

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT STIRLING

[2021] FAI 20

STI-B113-20

DETERMINATION

of

SHERIFF A WYLLIE ROBERTSON

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

into the death of

ANDREW McBRIDE

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Stirling, 22 March 2021

**Determination**

The sheriff, having considered the information presented at the inquiry, determines:

**in terms of section 26(2)(a)** of the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (the Act) that Andrew McBride, born 24 December 1949, died at 0747 hours on 17 August 2018 at Western General Hospital, Crewe Road, Edinburgh;

**in terms of section 26(2)(c)** of the Act the cause of death was:

1a complications of WHO grade 4 glioblastoma (left temporal lobe);

**in terms of section 26(2)(e)** of the Act there are no precautions which could reasonably have been taken that might realistically have resulted in his death being avoided;

**in terms of section 26(2)(f)** of the Act there are no defects in any system of working which contributed to his death;

**in terms of section 26(2)(g)** of the Act there are no other facts relevant to the circumstances of his death;

**in terms of section 26(1)(b)** of the Act there are no recommendations to make.

## **Note**

### **Introduction**

[1] This inquiry was held into the death of Andrew McBride, who was born on 24 December 1949. At the time of his death, Mr McBride was in legal custody as a serving prisoner within HM Prison Glenochil, Tullibody and had been transferred to the Western General Hospital, Edinburgh.

[2] A preliminary hearing was held on 16 February 2021 and the inquiry held on 19 March 2021.

[3] Ms Swansey, procurator fiscal depute, represented the Crown. Miss Sargent, solicitor, represented NHS Forth Valley Health Board. Mr Smith, solicitor, represented the Scottish Prison Service (SPS). There were no other participants in the inquiry. The inquiry was conducted through the medium of WebEx facility in accordance with guidelines issued under the present Covid-19 pandemic restrictions.

[4] A joint minute of agreement was signed on behalf of all participating parties in which all material facts were agreed, obviating the need for evidence to be led.

### **The legal framework**

This was a mandatory inquiry under section 2(4)(a) of the Act, the purpose of which is to

establish the circumstances of Mr McBride's death and consider what steps, if any, might be taken to prevent other deaths in similar circumstances.

### **Summary**

The material facts in this inquiry were undisputed and uncontroversial.

[5] The deceased Andrew McBride was lawfully detained in custody on remand at HM Prison Barlinnie on 2 February 2016 in respect of allegations of lewd, indecent and libidinous practices. He was convicted on 1 March 2016 at Glasgow High Court of Justiciary of two charges of lewd, indecent and libidinous practices and behaviour and was sentenced to five years imprisonment backdated to 2 February 2016. Mr McBride's earliest date of liberation was 31 July 2020 and his sentence was due to expire on 1 February 2021. On 13 December 2016, he was transferred from HMP Barlinnie to HMP Glenochil.

[6] About May 2018, Mr McBride's cellmate noticed that Mr McBride was becoming forgetful, his eyesight had deteriorated and his speech was slurred. Mr McBride's cellmate raised these concerns with prison officers.

[7] On 2 July 2018 Mr McBride was examined by triage nurse Clíodhna Lane due to his complaint about suffering from headaches. He was observed to be incoherent at that time and was not making sense when communicating with her. Nurse Lane referred Mr McBride to the prison GP Dr Jahangir Khan.

[8] On 3 July 2018 Mr McBride was seen by nursing staff and was noted as being very confused and unable to put a sentence together. They contacted SPS staff who were concerned that Mr McBride had been confused for "a few days".

[9] Dr Khan examined Mr McBride on 3 July 2018. He formed the opinion that Mr McBride was suffering from a urine infection and prescribed antibiotics.

[10] On 6 July 2018, Mr McBride was examined by advanced nurse practitioner Louise Kane. Mr McBride was observed to be unable to walk in a straight line and walked into walls attempting to do so. It was also noted by nurse Kane that Mr McBride had a right sided facial droop. Given his presentation, Mr McBride was referred to Forth Valley Royal Hospital that day where he was admitted to the acute assessment unit with a plan to carry out a CT scan.

[11] On 7 July 2018 at Forth Valley Royal Hospital a CT scan was carried out. The scan was reported as showing a likely large primary left temporal brain tumour causing midline shift. Mr McBride's condition was discussed with the neurosurgical department at the Western General Hospital in Edinburgh who advised that an MRI scan be undertaken.

[12] On 10 July 2018 Mr McBride was examined by Dr Paul Hunter at Forth Valley Royal Hospital. As a result of this examination Dr Hunter completed a certificate of incapacity in terms of Section 47 of the Adults with Incapacity (Scotland) Act 2000 which was to be in place from 10 July 2018 until 10 October 2018.

[13] On 12 July 2018 Mr McBride underwent an MRI scan at Forth Valley Royal Hospital. The results of the said MRI scan revealed a large left temporal tumour extending to ependyma with linear ependymal enhancement likely due to tumour spread in the left occipital and temporal horns. The left temporal horn was encysted. The results looked like glioblastoma multiforme, a highly aggressive malignant incurable brain tumour.

[14] Mr McBride's care was discussed at a neuro-oncology multi-disciplinary team meeting on 13 July 2018.

[15] On 18 July 2018 Mr McBride was examined by consultant neurosurgeon Mr Kandasamy at Western General Hospital. Mr Kandasamy noted that the MRI images showed a deep seated left temporoparietal tumour. Mr Kandasamy determined that Mr McBride had capacity and was able to consent to an intracranial biopsy under general anaesthetic. The risks were explained and accepted by Mr McBride. Mr Kandasamy explained to Mr McBride that the MRI images suggested a potentially incurable malignant tumour. Mr McBride was to remain on medication of dexamethasone twice daily and omeprazole 20mg once daily pending the biopsy.

[16] On 18 July 2018 Mr McBride was transferred back to HMP Glenochil. On 23 July he was placed in Abercrombie 3 Unit which is a unit within the prison which is classed as a medical unit for elderly inmates with extra needs and end of life care. Mr McBride was placed in an observation cell and was provided with a personal alarm.

[17] On 23 July 2018 Mr McBride was examined by prison medical staff at HMP Glenochil and a care plan was put in place whereby his eating, fluid intake and movements would be monitored. Mr McBride had fallen that day and, as a result, he was to be monitored continuously by staff and peers and was subject to 15 minute observations by prison staff during periods of "lock-up". This care plan would be reviewed daily.

[18] On 24 July 2018, Mr McBride was seen by rehabilitation support worker Fiona Sanzyi from the prison medical team. He was noted to appear confused. He stated that he was aware of his personal alarm but was unable to demonstrate how to use it correctly. Mr McBride continued to be monitored by staff every 15 minutes during "lock up" periods.

[19] On 25 July 2018 Mr McBride was seen by rehabilitation support worker Sanzyi and GP Dr Khan, both from the prison medical team. It was observed that Mr McBride appeared less confused than previous days although still had difficulty in finding words.

[20] On 25 July 2018, rehabilitation support worker Sanzyi requested assistance from speech therapy staff. Mr McBride's presentation and diagnosis of brain tumour was discussed and it was the opinion of the speech therapist, Dr Green, that Mr McBride's symptoms were suggestive of fluent aphasia related to his brain tumour. Dr Green provided Ms Sanzyi with resources to assist Mr McBride with his communication. There was to be a review after one week to monitor his progress and to consider further input from the speech and language therapy team.

[21] On 26 July 2018 Mr McBride had a consultation with Ms Sanzyi. It was observed at that time that his gait was steady and walking pace was moderate with no shortness of breath. She noted that Mr McBride still had difficulty in finding the correct words to hold a conversation.

[22] On 28 July 2018 Dr Khan was notified by prison staff that Mr McBride had been unaware he had spilled soup all over himself. Mr McBride was reviewed when he was given his medication and his presentation appeared to be the same as previous days. Mr McBride expressed no discomfort at that time.

[23] On 30 July 2018 Mr McBride was reviewed by Ms Sanzyi. It was noted at that time that Mr McBride's gait was shuffled but steady with no shortness of breath. She noted that he appeared to understand what was asked but had trouble finding the right words. It was noted that prison staff reported a decline in Mr McBride's walking whereby on occasion he had to be guided in the right direction and had collided with furniture. He had his meals

brought to him to prevent him having to walk whilst carrying food. An urgent referral was made by Ms Sanzyi for Mr McBride to be assessed for neuro physiotherapy, occupational therapy and speech and language therapy.

[24] On 31 July 2018 a referral was made for Macmillan one to one care for Mr McBride.

[25] On 1 August 2018 Mr McBride was reviewed by Ms Sanzyi who noted no change in his presentation.

[26] On 2 August 2018, Fiona Donnelly, clinical services manager, HMP Glenochil noted that the certificate of incapacity in terms of Section 47 of the Adults with Incapacity (Scotland) Act 2000 relating to Mr McBride had been rescinded by Forth Valley Royal Hospital after the consultation with Mr Kandasamy on 18 July 2018.

[27] On the morning of 3 August 2018, prison officers contacted the prison medical team to advise that Mr McBride appeared very confused and had poured coffee over his radio. He was to be reviewed by a rehabilitation support worker.

[28] On 4 August 2018, Mr McBride was examined by prison medical staff. It was noted he was moving freely, had suffered no reported falls and his conversation was coherent. Visual observations of Mr McBride during periods of “lock up” were reduced to 30-minute intervals and he was to be reviewed by medical staff again on 6 August 2018.

[29] On the morning of 8 August 2018 prison medical staff were alerted to the fact that Mr McBride had fallen forwards whilst getting up from the toilet. Mr McBride appeared alert and chatty when examined and reported no pain. He sustained a small cut to his ear which was cleaned and treated with a plaster.

[30] On 8 August 2018 Mr McBride was admitted to the Western General Hospital, Edinburgh for a biopsy of his brain tumour.

[31] On 9 August 2018, Mr McBride underwent a Brainlab guided Burr hole biopsy of his left temporal/parietal tumour. The biopsy was completed without complication and the histopathology result confirmed glioblastoma multiforme.

[32] Mr McBride's case was discussed twice within the supraregional specialist neuro-oncology multi-disciplinary team (MDT) meeting and it was agreed that the location, size and type of tumour did not afford Mr McBride the option of resective surgery. The tumour was too extensive for further treatment and the MDT consensus supported referral to the palliative care team.

[33] Mr McBride remained in the Western General Hospital, Edinburgh where his condition deteriorated rapidly.

[34] On 10 August 2018 a "do not attempt cardiopulmonary resuscitation (DNACPR)" form was completed in respect of Mr McBride.

[35] On 14 August 2018, a compassionate release meeting took place at HMP Glenochil to consider if an application for compassionate release should be made to Scottish Ministers in respect of Mr McBride. Given that there was no confirmed prognosis or timescale for the end of Mr McBride's life, it was decided that such an application would be deferred until further information had been obtained from the Western General Hospital.

[36] At approximately 0747 hours on 17 August 2018, nursing staff attended to bathe Mr McBride. Whilst doing so Mr McBride's breathing changed and nursing staff were unable to detect a pulse. Nursing staff formed the view that McBride had passed away.

[37] Dr Dibb attended and examined Mr McBride and pronounced life extinct at 0810 hours on 17 August 2018.

[38] Mr McBride's body was taken to Edinburgh City Mortuary, Cowgate, Edinburgh, and was examined by consultant forensic pathologist Dr Ralph BouHaidar on 21 August 2018. The medical cause of death was provided as: 1a) Complications of WHO grade 4 glioblastoma (left temporal lobe).

[39] The condition that Mr McBride suffered from has no cure. Earlier diagnosis of the tumour in May or June 2018 would have had no impact on Mr McBride's terminal diagnosis or the treatment options that were available to him.

[40] On 1 November 2011, the responsibility for the provision of healthcare transferred from the SPS to the NHS. Since then, Forth Valley Health Board have been responsible for the management and delivery of primary healthcare services within HMP Glenochil.

### **Discussion and conclusion**

[41] The Crown submitted that no issue arose from the circumstances of Andrew McBride's death. It had investigated the issue of whether earlier diagnosis in May or June 2018 would have had any impact on the terminal diagnosis or treatment options open to him. Mr Kandasamy, the consultant neurosurgeon who diagnosed Mr McBride, confirmed that, given how aggressive the tumour was, it would have made no material difference to the outcome or treatment. That was also the opinion of Dr BouHaidar, who carried out the post-mortem examination. The other parties to the inquiry concurred in the Crown's submissions.

[42] I must record my thanks to all parties who participated in the inquiry for their assistance and in particular for agreeing all the evidence by joint minute, the consequence of which was that I was able to determine this uncontroversial inquiry on the documentary productions and statements without the necessity of leading any witnesses.

[43] Accordingly, I have made the formal uncontentious findings I was invited to make by the Crown.

[44] All parties expressed to the inquiry expressed their condolences to the family and friends of Mr McBride, to whom I also extend the sympathy of the court.