SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES AND GALLOWAY AT DUMFRIES

[2017] FAI 1

B343/15

DETERMINATION

BY

SHERIFF GEORGE JAMIESON

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRIES (SCOTLAND) ACT 1976

into the death of

KEVIN MICHAEL McGURTY

DUMFRIES, 19 DECEMBER 2016

The Sheriff, having heard and considered all of the evidence, and the submissions of parties, finds and determines in terms of section 6 (1) of the Act that:

a. Kevin Michael McGurty died at Annan Police Station on 20 November 2013 at approximately 00:16 hours.

b. The cause of his death was: 1a Ischaemic heart disease due to 1b: Coronary artery atheroma.

c. There were no reasonable precautions whereby his death might have been avoided.

d. There was no defect in any system of working which contributed to his death.

e. The other facts relevant to the circumstances of his death are as found and further discussed below.

Representation at the Inquiry

For the Crown: Elizabeth Ross, Procurator Fiscal Depute, Glasgow.

For Martin McGurty (son): Carolyn Ann Priestley, Solicitor, Walker & Sharpe, Dumfries.

For Police Scotland: Andrew McGlone, Solicitor, Police Scotland, Glasgow.

For PC Keith McKinnell: Ross Cameron, Solicitor, PBW Law, Glasgow.

For PC Chloe Rice: Robert Vaughan**,** Solicitor Advocate, RS Vaughan & Co, Glasgow.

Evidence at the Inquiry

Evidence was led by the Procurator Fiscal Depute, in accordance with her duty under section 4(1) of the 1976 Act from:

1. Former PC Keith McKinnell.
2. PC Chloe Rice.
3. PC Julie Rankin.
4. Callum McCall, Ambulance Technician.
5. Chief Inspector Gary I'Anson (area commander, custody division).
6. John Barton, Police Scotland Training Instructor.
7. Isobel Torbert, Scottish Fire and Rescue Service (firefighter and first aid trainer).
8. PC Liam Fitzpatrick (with specialist training in emergency procedures).
9. James Purves (Police Scotland Health and Safety Officer).
10. Dr David Pedley (consultant in emergency medicine)

11. Dr Robin Northcote (consultant cardiologist).

Evidence was also led on behalf of Police Scotland from DI Sandra Stewart.

Parties lodged three Joint Minutes of Admission of agreed facts.

The Facts

[1] PCs McKinnell, Rice and Rankin were involved in searching for and detaining Mr McGurty on the evening of 19 November 2013, following a report of a domestic incident between Mr McGurty and his wife. He had run away from the matrimonial home, and from the police, but was eventually found by them and co-operated with them by surrendering himself to the custody of PCs McKinnell and Rice. They conveyed him to Annan Police Station and began the process of booking him into police custody. During that process, Mr McGurty suddenly fell backwards to the ground. The officers put him in the recovery position and immediately phoned for an ambulance. They did not commence cardio pulmonary resuscitation ("CPR"). There was no automated external defibrillator ("AED") at Annan Police Station, but even if there had been one available for use by them, they testified that they would probably not have used it on Mr McGurty. The ambulance crew arrived promptly at Annan Police station within seven minutes five seconds of being alerted to do so. Mr McCall observed that Mr McGurty was not breathing. He and his colleague applied CPR and used a defibrillator on Mr McGurty, but were unable to revive him.

[2] Both police officers had received training in CPR. PC McKinnell had received initial training in October 2008, and most recently on 31 May 2013. PC Rice had received training while a police probationer in March 2013.

[3] Mr McGurty was in poor health. He had lower back pain, depressive episodes, alcohol problems, and was a heavy smoker. His post mortem revealed that his heart was slightly enlarged, with concentric left ventricular hypertrophy. There was scarring within the lateral wall of the left ventricle, consistent with previous infraction, and severe atheromatous narrowing of the three main coronary arteries. There was fresh thrombus within the right main coronary artery that almost completely occluded the vessel lumen.

Observations on the evidence and reasons for my findings

[4] PC McKinnell first observed Mr McGurty out of breath before detention, smoking a cigarette. Once detained he complained of heart burn and did so again while being processed at the charge bar. While being processed he was rubbing his chest and coughing. PC McKinnell heard Mr McGurty's collapse and immediately attended to him. He rubbed his chest and massaged his airways. He concluded Mr McGurty's opening and closing of his eyes was a response to his chest being rubbed, and thought that his massaging of Mr McGurty's airways was improving his breathing. It "never crossed his mind" that Mr McGurty was not breathing normally, despite observing heavy, deep intakes of breath. He admitted to being "petrified" and "willing the medics to be there". He encouraged PC Rice to place her hand under Mr McGurty's head and to

continue massaging his airways. He acknowledged this was not a recognised emergency technique.

[5] PC Rice described Mr McGurty's breathing as "not normal". She thought he was still alive and CPR was not needed, but at points seemed to concede, with hindsight, that CPR should have been administered.

[6] It was apparent, however, to other witnesses reviewing the CCTV footage of Mr McGurty's collapse that the officers had not acted appropriately. In their opinion (John Barton, Isobel Torbert, PC Fitzpatrick, Dr Pedley and Dr Northcote), the police officers had failed to apply CPR when the circumstances suggested that Mr McGurty was not breathing normally. I agree with those opinions. My impression is PC McKinnell, who was "petrified" was unable to think clearly and apply his training. PC Rice, a newly qualified officer, deferred to his decisions. They both wanted the medics to arrive and deal with the problem. Unfortunately for Mr McGurty time was of the essence and CPR should have been applied immediately to increase his chances of survival.

[7] I am unable to conclude however that the officers' failure to apply CPR was a contributory factor to Mr McGurty's death. CPR would have increased Mr McGurty's chances of survival, but very few patients survive such incidents (10% according to Dr Pedley), and because of his particular health problems, Mr McGurty's chances of survival were even smaller even if CPR had been applied (Dr Northcote put them at 1% - 2%).

[8] There was contradictory evidence on whether use of an AED would have helped improve Mr McGurty's chances of survival. Dr Pedley suggested that had an AED been

used within the seven minutes five seconds before arrival of the ambulance crew, Mr McGurty's chances of survival would have been between 30 and 40 %.

[9] But that, as made clear in Dr Northcote's evidence, would only be in relation to restoration of a pulse. Mr McGurty would then have to have been removed to the local hospital and, possibly, by ambulance, to the Golden Jubilee in Clydebank for coronary angioplasty. His chances of survival were put by Dr Northcote at approximately 4-5% after 30 days, but given Mr McGurty's pre - existing cardiac damage, his overall chances of survival would have been no more than 1%- 2%.

[10] The purpose of the FAI was not to find fault for Mr McGurty's death. It was to determine whether there were any reasonable precautions whereby his death *might have been avoided*, or whether there was any defect in any system of working which *contributed* to his death. In my opinion, the answer to both questions is in the negative.

[11] Firstly, I cannot conclude, on the evidence, that even had the officers applied CPR, or used an AED had one been available, then Mr McGurty's death *might* have been avoided. There would plainly have been a better chance of avoiding his death had they applied CPR or used an AED.

[12] The fact that the officers did not apply CPR and their unwillingness to use an AED even if one had been available reduced his chances of survival to virtually zero, but his overall chances of survival even had CPR been applied, or an AED used, were, as Dr Northcote put it, at 1% - 2%; which to my mind is "virtually zero". "Might", in this context, means a real or significant chance of avoiding death had these precautions been

applied. In my opinion, the evidence does not allow me to conclude that applying CPR, or using an AED, *might*, in this sense, have avoided Mr McGurty's death.

[13] Secondly, was there a defect in the system of working that contributed to Mr McGurty's death? There are two aspects to that question. Firstly, was the officers' training adequate; and, secondly, ought an AED to have been supplied at Annan Police Station?

[14] Both officers had received training in emergency life support. I am unable to conclude that because they did not follow it, that they received inadequate training. It seemed to me, on the evidence, that theirs was adequate training for police officers. That is not to say that lessons cannot be drawn from this case and improvements made to the training. In my opinion, faced with a real life emergency, the officers, and in particular PC McKinnell, misjudged the situation and did not put their training into practice on this occasion. That said, they are not medical officers, they are police officers.

[15] The question of whether an AED ought to be placed in every custody police station in Scotland is one that bears on resources. Deaths in custody from heart failure are rare. Dr Northcote was of the opinion that as very few persons survive heart incidents such as Mr McGurty's in any event, so it would not be appropriate to fund AEDs in every police station. In my opinion, these are not matters of law, but of policy, to be determined between the police and the NHS. I am therefore unable to conclude that the absence of an AED in Annan police station was a defect in the system of working.

Observations on Findings

[16] My previous observations were confined to whether the police officers' failure to apply CPR, and the absence of an AED at Annan police station, in a legal sense caused or contributed to Mr McGurty's death. This heading however gives scope for consideration of other facts, relevant to the deceased's death, but which did not cause or contribute to it, insofar as they may affect the public interest.

[17] First, I wish to make a few observations regarding AEDs in police custody stations. Provision varies across Scotland, but it appears that policy is not generally to provide AEDs in "secondary" stations such as Annan.

[18] According to the evidence, AEDs are designed to be used by anybody, whether or not that person has had specific training in relation to the use of the AED. They are designed in the words of witness James Purves to be "fool proof" in their use. The AED takes a reading of the cardiac output from the patient and, based on that reading, only provides an electric shock if it is appropriate to do so. It cannot be used to provide a shock unless one is required. Its use is without risk to the patient.

[19] Responsibility for provision of AEDs in police custody stations now lies with the NHS Health Boards throughout Scotland. This gives rise to the possibility of different policies throughout the country.

[20] I recommend that Police Scotland and NHS Scotland reconsider their policies in this area. There should if possible be a uniform policy across Scotland, but consideration should be given to equipping all custody stations with AEDs and training officers to make as certain as possible that all officers faced with a situation of a sudden collapse

are clearly able to recognise a situation where the AED may be required and act accordingly.

[21] I now wish to address police training in relation to CPR and recognition of heart incidents.

[22] In hindsight, Mr McGurty was exhibiting problems such as shortness of breath, "heartburn", and pains in his chest, evidenced by his repeated rubbing of his chest at the charge bar.

[23] His chances of heart failure were increased by a number of factors preceding his death: he had been having a heated argument with his wife, he had been running from the police, and his detention would, in itself, have been a stressful event for him. Dr Northcote confirmed in his evidence that these would have made things more difficult for Mr McGurty. Police officers should in my opinion be given specific training in recognising these potential warning signs and of the stressors likely to increase risk of heart failure.

[24] I also recommend that Police Scotland review their training materials and policies in relation to heart health and responses to it, in particular the amount of time and emphasis allocated to it in training. The term "agonal breathing" has become commonplace. It is not in my opinion helpful. The training should be discrete, as simple as possible, and concentrate on what signs there are of possible heart failure.

[25] These include abnormal breathing, for which the recovery position would be inappropriate, with an emphasis on providing CPR forthwith. Officers should be trained in what is likely to be an emergency situation.

[26] They should be instructed to put their training into practice and put out of their minds their own ideas; such that it was helping Mr McGurty to massage his airways. They must be reminded of the need to act immediately and not just await the arrival of the ambulance crew.

Conclusion

[27] I wish to emphasise that I have sympathy for the circumstances in which PCs McKinnell and Rice found themselves regarding Mr McGurty's death. I commended them for acting in a very caring and attentive way towards Mr McGurty after his collapse. They acted appropriately in calling an ambulance, and trying to comfort him in his distress. They had to make a judgment in difficult circumstances, for which even the best training might not have equipped them psychologically. The court's duty however is to look back with the benefit of hindsight and conclude, as it has done, that the officers should have applied CPR. This is unlikely to have saved Mr McGurty's life, but, Police Scotland must do more to impress upon its officers the need to act with alacrity when similar circumstances arise in the future.

[28] I also wish to commend the procurator fiscal depute and all parties' agents for the efficiency and courtesy with which they conducted the inquiry. I am grateful to all of them for the assistance they afforded the court in reaching its determinations and recommendations.

[29] Finally and most importantly, I wish to extend my sympathy to Mr McGurty's family for their loss. For understandable reasons his widow did not feel able to attend

the inquiry. Both his sons were in attendance throughout the inquiry. They conducted themselves with appropriate dignity. I thank them for their attendance at the inquiry, and for the patience and understanding they displayed throughout it.