (“Mr Chesney”) was held on 19, 20, 21, 22 and 27 March 2018 at Hamilton Sheriff Court. That was followed by written submissions which were lodged on or before 6 April.

[2] The circumstances of the death had previously been investigated by the Police Investigations and Review Commissioner (“PIRC”) and by the Procurator Fiscal.

[3] Preliminary hearings were held on 12 December 2017 and 19 February 2018.

[4] Representation at the inquiry was as follows –

- Ms E Beadsworth, Senior Procurator Fiscal Depute, for the Procurator Fiscal and the public interest
- Mr U Dar, Aamer Anwar & Co, for Mr Chesney’s family
- Ms C Fraser, Clyde & Co, for the Chief Constable
- Mr D Japp, DWJ LAW, for
  - (a) Sergeant Cameron Mitchell
  - (b) Sergeant Graham Rankin
  - (c) Constable Kenneth Samuel
  - (d) Constable William McFarland
  - (e) Constable David Williamson
  - (f) Constable Paul Taylor
- Mr G Williams for Constable Paul Steell

- Mr R Vaughan, RS Vaughan & Co, for Sergeant Damian Murphy
- Professor P Watson, PBW Law, for Inspector Hugh Burns

[5] Twenty three witnesses gave evidence and they are named in the Appendix.

### **The legal framework**

[6] The inquiry was held under section 1 of the 2016 Act and was conducted in accordance with the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (“the 2017 Rules”). It was a mandatory inquiry in terms of section 2(1) and (4) of the 2016 Act as Mr Chesney was in legal custody, namely police custody, at the time of his death.

[7] This was an inquisitorial judicial inquiry held in the public interest. Its purpose, in terms of section 1(3) of the 2016 Act, was to establish the circumstances of the death and consider what steps (if any) might be taken to prevent other deaths in similar circumstances. It was not its purpose to establish civil or criminal liability (section 1(4) of the 2016 Act) and the rules of evidence in civil or criminal proceedings which might have prevented evidence being led on the ground of inadmissibility or restricted the manner in which evidence was presented did not apply to the inquiry (rules 4.1(1) and (3) of the 2017 Rules). Otherwise the rules of evidence for civil proceedings applied (section 20(3) of the 2016 Act) and the standard of proof for establishing the circumstances of the death was the civil standard, being the balance of probabilities.

[8] Following the inquiry, a determination required to be made in terms of section 26 of the 2016 Act, subsections 1 to 4 of which provide that -

(1) As soon as possible after the conclusion of the evidence and submissions in an inquiry, the sheriff must make a determination setting out —

- (a) in relation to the death to which the inquiry relates, the sheriff's findings as to the circumstances mentioned in subsection (2), and
- (b) such recommendations (if any) as to any of the matters mentioned in subsection (4) as the sheriff considers appropriate.

(2) The circumstances referred to in subsection (1)(a) are —

- (a) when and where the death occurred,
- (b) when and where any accident resulting in the death occurred,
- (c) the cause or causes of the death,
- (d) the cause or causes of any accident resulting in the death,
- (e) any precautions which —
  - (i) could reasonably have been taken, and
  - (ii) had they been taken, might realistically have resulted in the death, or any accident resulting in the death, being avoided,
- (f) any defects in any system of working which contributed to the death or any accident resulting in the death,
- (g) any other facts which are relevant to the circumstances of the death.

(3) For the purposes of subsection (2)(e) and (f), it does not matter whether it was foreseeable before the death or accident that the death or accident might occur —

- (a) if the precautions were not taken, or
- (b) as the case may be, as a result of the defects.

(4) The matters referred to in subsection (1)(b) are —

- (a) the taking of reasonable precautions,
  - (b) the making of improvements to any system of working,
  - (c) the introduction of a system of working,
  - (d) the taking of any other steps,
- which might realistically prevent other deaths in similar circumstances.

### **The facts**

[9] On the basis of the facts which I found proved at the inquiry and reasonable inferences from those facts, the circumstances relevant to the death were as follows -

- (1) On 1 May 2016 the deceased Steven Chesney ("Mr Chesney") was aged 33 (born 12.2.83) and resided at 20A Biggar Road, Cleland, Motherwell. This was a flat on the upper floor of a terraced house at the end of a row of terraced houses.
- (2) At 4.20am on 1 May 2016 a near neighbour of Mr Chesney was returning home by car when she saw him in the street bare-chested and brandishing a machete. At 4.22am she made a 999 call to the police to report the matter and told the operator that she recognised him as a man named Steven who possibly lived at the end of her row of houses.
- (3) At 4.24am Constables Kenneth Samuel and Michael Nisbet received a radio call to attend this incident. They drove to Biggar Road, arriving at about 4.30am. Sergeant Damian Murphy arrived around the same time. Acting on the information then available, they went to the house at the end of the row and in particular to the ground floor flat there. A male who answered the door was initially treated as a suspect but after speaking with him they realised that he was not the person they were looking for. At 4.50am they received information that a man named Steven resided in one of the upstairs flats. They went up the external stairs at the back of the building and into the common area upstairs. There were two flats there. One appeared insecure. They searched it but did not find anyone or anything of note.
- (4) They knocked on the door of the other flat, being number 20A occupied by Mr Chesney, and shouted that it was the police. They heard a dog barking inside but there was no response from anyone inside. They believed that someone was in the flat. Sergeant Murphy decided that they would require to force entry but given the

information that the man they were looking for had a machete and the presence of a dog, he considered that protective measures were required to ensure the safety of the officers involved. Between 5.02am and 5.50am appropriate protective measures were organised, being the provision of a shield and the attendance of dog handlers. Other officers also attended and a rammit device for forcing the door was obtained. Meantime further information was received indicating that the flat at number 20A was occupied by a Steven Chesney.

- (5) Shortly before the police forced entry Mr Chesney swallowed a very substantial quantity of cocaine. They were unaware of this.
- (6) At 5.50am the police forced entry and a number of police officers entered. Inside they found Mr Chesney sitting on a couch in the living room. His dog was also on the couch. It jumped off and came towards them. He was asked to call it back and take hold of it and did so. It was put in another room. Mr Chesney stood up. He appeared to be mildly under the influence of alcohol but had no difficulty with speech or balance, was coherent and was co-operative with the police. He spoke with them, in particular about his dog. He asked for and was given a glass of water. There was nothing about his appearance or condition to give any cause for concern about his welfare. He complied with a police instruction to put his hands behind his back and at 5.56am was handcuffed and detained under section 14 of the Criminal Procedure (Scotland) Act 1995 in respect of the incident being investigated. He was searched and a small amount of money and house keys were found in his pockets.

He was asked about the machete involved in the incident and indicated that it was down the side of the settee, from where it was recovered.

- (7) Constables Kenneth Samuel and David Williamson took Mr Chesney out of the flat and down the external steps. He walked down without difficulty. At the bottom of the steps they were told by another officer that they now had sufficient evidence to arrest him for a contravention of section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (threatening or abusive behaviour) and they arrested him. They walked him to a police cell van (a van containing a cell) parked nearby. He complained about the handcuffs being too tight and they loosened them. They placed him in the cell in the van with a view to taking him to Motherwell Police Office. His condition remained unchanged. The van left at around 6.15am.
- (8) Constable Williamson drove the van to Motherwell Police Station, a distance of 4.7 miles. The journey took around 13 minutes. Constable Paul Steell was tasked with watching Mr Chesney during the journey and was in the back seat from where he could see into the van cell. He saw Mr Chesney sitting on the cell floor, which was not an uncommon practice for persons in custody. He had his head up, was looking at him and appeared comfortable. During the journey he noticed that Mr Chesney was occasionally whistling, tapping his feet off a Perspex screen in the cell and winking. Constable Williamson, who could not see into the cell, heard the noise and asked him what Mr Chesney was doing. Constable Steell told him that he was whistling and tapping his feet. This behaviour did not give them any cause for concern about his welfare.

- (9) At 6.28am the van arrived at Motherwell Police Office. Constable Williamson parked it in the rear yard, a few metres away from the door leading to the custody suite. He and Constable Steell went to the back of the van, opened it up and took Mr Chesney out. At that point there was a sudden and dramatic change in Mr Chesney's condition in that he was uncoordinated, was unable to stand without being supported, was exhibiting intermittent and abnormal limb and facial movements and appeared to have a reduced level of consciousness. Constables Williamson and Steell did not know of any reason why he should suddenly become ill. They were familiar with a practice of persons in custody pretending to be ill, sometimes very convincingly, on arrival at the police office with a view to being taken to hospital rather than being put in a cell. Due to the suddenness of the appearance of symptoms and the time when they appeared, they both thought that Mr Chesney was feigning these symptoms.
- (10) Their view on this matter was mistaken. These were genuine symptoms of cocaine intoxication and their dramatic nature was due to the very substantial amount of cocaine ingested and the consequent very high level of intoxication.
- (11) Constables Williamson and Steell positioned themselves on either side of Mr Chesney and had to hold onto him and support his body weight while they took him into the police office. Once inside they sat him on a bench in the prisoner holding area beside the custody suite. That was at 6.29.46 am (the precise timings being from the clock on the CCTV system, adjusted to take account of the fact that it was 4 seconds slow relative to GMT). He continued to display similar symptoms



when seated on the bench and they required to continue holding him to prevent him from falling off.

- (12) Mr Chesney's entrance into the building at 6.29.33 am was seen on CCTV by the custody sergeant, Sergeant Cameron Mitchell, and two police custody support officers (PCSOs), Elaine Kyle and Scott Rowan. Given his apparent condition and behaviour, PCSOs Kyle and Rowan went to the holding area to have a look at him. There PCSO Rowan asked Constable Williamson what Mr Chesney was doing. Constable Williamson said that he was "playing up, I think" and commented that it started when they took him out of the van. Both Constables Williamson and Steell still thought that he was feigning illness. Constable Williamson was telling him to calm down in the hope, as he put it in evidence, that "he would come to his senses". He also asked him what he was up to, but there was no response. PCSO Rowan thought that a medical assessment would be required and left the holding area at 6.31.11 am to consult with Sergeant Mitchell. He told Sergeant Mitchell that the arresting officers thought that Mr Chesney was feigning illness as the behaviour only started on arrival at the police office, but that he thought he should go to hospital to get him checked out. Sergeant Mitchell agreed and PCSO Rowan returned to the holding area at 6.31.49 am to report his instruction that Mr Chesney should be taken to hospital. Sergeant Mitchell came to the holding area at 6.32.56 am to see Mr Chesney. He tried to engage him in conversation by asking him his name, but there was no response. He heard him mumbling but did not hear any words. Constable Williamson told him that it started when they were taking Mr Chesney

out of the van. He was not convinced that Constable Williamson was wrong about the symptoms being feigned but was satisfied that a medical assessment was necessary, not least because there appeared little possibility of Mr Chesney walking into the custody suite and giving his details, which was a basic requirement if he was to be taken into custody. In order to save time, he instructed that he be taken to hospital by police van rather than wait for an ambulance.

- (13) As Mr Chesney appeared unable to support himself, he was lifted up from the bench and four officers were involved in carrying him out of the building and into the yard. Rather than put him back into the same van, they decided to put him in a larger van as they thought he would be more comfortable with more space. They let him down onto the ground and remained with him while this van was brought round. While on the ground Mr Chesney appeared to have a seizure with very noticeable shaking which gradually decreased in intensity until it passed, leaving him motionless but still breathing. On arrival of the larger van, Constable Williamson got into the back to support Mr Chesney and other officers lifted him in. At he was about to put him on the seat, Constable Williamson saw his face “slump” and turn an “awful colour”, indicating a marked deterioration in his condition. They took him back out, laid him on the ground in the recovery position and called an ambulance – at 6.37am. PCSO Kyle came out and on seeing Mr Chesney’s condition, knelt down beside him and checked that he was still breathing, which he was, and that his airway was clear, which it was. She said his name but there was no response. She remained beside him. After a minute or so she suddenly realised that

the noise of breathing had stopped. She checked his neck for a pulse but could not detect anything and immediately began CPR (cardiopulmonary resuscitation) with chest compressions. A further call was made to ambulance control at 6.42am to advise that Mr Chesney had stopped breathing and that CPR was being administered.

(14) An ambulance arrived at 6.44am. The ambulance crew paramedics saw PCSO Kyle administering CPR and noticed that she was doing it well, with the position, depth and rate all being correct. They asked her to continue until they got their equipment set up, at which point they took over. They checked Mr Chesney for a pulse and breathing but could not detect anything. He appeared to be in a state of cardiac arrest, with his skin colour being cyanosed (blue tinged). They tried to intubate him to deliver oxygen but failed because his airway kept filling up with fluid. They administered adrenalin intravenously and left with him in the ambulance, alerting the hospital so that there would be a doctor on standby on arrival. They continued with CPR en route.

(15) At 6.57am the ambulance arrived at Wishaw General Hospital. Mr Chesney was taken in and treated by Dr Lehane, a specialist in emergency medicine, and a supporting team. His airway was cleared, he was intubated to supply him with oxygen, adrenalin and saline were administered, CPR was continued and an ECG monitor and defibrillator were attached. Dr Lehane found no pulse, no heart sound, no respiratory effort, fixed and dilated pupils and a consistently flat asystole reading (meaning that the ECG monitor could not detect any electrical activity of

the heart). Given these findings and the lack of response to treatment, at 7.12am he pronounced life extinct.

(16) A post mortem examination was carried out on 9 May 2016. The pathologists were told that Mr Chesney had collapsed in the yard at the police station and had suffered a cardiac arrest. In terms of natural disease, they found heart disease in the form of severe atheromatous narrowing of one of the main coronary arteries. The severity was such that they considered that this alone could have caused sudden death. A subsequent toxicological analysis of the blood revealed the presence of cocaine at a level higher than 10 mg per litre, though the exact level could not be determined as it was so exceptionally high as to be off the top level of the analytical scale. The pathologists concluded that the main factor causing death was cocaine toxicity but given that the heart disease would have increased the risk of a fatal cardiac event and the sudden collapse in the yard, they considered that the coronary artery atheroma was a contributory factor. Accordingly they certified the cause of death as cocaine intoxication and coronary artery atheroma.

(17) The toxicological analysis also revealed a low level of alcohol in the blood.

(18) Subsequent viewing of the CCTV footage from Motherwell Police Office by the expert medical witnesses who gave evidence at the inquiry established that the heart disease found at the post mortem examination did not contribute to the death. The symptoms seen on the CCTV footage were indicative of neurological irritation consistent with cocaine intoxication and there was nothing to indicate that any

cardiac problem was a contributory cause of those symptoms. Accordingly the cause of death as established at the inquiry was restricted to cocaine intoxication.

- (19) Severe cocaine intoxication is very difficult to treat successfully and once Mr Chesney had ingested this exceptionally high toxic dose, there was no realistic possibility of survival even with immediate medical treatment.

### *Issues at the Inquiry*

- (20) There were various matters which were considered in some detail at the inquiry and it is appropriate to comment on them.

- (21) Reference has already been made to the expert medical witnesses ("the medical experts") who gave evidence at the inquiry. They were aware of the facts of the case as they had previously been provided with copies of the relevant witness statements and documentary productions and had viewed the CCTV footage from Motherwell Police Office. They were all very well qualified to give expert evidence and their evidence was of considerable assistance. They were -

- Dr Michael Johnston, Consultant in Emergency Medicine at Ninewells Hospital, Dundee and Perth Royal Infirmary.
- Dr Stuart Hutcheon, Consultant Cardiologist at Ninewells Hospital and Medical School, Dundee.
- Professor Michael Eddleston, Professor of Clinical Toxicology at the University of Edinburgh, Consultant Clinical Toxicologist and Pharmacologist with NHS,

Lothian and Consultant Clinical Toxicologist with the National Poisons Information Service at the Royal Infirmary of Edinburgh.

*Cause of death*

(22) As regards the cause of death as established at the inquiry being restricted to cocaine intoxication, the medical experts were not surprised that the pathologists had noted coronary artery atheroma as a second cause of death given the severity of the heart disease. The advantage they had over the pathologists was that they had been able to view the CCTV footage, see the symptoms being exhibited by Mr Chesney shortly before he died and consider whether they were consistent with the conclusion reached by the pathologists. Having done that, they were all of the view that the symptoms were indicative of rapidly progressing neurological irritation consistent with severe cocaine intoxication and that there were no symptoms of a cardiac problem – such as a clutching of the chest in response to pain or a sudden loss of consciousness such as might result from an acute cardiac event. In medical terms, the involuntary limb movements were “myoclonic jerks” and the involuntary facial distortions were associated with “bruxism”, being teeth grinding and clenching, and these and the other symptoms seen were caused by the impact of the cocaine intoxication on the central nervous system. The CCTV footage was described as striking footage, to a medically trained person, of a neurological rather than a cardiac problem. Dr Johnston also highlighted the absence of post mortem evidence of myocardial infarction (heart attack). The medical experts were

accordingly satisfied that the heart disease played no part in the death. I accepted their view.

- (23) One of the pathologists, Dr Julia Bell, gave evidence at the inquiry and said that, having seen the CCTV footage, she could understand why the medical experts had reached that view. She accepted that the heart disease may have played no part in the death but made the point that it would have made Mr Chesney more susceptible to anything adversely affecting his heart. She was not as sure as they were that it could be excluded as a cause and considered it a potentially contributory factor.

### *Possibility of survival*

- (24) It appeared fairly obvious from the evidence at the inquiry that given the exceptionally high dose of cocaine and the difficulty in treating cocaine intoxication, there was no realistic possibility of survival. Professor Eddleston in particular indicated that there was no real basis in medical literature for suggesting the possibility of survival as the rare findings of similarly high levels generally related to people who had died. He, like Dr Johnston, commented in his report about the level being “off the analytical scale” and emphasised that they did not know how far above the top end of 10mg per litre it was. He thought it likely that this exceptionally high level had been contributed to by an earlier ingestion of cocaine an hour or two before the police entered the flat, as the toxicological examination revealed a high level of the metabolites of cocaine (resulting from the body

processing cocaine) and it was unlikely that all of this metabolism had occurred after death.

(25) The finding I made that Mr Chesney swallowed the cocaine was made on the basis that this appeared to be the most probable explanation for the delayed effects. The more common snorting or injecting cause almost immediate effects but swallowing delays the effects until the cocaine is absorbed by the body.

(26) A feature of this case was the speed of Mr Chesney's deterioration once it had started. It was 6.29 am when he was taken out of the van at the police office and at 6.42am, only 13 minutes later, he was in a state of cardiac arrest from which he never recovered. He was apparently fine when he was put in the van at around 6.15am and even if his condition was deteriorating unnoticed during the journey, it was at most 27 minutes from when his body started absorbing the cocaine before he was completely overwhelmed by the toxic effects, which was alarmingly quick.

(27) Had he reached hospital before the cardiac arrest, there would have been the obvious difficulty in diagnosing his illness as none of the witnesses knew that he had consumed cocaine. Even if his condition prior to his collapse had been described in detail, it appeared unlikely that an accident and emergency doctor would have been able to make a speedy diagnosis as the symptoms were extremely unusual. The medical expert Dr Johnston in particular indicated that he had never previously seen such dramatic symptoms.

(28) Even if there had been an immediate correct diagnosis, there would have been a major problem in relation to treatment in that cocaine intoxication has multiple



effects which cannot be reversed as there is no antidote (as there is for heroin overdose). Treatment can only be directed at attempting to minimise the toxic effects and where these effects are severe, it can be very difficult to achieve a successful outcome. Valium-like medication may be administered in an attempt to counter the impact on the central nervous system and calm the body down. Alkaline agents may be administered to try to counter the increased acidity of the blood caused by the cocaine. The patient may be placed on a ventilator for life support. Other measures may also be adopted. But in this case, given the massive amount of cocaine, the medical experts considered the possibility of survival to be vanishingly slim. Dr Johnston in particular said that in view of the “incredibly high toxic dose” of cocaine it was “extremely highly unlikely” that the death could have been prevented.

### ***Defibrillator***

(29) There was an issue as to whether the death might have been avoided by use of a defibrillator, being a device which can be used with CPR as treatment for someone suffering from cardiac arrest and which delivers an electric shock to assist in restarting the natural rhythm of the heart. The expert medical evidence indicated that it would not have been of any assistance. That was because it would have had no effect on what was causing death, being the overwhelming toxic effects of cocaine, and when cardiac arrest occurred this was the terminal event in that irreversible process.

*Condition of Mr Chesney from when entry was forced to his flat until start of journey to Motherwell Police Office*

(30) I was satisfied that there was nothing at this stage to indicate that Mr Chesney was about to become ill.

(31) One matter which was repeatedly referred to in questioning was evidence from Constable Samuel that while in the flat Mr Chesney was slightly anxious and agitated and was shifting his weight from foot to foot. The manner in which these comments were put to various subsequent witnesses suggested that they had a significance which in my view Constable Samuel did not intend. As regards Mr Chesney being "slightly anxious", what he said was that Mr Chesney was slightly anxious that they had forced his door. When asked how that was apparent, he said it was just an assumption on his part. Asked why he thought Mr Chesney to be agitated, he said that he was shifting his weight from foot to foot but that this was quite normal for someone who had had a drink and that Mr Chesney was no different from anyone else he would expect to deal with at the weekend. He emphasised that he appeared fine and that there was no difficulty in speaking with him. The only other evidence of agitation came from Sergeant Murphy who said that Mr Chesney might have been slightly agitated but that that this was to be expected, given that the police had just forced his door.

*Condition of Mr Chesney during journey to Motherwell Police Office*

(32) The only witness speaking directly to Mr Chesney's condition during the journey of some 13 minutes to Motherwell Police Office was Constable Steell, who was seated in the back of the van and was tasked with watching him. The other officer present, Constable Williamson, was driving the van and was not in a position to see him. Constable Steell said that Mr Chesney appeared content throughout the journey and was tapping his foot, whistling and occasionally winking. He said that this started during the journey but he could not remember when. Constable Williamson said that he heard the whistling and tapping, that it started maybe half way into the journey, that it sounded more like tapping than banging, that he asked Constable Steell what the noise was and that Constable Steell told him that Mr Chesney was sitting on the floor and was tapping his foot and whistling. Neither officer thought that there was anything wrong with him.

(33) It was put to Constable Steell that he was not being truthful in his account of Mr Chesney's low-key behaviour during the journey but I did not share that view and accepted his evidence. Apart from that, there was no evidence to support the suggestion that Mr Chesney would have been behaving differently, as discussed below.

(34) The medical experts were asked whether the tapping, whistling and winking seen by Constable Steell were precursors of what was about to happen, in the sense of being a milder version of the subsequent symptoms. They were by no means certain that they were and considered this to be little more than a possibility. They were

aware of the evidence of the sudden appearance of dramatic symptoms at the police office and it was noticeable that they did not suggest that this could not have happened or that Mr Chesney's behaviour during the journey must have been different from that described by Constable Steell. It was clear from their evidence that even if what was seen by Constable Steel were early symptoms of illness, which was not established by the evidence, it would have been difficult even for a medical professional to identify them as such and that accordingly it would have been wholly unrealistic to expect Constables Williamson or Steell to have reached that conclusion. The medical experts emphasised that one of the problems with cocaine intoxication is that the early symptoms are very difficult to identify. Dr Hutcheon thought that what was observed might have been very subtle signs but indicated that even he was not sure and said that a toxicologist might be better able to give an opinion. Dr Johnston said that what was observed did not fit with cocaine intoxication and that even an inability to stop tapping or banging could have been entirely unrelated to it. He accepted that if the winking had been combined with facial twitching, which could be associated with cocaine intoxication, someone who was not medically trained might interpret that as mere winking. Professor Eddleston indicated that it would really require a doctor with experience in cocaine intoxication observing the behaviour to enable a more definite conclusion to be reached.

- (35) In these circumstances I was satisfied that Constables Williamson and Steell would have had no cause to suspect that Mr Chesney was becoming unwell during the journey.

*Condition of Mr Chesney on arrival at Motherwell Police Office*

- (36) The sudden dramatic change in Mr Chesney's condition when he was taken out of the van did initially seem surprising but, as indicated above, the medical experts did not suggest that this would not have happened. They emphasised the speed of deterioration once the process of absorption of cocaine had started, which implied that significant change would occur very rapidly. The very fact that they were uncertain about whether what Constable Steell observed during the journey were early symptoms of cocaine intoxication allowed for the possibility that there were no apparent symptoms until Mr Chesney was taken out of the van.
- (37) There was an unresolved issue of whether the taking of Mr Chesney out of the van was a factor which contributed to the sudden appearance of symptoms. It appeared possible that his condition was deteriorating during the journey, though without any obvious symptoms while he was resting on the floor of the van, and that the sudden physical exertion involved in attempting to stand put such a strain on him in his weakened condition that his illness became immediately apparent. This however was no more than a possibility and was not established by the evidence.

*Mistaken view that illness was feigned*

(38) It was the sudden change in Mr Chesney's condition on arrival at the police office which was the main factor leading to the mistaken view reached by Constables Williamson and Steell that he was feigning his symptoms. They thought that such symptoms, if genuine, would have been preceded by milder symptoms and as far as they were concerned there had been none. Constable Williamson said that Mr Chesney had been a "model custody" up to that point and that he had never previously seen anyone go straight from being perfectly healthy to being very unwell. They were aware of the practice of persons in custody pretending to be ill on arrival at a police office and Constable Williamson spoke about people having in the past been taken to hospital because they appeared to be ill only for it to be discovered there that there was nothing wrong with them. It had to be borne in mind that when Constables Williamson and Steell were taking Mr Chesney into the police office they did not have the same opportunity for detached, undisturbed and repeated observation afforded by the viewing of the relevant CCTV images at the inquiry, as they were heavily engaged in physically supporting him, and that they did not have the same frontal view of his face and behaviour as was provided by the CCTV images. As regards their perception of what he was doing, Constable Steell spoke to being aware that he was dragging his feet and making what he described as kicking movements and said that he thought that he was deliberately being awkward and might spit at him.

- (39) This assessment by Constables Williamson and Steell of Mr Chesney's condition was only relevant for the purpose of deciding whether to take him into the police office or put him back in the van and take him to hospital. Constable Williamson commented that once you get to the police office it is for the custody sergeant to decide whether someone should go to hospital and Constable Steell similarly said that he knew that Mr Chesney would be assessed by the custody officer. Given the limited opportunity they had for observation, the highly unusual symptoms and their closeness to the custody suite, even if they had suspected a genuine illness it might not have been unreasonable to continue taking him into the police office to allow for an assessment by the custody sergeant. That was a view expressed in evidence by Chief Inspector Paterson who said that the custody sergeant would have been better able to make this assessment as custody officers had a better level of medical training.
- (40) As regards whether the view reached by Constables Williamson and Steell was not just mistaken but was also unreasonable, I did not consider that it was unreasonable given their reasons and the circumstances outlined above. It was clearly a view which they genuinely held at the time. It was also a view which the custody sergeant, Sergeant Mitchell, with his better level of medical training, did not consider to be unreasonable in that he made a comment at the time to Constable Williamson to the effect that he could be right about the feigning and said in evidence that his view at the time was that there was either something wrong with Mr Chesney or he was feigning as they suggested, not least because of the sudden

appearance of symptoms. He too spoke about the practice of persons in custody pretending to be ill and said that some people were very good at putting on an act.

- (41) It is worth noting that at no stage during the inquiry was it suggested that either Constable Williamson or Steell, or for that matter any other officer, was ill-disposed towards Mr Chesney, or physically mishandled or mistreated him, or had any reason to misinterpret or ignore a genuine illness, or had any motive for not giving a truthful account of what happened.

*Whether it was appropriate for Constables Williamson and Steell to make an assessment of Mr Chesney's condition*

- (42) There were two issues here, the first being whether it was appropriate for Constables Williamson and Steell to make an assessment of Mr Chesney's condition when they took him out of the van and the second being whether they were adequately trained to differentiate between genuine and feigned symptoms of illness.

- (43) As regards the first matter, I was entirely satisfied that they had a duty to assess Mr Chesney's condition as part of their ongoing duty of care for any person in their custody. It appeared from the questioning that what was being suggested was that anyone appearing to be ill should be taken to hospital for a medical assessment and that police officers should not consider the possibility of illness being feigned. If that was the suggestion, I did not agree with it given the evidence about persons in custody regularly feigning symptoms of illness, the likelihood that this problem



would increase if police officers were required to assume that symptoms were genuine and the well-known pressures on accident and emergency departments. It appeared that police officers were quite properly entrusted to use their common sense in making an assessment and that there was no pressure or incentive to make a decision one way or the other. That was reflected in the evidence of both Constables Williamson and Steell who said that if at any stage while Mr Chesney was in their care they had thought that he might be unwell and required medical attention, they could and would have taken him direct to hospital. There was nothing in the evidence to suggest otherwise.

### *Training*

(44) As regards the second point in relation to training, the evidence was that police officers were not trained to differentiate between genuine and feigned symptoms of illness. There was no evidence about what such training might involve but it appeared that such differentiation might be difficult even for a medical professional, depending of course on whether the person involved knew what symptoms to feign and how convincingly he or she was able to do so. It therefore appeared reasonable to allow for a common sense assessment on the basis that a medical assessment would be instructed if the symptoms might be genuine, which was the approach taken by Sergeant Mitchell in this case.

*Mr Chesney's condition in the holding area*

(45) Once seated on a bench in the holding area, Mr Chesney's dramatic symptoms continued. Constables Williamson and Steell remained of the view that he was pretending to be ill but at that stage their opinion was of little significance as it was for Sergeant Mitchell to decide whether Mr Chesney was well enough to be accepted into custody. He quickly decided that he should be taken to hospital for assessment.

*CCTV audio recording*

(46) There were two issues arising from the CCTV audio recording of events in the holding area, the first being whether Mr Chesney could be heard saying that he was ill and the second being whether Constable Williamson could be heard making a comment to the effect that Mr Chesney's behaviour started when he was put in the van, contrary to his evidence that it started when he was taken out of the van. Both of these issues arose because of the poor quality of the audio recording, uncertainty about what had been recorded and evidence from those present at the time which conflicted with the interpretations of the audio recording.

*Comments by Mr Chesney about being ill*

(47) As regards Mr Chesney saying he was ill, when the CCTV recording was played in court he could be heard making noises but they were not recognisable as words. It might reasonably have been expected that he would have been trying to say that he

was ill but the problem, as explained by Professor Eddleston, was that he was so ill that it would have been very difficult for him to communicate. Professor Eddleston said that the CCTV images showed him looking very confused and not interacting with people and that he would have been surprised if he had been able to say anything.

- (48) The witness Kareen Pattenden from PIRC (the office of the Police Investigations and Review Commissioner) said that she had repeatedly listened to the audio on the CCTV recording, probably about 50 times over 8 to 10 days, in a room which was purpose-built for watching and listening to CCTV recordings and that she had heard Mr Chesney when in the holding area saying “oh man I’m ill”, “I think I’m gonna be sick” and “I’m no well, ah, I’m sick”. However her colleague Kevin Rooney (who was not called as a witness), having undertaken a similar exercise, did not hear him say anything. Questioned about this, she said that it was a matter of perception for the listener, which implied that there was a considerable degree of uncertainty about what if anything was recorded. A further interpretation of the audio recording was provided by a witness Iain McArthur, a specialist in forensic audio enhancement, who believed that Mr Chesney had said “I’m ill”, “I’m ill”, “Ah’m no..”, and possibly “I need help”.

- (49) None of the witnesses present in the holding area at the time spoke to hearing Mr Chesney say anything, in particular Constables Williamson and Steell who were closest to him. Constable Williamson said that he heard him making noises but could not make out any words. He accepted with the benefit of hindsight that Mr

Chesney might have been trying to say something but as far as he was aware he did not manage to do so. Constable Steell similarly did not hear any words and commented on the background noise, in particular from his police radio.

- (50) Given the difficulty that Mr Chesney would have had in communicating and the uncertainty about what had been recorded, it could reasonably be inferred that any words he might have managed to utter would have been indistinct and easily missed and I had no reason to doubt the evidence from those who had been present that they did not hear any words. However even if they had heard him say in the holding area that he was ill, it did not appear that this would have resulted in anything different being done as his appearance alone at that time was sufficient to prompt a quick decision to take him to hospital.

*Comments by Constable Williamson about when the symptoms began*

- (51) According to Kareen Pattenden and Kevin Rooney, based on their interpretation of the CCTV audio recording and as noted in their transcript of it, Constable Williamson while in the holding area with Mr Chesney made the following three comments -

- in response to an inquiry from PCSO Rowan about whether Mr Chesney was “struggling, shaking or what” – “He’s fine, he’s been going on like that since we put him in the cell.”
- to PCSO Rowan – “He was alright till we got him doon tae the cell van, then he started wi aw this.”

- to Sergeant Mitchell – “I don’t know. This didn’t start till he got arrested. He was alright coming out to the van and all that. Then once he’s put in the van and arrested.”

The question was whether their interpretation of the audio recording was correct as it conflicted with the evidence from Constable Williamson and from all of the other witnesses who were present at the time that what he said was that the behaviour started when Mr Chesney was taken out of the van. There were two issues here. The first was the reliability of the interpretation and the second was the credibility of the conflicting evidence.

(52) As regards the reliability of the interpretation, the poor quality of the audio recording was again a problem and it was not possible when the CCTV footage was played in court to determine whether the interpretation was correct. The poor quality had resulted in the interpretation process not been straightforward in that it had required a lot of time spent repeatedly listening to the recording. The reasons for the poor quality were explained in evidence by the expert witness Ian McArthur. He said that the quality of microphone was “not great”, that audibility was affected by the distance between the microphone and Constable Williamson, that the holding area was “quite a bouncy room in terms of audio” due to echo and reverberation and that a considerable amount of background noise had been captured on the recording. Asked about the overall quality of the recording, he said that it was not the worst he had experienced but that it was “not great”. The

question in relation to all of this was whether the quality of the recording was such as to introduce a degree of uncertainty about the accuracy of the interpretation.

- (53) As regards that degree of certainty, Kareen Pattenden spoke on behalf of both herself and Kevin Rooney as he was not called to give evidence. At times she appeared confident that they had got it right and commented that Constable Williamson spoke clearly, unlike Mr Chesney, but at other times she appeared less certain. In particular, in relation to the first of the comments noted above, she said “I don’t believe” that she and her colleague had any disagreement about it. Asked whether instead of “we put him in the cell” it could have been “we got him oot the cell”, she said that it was down to the listener’s interpretation and that “you could listen to that and form a different view”. Asked about the second comment, she said that she had no disagreement with her colleague about it but when it was put to her that Constable Williamson’s position was that rather than saying “we got him doon tae the cell van” he said “we got him oot aw the cell van”, she said that she believed that her interpretation was correct but that it was down to perception. It was obvious that the meaning of these three phrases turned on the interpretation of a few key words and that if the court was to rely on the transcript of the audio recording as an accurate record of what Constable Williamson said, it would have to be satisfied that these few key words had been interpreted accurately. It appeared from the evidence of Kareen Pattenden that there was room for doubt about this matter.

- (54) It might be argued that as all three comments as interpreted conveyed the same meaning, that increased the likelihood of the interpretations being correct but I was not convinced that it did. If efforts were being directed at establishing what Constable Williamson was saying and one comment was misinterpreted, it could reasonably be inferred that that might colour the listener's views about what he was likely to be saying in the other comments.
- (55) It appeared relevant to consider whether the attributed comments were likely to have reflected what happened – as if not, it appeared less likely that they would have been made. The meaning conveyed by them was that Mr Chesney started behaving in the manner seen on the CCTV recording immediately he was put in the van. That implied a suddenness in the appearance of the symptoms which was far more pronounced and more difficult to understand than the appearance of symptoms at the end of the journey during which his condition might have been deteriorating unnoticed. Support for the view that there was likely to have been some such deterioration came in particular from Professor Eddleston who expressed the opinion that the dramatic symptoms would “not have come out of the blue”. This tended to indicate that the scenario suggested by the attributed comments, involving a sudden transformation from being well to being very unwell, was less likely than the one described by Constables Williamson and Steell. Further, if, as indicated in the attributed comments, the dramatic symptoms did suddenly appear when Mr Chesney was put in the van, it might reasonably have been expected that this would have prompted some response from Constables Williamson and Steell,

not least because of a likely concern about how things would develop during the journey, and that they would have asked him what was wrong or what he was up to, or tried to calm him down, or consulted with the senior officer present on whether they should take him to hospital, but nothing like that happened – which again tended to indicate that this scenario was less likely than the one established by the evidence. There was also the fact that the evidence from Constables Williamson and Steell about Mr Chesney's condition when he was put in the van was confirmed by the evidence of Constable Samuel who was present when that happened and said that there was nothing about him at that stage to suggest that he might be unwell and that if there had been, he would have raised that issue at the time.

(56) As regards the evidence which conflicted with the interpretation of the audio recording by Kareen Pattenden and Kevin Rooney, as previously indicated Constable Williamson said in evidence that the comments he made were to the effect that Mr Chesney's behaviour as seen in the holding area only started when he was taken out of the van. His evidence on this matter was supported by the evidence of all three persons who were present when he made the comments. These were -

- Constable Steell – who said that that was his understanding of what Constable Williamson said and that he would have corrected him if he had indicated that the behaviour started when Mr Chesney was put in the van. He also said that he had listened to the CCTV audio recording several times prior to the



inquiry and that as far as he could make it out, it confirmed his understanding of what was said.

- PCSO Rowan – who said that Constable Williamson said that Mr Chesney started behaving in that way when they got him out the van. Questioned further about the different version based on the interpretation of the audio recording, he said that he definitely said that it started when they got him out of the van – and not when he was put in the van.
- Sergeant Mitchell – who said that PCSO Rowan came to consult with him about whether Mr Chesney should be taken to hospital and told him that the arresting officers thought that he was feigning illness as it had only started on arrival at the police office. He then went to the holding area to have a look at Mr Chesney and Constable Williamson told him that this had begun when they were taking him out of the van at the police office. When it was put to him that Constable Williamson said that it started when he was put in the van, he said no, that that was not what he said and that what he told him was that it started when they took him out of the van at the police office.

(57) It was not suggested that these witnesses were unreliable because for example they misheard what was said or had difficulty in remembering the comments. They had plainly been better-placed to hear the comments than any listener to the audio recording. That was emphasised by the witness Ian McArthur who said that the quality of sound heard by the persons present in the holding area would have been “vastly better” than the quality of sound on the recording. The issue was a

straightforward one of credibility, being whether these witnesses were giving a truthful account of what they heard. There was nothing in the evidence to suggest any reason why they should be disinclined to give a truthful account and ultimately I had no difficulty in accepting their evidence and preferring it to the apparently less reliable and less probable evidence derived from the interpretation of the CCTV audio recording.

### *Submissions*

(58) Written submissions were lodged, some of which included considerable rehearsal of the evidence. I had a detailed note of the evidence and relied on that rather than the accounts in submissions.

(59) I largely agreed with the submissions made by Ms Fraser, Mr Japp, Mr Williams, Mr Vaughan and Professor Watson and took account of them in making this determination. That being the case, I did not consider it necessary to repeat these submissions here.

(60) Mr Dar for Mr Chesney's family made a number of submissions, some of which I did not accept. I considered that it was appropriate to deal with his submissions in some detail and have done so below. There were also some submissions made by Ms Beadsworth for the Procurator Fiscal which I did not accept and again I have commented on them below.

*Submissions by Mr Dar*

- (61) Mr Dar accepted that the coronary artery atheroma discovered at post mortem examination was perhaps not a second cause of death. – As previously indicated, it was not established at the inquiry to be a second cause of death.
- (62) It was accepted that it would be inappropriate for findings to be made in terms of section 26(2)(e) and (f) of the 2016 Act due to the medical evidence indicating that there were no reasonable precautions which, if taken, might realistically have avoided the death and the absence of evidence indicating that any defect in a system of working contributed to the death. – I agreed.
- (63) It was appropriate for findings to be made in terms of section 26(2)(g) in relation to other facts relevant to the death. – This was the focus of various submissions detailed below. I was not satisfied that it was appropriate to make any such findings.
- (64) The police were negligent in failing or delaying to assess Mr Chesney's condition. – Again this was the focus of further submissions as detailed below. I was not satisfied that there was any evidence of negligence.
- (65) Given the quantity of cocaine consumed, Mr Chesney's presentation and demeanour when found in his flat must have given cause to consider that he was significantly under the influence of drink or drugs. – This assumption was not supported by the evidence.
- (66) The suspicion while in the flat that Mr Chesney might have been intoxicated should have prompted an inquiry about his condition as part of a general risk assessment

consistent with the exercise of a duty of care. – The evidence was that he was mildly intoxicated, which appeared consistent with the toxicological finding of a low level of alcohol in his blood. There was no apparent risk to be assessed.

- (67) The signs of Mr Chesney becoming unwell should have been apparent during the journey to Motherwell Police Office. – I have previously dealt with this matter at length. I was satisfied that Constables Williamson and Steell had no cause to think that Mr Chesney was becoming unwell during the journey.
- (68) The assumption by Constables Williamson and Steell at Motherwell Police Office that Mr Chesney was feigning illness was inappropriate and this might be a defect in the system of working by them, even though it did not directly contribute to the death. Numerous other police witnesses recognised the urgent medical need and did not make the same assumption. It was reasonable to assume that Mr Chesney was unwell and act with greater urgency. It was contrary to Standard Operating Procedure (Crown production 14) para 8.1.16 to make such an assumption as it states that assumptions should never be made regarding any custody. – The question of whether Constables Williamson and Steell made an assumption was discussed at the inquiry. I was satisfied that rather than make an assumption they made an assessment, that it was appropriate for them to do so in compliance with their duty of care and that there was a reasonable basis for the mistaken view they reached. As previously discussed, I did not consider that it would have been appropriate for them to make an assumption that the symptoms were genuine. I did not therefore consider that there was any defect in their system of working. As

regards other police witnesses not making the same assumption, again what was involved was an assessment rather than an assumption, the assessment which mattered at the police office was that of Sergeant Mitchell and his assessment was different not because he considered that the assessment made by Constables Williamson and Steell was wrong but because he could not be certain whether it was right or wrong. I was not satisfied that there was any lack of urgency on the part of Constables Williamson and Steell.

- (69) The paramedic Sharon Burgess who arrived after Mr Chesney had collapsed was not given relevant information about his behaviour and degree of intoxication / consumption. – When Sharon Burgess arrived the situation was critical in that Mr Chesney was in a state of cardiac arrest and efforts were focussed on trying to re-start his heart. The evidence did not establish what information was sought or provided so it was not possible to say whether there was any deficiency in communication. Communication may well have been limited due to the nature of the situation, which Constable Williamson described as “traumatic”. Sharon Burgess might reasonably have sought information on why Mr Chesney had collapsed, so that she would know the illness to be treated if his heart was re-started, but the police witnesses could not have provided this information as they did not know why he was ill and in particular did not know about the cocaine. They might well have thought that they had no useful information to provide.
- (70) The police failed to pass relevant information along the chain of custody from the officers at the locus right thorough to the paramedics. – This point is related to the

preceding one. There was nothing of note until Mr Chesney's arrival at the police office and I was not satisfied that the evidence established any breakdown in communication.

(71) The information that Mr Chesney was intoxicated was not passed along the chain of custody. – Again this is a similar point. The intoxication was mild and was unrelated to the death. There was nothing to suggest that this information would have been of any value to Sharon Burgess.

(72) The fact that Mr Chesney gave the wrong address for his father might have been indicative of his state of confusion. – This was in the context of a discussion which Constable McFarland had with him about his dog. Mr Chesney told him that his father could look after the dog while he was in custody and gave him his father's address. Constable McFarland said that there was a "minimal error" in the address he noted and that it was possible that he had noted it wrongly. Even if the mistake was not his, he said that this was something which happened quite regularly as people sometimes did not know the precise details of an address. As far as he was concerned, Mr Chesney appeared fine.

(73) Although the medical evidence indicated that the possibility of survival was very low, by inference a possibility remained. – That is correct but it was clear that this possibility was so remote and unlikely that it was unrealistic to suggest that Mr Chesney could have survived.

(74) There was evidence from witnesses who had listened to the CCTV recording of Mr Chesney saying that he was unwell and on that basis there was a strong body of

evidence that Mr Chesney was trying to communicate his ill health to Constables Williamson and Steell but these warning signs went unheeded. – I have previously discussed this matter at length. I accepted the evidence of those present that they did not hear him make any such comment.

- (75) The CCTV recording captured Constable Williamson in the holding area repeatedly saying that Mr Chesney was displaying symptoms when he was put in the cell van and this impacts on the credibility of Constables Williamson and Steell. Constable Steell during the journey observed winking, tapping of feet and whistling and though these would not have been recognised by the untrained eye as medical symptoms, the recorded comments indicate that they were recognised as such, in which case these officers must have formed the impression that he was feigning symptoms at that stage, without there being any reasonable basis for that view. In not taking action to assess the risk by speaking to Mr Chesney at that stage, the officers were in dereliction of their duty of care. – Again I have previously discussed this matter at length. I was not satisfied that Constable Williamson did make the comments attributed to him by Kareen Pattenden and Kevin Rooney on the basis of their interpretation of the audio on the CCTV recording. I disagreed with the submission that the attributed comments, if made, would have indicated that Constables Williamson and Steell recognised that the winking, tapping of feet and whistling observed during the journey were symptoms of illness, as the meaning conveyed by them was that the quite different behaviour observed at the police office started when he was put in the van. I was satisfied that Mr Chesney's

behaviour during the journey would not have given them any cause to think he was ill, with even the expert medical witnesses not being convinced that it was symptomatic of illness. There was accordingly nothing during the journey to indicate a risk which required to be assessed and no failure to comply with the duty of care.

(76) Constable Steell's credibility was open to question as he noted in his statement prepared at the time that Mr Chesney was kicking in the van, which differed from his evidence in court. – Constable Steell was asked in evidence about whether Mr Chesney was kicking, as noted in his statement, and said "I would not say so". Later in evidence he said that he was not kicking and that that was a mistake which he had made in his statement due to tiredness when compiling it. I considered him to be a credible witness and accepted his evidence. In any case this appeared to be a minor matter as the difference between tapping with a foot and kicking in this situation was simply down to the amount of force used. Constable Williamson, when asked whether it was tapping or banging, said that it was more like tapping, which implied that it was somewhere between the two. He added that Mr Chesney's behaviour contrasted favourably with the more common noisy and abusive behaviour of persons in custody.

(77) It was accepted that there may well have been a dramatic change or decline in Mr Chesney's condition but the lack of proactive policing was redolent of negligence. – I was satisfied that there was a dramatic and unexpected change in Mr Chesney's



condition. I did not consider that there was any evidence of negligence on the part of the police.

(78) A recommendation should be made dissuading a subjective assumption of feigning in the absence of objective evidence. – As previously discussed, I considered that Constables Williamson and Steell made an assessment or judgment based on facts known to them rather than an unjustified assumption. I did not therefore consider this recommendation to be appropriate.

(79) A recommendation should be made that police training on seizures should be reinstated. – This point arose from evidence that all police officers received basic first aid training and that training on seizures had been removed from the syllabus following a review in response to analysis of incidents. I did not consider this recommendation to be appropriate. The seizure training had been removed since this incident, meaning that it was provided at the time, and it did not appear to have had any significance in relation to the only issue which arose in relation to the symptoms seen on arrival at the police office, being whether or not they were genuine. There was nothing to suggest that the current training, which does not include seizure training, would have caused any of the officers involved in this case to have acted differently.

#### *Submissions by Ms Beadsworth*

(80) Ms Beadsworth submitted that the CCTV footage provided an independent check on what happened and it and the evidence of the person with skill in transcribing it

was the most reliable record of what was said in the holding area. The independent PIRC investigator Kareen Pattenden was a person of skill. She had listened to the CCTV recording over 50 times over an 8 to 10 day period in a purpose-built CCTV room using headphones and speakers and equipment providing better sound quality than that in court. Her colleague Kevin Rooney had also listened to and transcribed the footage. The witness Ian McArthur had listened to the footage at least 20 times post enhancement. Both she and Ian McArthur heard Mr Chesney say the words "I'm ill", albeit they may have heard different things at different stages. Kevin Rooney could not discern Mr Chesney saying anything. This should provide reassurance to the court as to the consideration given to the PIRC transcript and the accuracy. – I did not accept the submission that the CCTV footage and the transcript could be regarded as a reliable record of what Mr Chesney said in the holding area, as the differing views about what was on the recording demonstrated its unreliability, and neither did I accept the submission that the differing views taken by Kareen Pattenden and Kevin Rooney provided reassurance to the court about the accuracy of the PIRC transcript, as it simply indicated that at least one of them was wrong. It appeared that even PIRC would not have agreed with this submission as the words attributed to Mr Chesney by Kareen Pattenden were not noted in the PIRC record of the content of the audio recording but were instead noted in a separate column headed "Remarks", precisely because of the differing and unreconciled views.

(81) The “elephant in the room”, in so far as the positions of Constables Williamson and Steell about when Mr Chesney became unwell were concerned, was the CCTV evidence and the transcript prepared by the independent CCTV investigators. There was no dubiety or question in so far as PIRC were concerned that PC Williamson made the three comments attributed to him. – I did not accept this submission and was surprised that it was expressed in these terms. To describe the CCTV evidence and the transcript as the “elephant in the room”, meaning an obvious problem that no one wanted to discuss, implied that the inquiry deliberately chose not to address this evidence, which was simply not the case. There was considerable investigation at the inquiry of what Constable Williamson said in the holding area and this enabled me to reach a reasoned conclusion on the matter. The submission that “there was no dubiety or question in so far as PIRC were concerned” did not accord with my detailed note of the evidence.

(82) A finding should be made in terms of section 26(2)(d) of the 2016 Act that the cause of the accident resulting in the death was cocaine use by Mr Chesney. – I disagreed. The word “accident” in this context has its usual meaning. If for example Mr Chesney had ingested the cocaine by mistake, thinking it was something innocuous, that could well have been regarded as an accident resulting in his death and the inquiry might have made a finding in terms of this subsection and perhaps a finding in terms of section 26(2)(e) in relation to reasonable precautions which might have avoided the accident. In this case however there was nothing to suggest that the

consumption of the cocaine was anything other than deliberate and there was no basis for a finding based on the occurrence of an accident.

- (83) Constables Williamson and Steell excluded the possibility of Mr Chesney being unwell due to the onset of symptoms being fast. Police Scotland's training should be amended to reflect the possibility of a very fast onset of symptoms of drugs toxicity. A finding should be made in terms of section 26(2)(g) of the 2016 Act that the training does not include an awareness of the symptoms of drug toxicity and the speed of onset of symptoms. – I disagreed. There was no proper basis in the evidence for a finding which suggested that current police training was deficient as there was no evidence that any particular training would have caused anyone involved in this incident to have acted differently. The symptoms exhibited by Mr Chesney on being taken out of the van were so unusual that it was unrealistic to suggest that any police training would have enabled Constables Williamson and Steell to identify them as symptoms of cocaine intoxication and there was no evidence of any training which might have assisted them in determining whether these symptoms were genuine.

#### *Footnote*

- (84) It is worth noting that PCSO Elaine Kyle was thanked at the inquiry by Mr Dar on behalf of the family for attending to and attempting to resuscitate Mr Chesney and that family members present at the inquiry also thanked her.

**APPENDIX**

The following witnesses gave evidence at the inquiry -

1. Sharon Burgess
2. PC Kenneth Samuel
3. PC Michael Nisbet
4. PS Damian Murphy
5. PC William McFarland
6. PI Hugh Burns
7. PC Janet Findlay
8. PC Kevin Mason
9. Dr Michael Johnson
10. PC David Williamson
11. Dr Stuart Hutcheon
12. PC Paul Steell
13. PS Cameron Mitchell
14. PCSO Elaine Kyle
15. PCSO Scott Rowan
16. PS Graham Rankin
17. PC Ross Gibson
18. Philip Briggs
19. PCI Mark Paterson
20. Kareen Pattenden
21. Dr Julia Bell
22. Iain McArthur
23. Professor Michael Eddleston