

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2020] FAI 22

GLW-B1569-19

DETERMINATION

BY

SUMMARY SHERIFF BRIAN CAMERON

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

into the death of

GEORGE EDWIN EATON OR LEVER

Glasgow, 6 May 2020

Determination

The sheriff having considered the information presented at the inquiry, determines in terms of section 26 of the Act that:-

- (1) In terms of section 26(2) (a) George Edwin Eaton or Lever (“Mr Lever”), date of birth 12 August 1968, died at HMP Barlinnie, Glasgow between 20.44 hrs on 24 April 2018 and 7.07 hrs on 25 April 2018.
- (2) In terms of section 26(2) (b) Mr Lever’s death was not the result of an accident.
- (3) In terms of section 26(2) (c) the cause of Mr Lever’s death was methadone and synthetic cannabinoid receptor agonist intoxication.

- (4) In terms of section 26(2) (d) there was no accident resulting in Mr Lever's death.
- (5) In terms of section 26(2) (e) there were no reasonable precautions by which the Mr Lever's death might have been avoided.
- (6) In terms of section 26(2) (f) there were no defects in any system of working which contributed to Mr Lever's death.
- (7) In terms of section 26(2) (g) there are no other facts relevant to the circumstances of Mr Lever's death.

Recommendations

I have no recommendations to make arising from the circumstances of Mr Lever's death.

NOTE

Introduction

[1] This inquiry was held under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the Act”) into the death of George Edwin Eaton or Lever. A preliminary hearing was held on 4 September 2019. The inquiry heard oral evidence and considered other evidence agreed by way of joint minute on 3 February 2020 and 4 March 2020. Parties presented written submissions to the court.

[2] The inquiry heard from three witnesses all called by the Crown;

- (i) Sean McFedries, Head of Operations for the Scottish Prison Service at Barlinnie Prison
- (ii) Alyssa Armstrong, Senior Addictions Nurse at Barlinnie Prison
- (iii) Detective Constable Kenneth Foy, Police Scotland Drugs STOP Unit.

[3] The following parties participated in the Inquiry;

- (i) The Crown represented by Margaret McCallum, Procurator Fiscal Depute
- (ii) The Scottish Prison Service represented by Ysabeau Middleton, Solicitor
- (iii) The Scottish Prison Officers Association represented by Alan Rodgers, Solicitor and Ruth Wallace, Solicitor
- (iv) Greater Glasgow Health Board represented by Eleanor Paton, Solicitor.

The Crown made attempts, without success, to engage with Mr Lever’s partner, Lillian McKivor to establish whether she wished to participate in or be represented at the Inquiry.

The legal framework

[4] This was an inquiry held under section 1 of the Act, in accordance with section 2(4) (a) of the Act, on the grounds that the person who died was, at the time of his death, in legal custody. The inquiry is governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

[5] The purpose of the inquiry held in terms of the Act is for the Sheriff to establish the circumstances of the death, and to consider which steps (if any) might be taken to prevent other deaths in similar circumstances. The Sheriff is required in terms of section 26 of the Act to make a determination setting out the following circumstances of the death, so far as they have been established to his satisfaction;

- 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
 - 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.

[6] The Sheriff must also make such recommendations as to the taking of reasonable precautions, the making of improvements to any system of working, the introduction of any system of working and the taking of any other steps which might realistically prevent other deaths in similar circumstances (sections 26(1) (b) and 26(4)).

[7] The court proceeds on the basis of evidence placed before it by the Procurator Fiscal and by any other party to the inquiry. The determination must be based on the evidence presented at the inquiry, and is limited to the matters defined in section 26 of the Act. Section 26(6) of the Act sets out that the determination of the Sheriff shall not be admissible as evidence or be founded on in any judicial proceedings, of any nature. This prohibition is intended to encourage a full and open exploration of the circumstances of a death. It also reflects the position that a Fatal Accident Inquiry is not a forum designed to establish legal fault. The procurator fiscal for the Crown represents the public interest. The inquiry is an inquisitorial process.

Summary

[8] George Edwin Eaton or Lever ("Mr Lever") was born on 12 August 1968. On 27 March 2018 Mr Lever was convicted at Greenock Sheriff Court of a contravention of section 38(1) of the Criminal Justice and Licensing (Scotland) Act and a contravention of section 49(1) of the Criminal law (Consolidation) (Scotland) Act 1995 and was sentenced to two years' imprisonment to run concurrently on each charge and back-dated to run from 16 February 2018 (the date of him being remanded in custody).

[9] At the time of his death Mr Lever was a prisoner in HMP Barlinnie, Glasgow. He was accordingly in legal custody at the time of his death.

[10] Between his initial arrival at HMP Barlinnie following remand on 16 February 2018 and his admission as a full custody prisoner on 27 March 2018, Mr Lever was assessed for a risk of suicide or self-harm in accordance with the Scottish Prison Service's (SPS) suicide prevention strategy, Talk to Me, on three occasions. The conclusion drawn by the assessing members of SPS staff and, in the case of the assessment carried out on 16 February 2018, the assessing healthcare professional, was that Mr Lever displayed no suicidal ideations.

[11] From his initial remand to HMP Barlinnie Mr Lever was subject to a number of medical assessments and a mental health assessment. He presented to medical staff with the following medical history- Asthma, Epilepsy and Short –term Memory Loss. Mr Lever advised the prison staff on 16 February 2018 that he had previously been diagnosed with Paranoid Schizophrenia. He further advised the prison staff on 27 March 2018 that he had been diagnosed with ADHD and Bi-polar. Mr Lever was known to Community Addiction Services in Greenock. It was confirmed by medical staff at the prison that Mr Lever had regularly been prescribed Methadone – 50 ml per day and this was continued throughout his remand and subsequent sentence. He was referred to Mental Health and Addictions on 26 February 2018.

[12] On 14 March 2018 a Mental Health Assessment of Mr Lever was carried out. At the time of this examination it was noted that he suffered from the following medical conditions: Epilepsy, Asthma and Short term Memory Loss. He was prescribed the

following medication: Lamotrigine 50mg, Gabapentin 600mg, Mirtazapine 45mg, Salbutamol, Beclomethasone and Methadone 50 ml. Mr Lever declined to be referred for counselling but was “keen” to engage with the Mental Health Team on a fortnightly basis. He was given a single cell marker, having requested one due to concerns for his mental health. He continued to engage with Addictions and Mental Health. Following his Talk to Me assessment on 27 March 2018 the deceased was also interviewed and assessed by practitioner nurse Laura Connelly at 13.57 on 27 March 2018. Ms Connelly considered that he was “conversing well” and providing “good eye contact” and noted that he denied any thoughts of self-harm or suicide at that time.

[13] The sentence of the deceased continued without notable incident. He was allocated cell number 2/37 within A Hall. He had regular visits from his fiancée, Lillian McKivor (Ms McKivor) and also from his step-son.

[14] Mr Lever’s prison records record three incidents concerning drugs. In particular it is noted that on 12 April 2018 Mr Lever appeared to receive an item from his visitor during an open-mouth kiss. The prison records note that Mr Lever had one visitor on 12 April 2018 namely Ms McKivor.

[15] On 24 April 2018, Prison Officer Bryan Johnstone commenced duties at 12.15 hrs within A Hall of the prison and finished his duties at 21.30 hrs. During this period he opened Mr Lever’s cell to obtain medication at around 19.00 hrs. Approximately, one hour later Mr Johnstone allowed the deceased access to the phone. Mr Johnstone had no further dealings with the deceased and concluded his duties at 21.30 hrs.

[16] On 24 April 2018, Prison Officer John Wight commenced duties within A Hall of the prison at 21.00 hrs. During his shift he went round each door within A Hall to check that they were secured. Mr Wight had no contact with Mr Lever and whilst patrolling A Hall he did not hear any disturbances.

[17] On 25 April at approximately 07.05 hrs Prison Officer Mandy Dickson was on duty within A Hall Second Flat. Ms Dickson was standing outside cell A2/15 when she was approached by Prisoner 80344, David Bunce, who informed her that the deceased was lying in his bed, but not moving. Ms Dickson immediately made her way to Mr Lever's cell. She entered the cell and called the deceased's name more than once, receiving no response. Ms Dickson then shook the deceased's shoulder lightly, listened and looked for signs of breathing, but there were none. She noted that the deceased's body was rigid. Ms Dickson radioed a "Code Blue" for cell 2/37 three times. Shortly thereafter, three Prison Officers arrived at Cell 2/37, namely, Ross Clinton, Chris McGovern and Colin Blackburn. Said officers removed a duvet which was covering the deceased and they noticed that the arms and legs of the deceased appeared to be "red and blotchy".

[18] At approximately 07.07 hrs Nurses Agnes Raphael and Mary Quarshie attended at Mr Lever's cell. They noted that the deceased was lying in his bed face down. On examination no evidence of life was noted. The body of the deceased was rigid, his temperature was 30.1 degrees Celsius and he was cold to touch. There was no sign of respiration and no pulse was evident. Rigor mortis and lividity were evident. Upon

checking, no ligature was present around the neck of the deceased. Both nurses were in agreement that CPR should not be attempted.

[19] At 07.10 hrs Security Manger, Ronnie Andreucci arrived at Mr Lever's cell. Deputy Governor, Brian Ironside arrived at the cell shortly thereafter. Nurses Raphael and Quarshie were inside the cell with Mr Lever at this time. Nurses Raphael and Quarshie stated that there was no requirement for CPR, given the condition of the deceased. Mr Andreucci co-ordinated the ambulance and police response to the incident and at 07.35 hrs, placed an inhibition on entry into Mr Lever's cell.

[20] At 07.45 hrs the door to Mr Lever's cell was unlocked to allow Paramedics, Harry Trodden and Susan Howatson to enter. Paramedic Harry Trodden pronounced life extinct at 07.50 hrs.

[21] At approximately 09.28 hrs two uniformed police officers, Police Constables Samantha Hare and Liam Coyle attended at the prison. They were briefed by Mr Andreucci and escorted by him to Cell 2/37. Said officers carried out a brief inspection of Mr Lever's cell after which the cell was once again secured. The Police constables thereafter reviewed CCTV footage of A Hall from 24 and 25 April 2018. The CCTV footage shows Mr Lever entering his cell at 20.44 hrs on 24 April 2018. His cell was secured by staff at that time. No one is seen to attend at the cell until the morning of 25 April 2018 at 07.07 hrs when prisoner David Bunce is seen to enter Mr Lever's cell and remain there for approximately fifteen seconds, following which he is seen to exit quickly and make staff aware of his discovery.

[22] At approximately 10.46 hrs, Detective Sergeant Bernadette Walls and Detective Constable Jaswinder Juttla attended at the prison and carried out a full search of Mr Lever's cell. A number of items were seized during that search, including a home-made smoking pipe and a quantity of medication.

[23] At 11.42 hrs Police Photographer, Anne Wright attended and took crime scene photographs. Detective Sergeant Walls and Detective Constable Juttla inspected Mr Lever's body and observed no obvious fresh injuries, needle-stick injuries or blood. Detective Sergeant Walls, Detective Constable Juttla and the Police Photographer left the A Hall at approximately 12.46 hrs and a private ambulance was arranged to remove the remains of the deceased to the Queen Elizabeth Hospital Mortuary.

[24] A post mortem examination was carried out on 2 May 2018 by Dr Sharon Melmore, Forensic Pathologist and Dr Gemma Kemp, Consultant Pathologist. The cause of death was certified as:

Methadone and synthetic cannabinoid receptor agonist intoxication

[25] Methadone was found in Mr Lever's blood and urine. As to its concentration and effects, the post-mortem report notes:

"Toxicological analysis of samples retained at the time of the post-mortem examination has shown the prescribed opioid analgesic, methadone. [Mr Lever] was prescribed 50ml a day and the concentration in this case was greater than that observed following chronic administration of 100 – 200 mg...the concentration was within the range observed in male fatalities attributed to methadone. The effects of methadone are sedative, including unconsciousness, coma and potentially fatal respiratory depression."

[26] "Synthetic cannabinoid receptor agonist" (SCRA) is a psychoactive substance commonly known as "Spice". SCRAs were found in the deceased's blood and urine.

The post-mortem report notes that:

"Metabolites of synthetic cannabinoid receptor agonists (SCRAs) were also present. SCRAs are often sold as replacements for cannabis due to their similar effects, but are often much more potent and active...the presence of metabolites in blood and urine is indicative of AB-FUBINACA (or similar) and 5F-MDMB-PINACA (or similar) use prior to death...the effects may include central nervous system depression (rapid loss of consciousness/coma), cardiovascular effects, respiratory depression, seizure and sudden death...the mere presence of the drug is thought to be significant, especially in situations of poly-drug use."

[27] Dr Sharon Melmore has commented that the presence of both Methadone and SCRA is significant as both substances are potentially additive, namely each can increase the effect of the other and it is the combination of these substances which has proved fatal.

[28] Police Scotland carried out inquiries in relation to the supplier of the SCRAs. Police Scotland have been unable to identify the supplier of the drugs or how the deceased managed to source them.

[29] HMP Barlinnie has the following measures in place to detect and prevent the flow of illicit drugs and substances into the prison:

- All visitors and staff entering the prison are subject to security measures which involves the use of staff and technology;
- Visit rooms are patrolled by staff and there is also CCTV in use as a backup security measure.

- The use of “closed visits”, where the visitor and prisoner are separated by a glass partition. This is used for those who have previously tried to introduce articles into the establishment, or those which intelligence suggests may be trying to introduce items into the prison.
- Checking of all mail entering the prison before it is passed onto prisoners.
- Rapiscan detectors are to be introduced shortly into the prison permanently. These are calibrated specifically for drug detection, including the emerging rise in psychoactive substances.
- The Intelligence Management Unit (IMU) analyses intelligence from a number of sources to assist in targeting individuals or groups within the establishment who may be involved in the introduction of illicit drugs, allowing the prison to carry out strategic actions to address this.
- Training of staff in search techniques and awareness of different types of drugs and their effects.
- Carrying out of routine searches of cells in all residential halls and are kept updated on new and emerging places and techniques that individuals are using to conceal items.
- Intelligence-based searches tasked from the IMU and carried out by the staff within the prison’s Security Unit.
- Use of CCTV to monitor all areas of the establishment, including the perimeter wall.

- Regular interior and exterior wall patrols to mitigate against items being thrown over the wall and/or detection of drones.
- Two full-time mandatory drug testing officers, who carry out a range of statutory, targeted and random testing.
- The reporting of all drug finds to Police Scotland for possible criminal action taken against individuals involved.
- Making available a number of support services for those who wish to address their addiction issues, including specific programmes and a recovery cafe.
- Provision of literature that is available to staff and prisoners relating to the effects of drugs etc., including synthetic cannabinoids

Submissions

[30] Those parties who participated in the inquiry all lodged written submissions and were content that I proceed to make my determination without the need for a hearing on submissions.

[31] I am grateful for the helpful submissions that were lodged.

Discussion and conclusions

[32] Parties were, in general terms, at one in submitting that formal findings only should be made.

[33] I think it important, however, that I make it clear that on the evidence I heard, the supervision and care of Mr Lever by the Prison Service, the prison staff and the medical staff at Barlinnie Prison cannot be criticised. It is clear that the issue of illicit substances within the prison setting is an ongoing problematic issue but on the evidence I heard I am satisfied that the systems in place within Barlinnie aimed at detecting and preventing the importation of illicit substances into the prison are reasonable and cannot be criticised. Psychoactive substances in particular present their own difficulties in terms of detection and prevention of importation, given their odourless and colourless characteristics. As Detective Constable Foy commented those who smuggle psychoactive substances into prisons are limited only by their imagination.

[34] I express my condolences to the family of Mr Lever.