

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

2B2249/08

***INQUIRY HELD UNDER
THE FATAL ACCIDENTS
AND
SUDDEN DEATHS
INQUIRY (SCOTLAND)
ACT 1976,
SECTION 1(1)(a)(ii)***

DETERMINATION

by

IAN HARPER LAWSON MILLER,
Esquire Advocate, Sheriff of the
sheriffdom of Glasgow and Strathkelvin

following an Inquiry held at Glasgow on
21st September 2009

into the death of
WILLIAM KELLY

GLASGOW, 21st SEPTEMBER 2009.

The sheriff, having resumed consideration of the evidence, joint minute of agreement,
productions and the submissions thereon,

FINDS IN FACT

that

- (1) William Kelly was born on 28th January 1948. He resided latterly at 230 Calder
Street, Coatbridge, ML5 4QN.

- (2) He was admitted initially to Her Majesty's Prison Barlinnie, Glasgow on 16th June 2008 as a remand prisoner.
- (3) As at Tuesday 10th February 2009 he was serving a sentence of imprisonment within that prison. He was detained in B Hall and shared a cell with Joseph Keegan. Mr Kelly slept in the lower bunk in the cell. The cell was on the bottom flat of the Hall.
- (4) Throughout the time that he was in Barlinnie, it was known that he suffered from epilepsy. He suffered several seizures during that time.
- (5) Prior to going to sleep on 9th February 2009 Mr Kelly had not complained of being ill or of feeling unwell.
- (6) At about 2.30 am on 10th February 2009 Prison Officer Emma Faulds was on patrol in B Hall when she heard a loud bang from the bottom flat. She attended at the cell from which the noise had come. She found that Mr Keegan had been awoken by the noise and that Mr Kelly was lying on the floor of the cell by the door. He appeared to have fallen out of bed.
- (7) Mr Keegan, on being awoken and having seen Mr Kelly lying on the floor, had asked him if he were alright. He got no response. He could not feel Mr Kelly breathing. He put a pillow under Mr Kelly's head and then rang the bell to alert prison staff.
- (8) At the cell Prison Officer Faulds radioed the outside patrol for assistance and informed them that Mr Keegan believed that Mr Kelly was having a fit.
- (9) Medical assistance arrived in the form of practitioner nurse Agbomoreille shortly after 2.50 am. At approximately 3.00 am a fast response paramedic arrived followed at 3.05 am by an ambulance and its two staff.
- (10) At around 3.15 am the staff announced that despite attempts at resuscitation they could get no response from Mr Kelly.
- (11) Mr Combe was the duty manager that night. He was summoned and attended at the cell shortly after 3.45 am along with the duty doctor.
- (12) At about 3.53 am two officers of Strathclyde Police arrived and took details of Mr Kelly and interviewed the staff involved.
- (13) Mr Kelly was pronounced dead at 3.55 am.
- (14) His body was removed to the City Mortuary some two and a half hours later.

- (15) On 13th February 2009 Dr John Clark, a consultant forensic pathologist at Glasgow University conducted a post mortem on the body of Mr Kelly at the City Mortuary, Glasgow.
- (16) His post mortem examination showed no gross natural disease sufficient to account for the death of Mr Kelly by which he meant nothing in his heart or lungs. Nor had he suffered any significant injuries apart from a bruise at the front of the right side of his head and a number of fractured ribs on the left side of the chest. The former could be attributed to the act of falling within the cell, and the latter were caused by attempts at resuscitation. There was no evidence of inhalation of vomit or any other major trauma.
- (17) The histological investigations revealed nothing of any consequence. The toxicological investigations revealed only a slightly lower than therapeutic level of the anti-epileptic drug phenytoin (Epanutin) in his blood.
- (18) As a result of that examination and given the reported circumstances of his death, Dr Clark concluded that the cause of death was a sudden unexpected death in epilepsy. He postulated the likely final mechanism of death as being a disturbance of the heartbeat during the seizure.
- (19) Dr Clark, as certifying registered medical practitioner, intimated that cause of death to the procurator fiscal at Hamilton. The death was registered in the district of North Lanarkshire, Airdrie on 16th February 2009.

FINDS AND DETERMINES:

- (1) In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, that William Kelly, whose date of birth was 27th January 1948, and who formerly resided at 230 Calder Street, Coatbridge, ML5 4QN, died within Her Majesty's Prison Barlinnie, Glasgow at 0355 hours on 10th February 2009 at which time he was a serving prisoner there;
- (2) In terms of section 6(1)(b) of the said Act, that the cause of his death was sudden unexpected death in epilepsy;
- (3) In terms of section 6(1)(c) of the said Act, that there were no reasonable precautions whereby his death might have been avoided;
- (4) In terms of section 6(1)(d) of the said Act, that there were no defects in any system of working which contributed to his death; and

(5) In terms of section 6(1)(e) of the said Act, that there were and are no other facts which are relevant to the circumstances of his death.

NOTE

[1] This Fatal Accident Inquiry has been convened to inquire into the circumstances of the death of William Kelly which occurred on 10th February 2009 within Her Majesty's Prison Barlinnie, Glasgow. He was then 61 years of age, having been born on 27th January 1948.

[2] The Crown applied to the Court for the holding of this inquiry because at the time of his death Mr Kelly was serving a sentence of imprisonment. It has therefore proceeded under section 1(1)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ("the Act").

[3] At the inquiry only the Crown and the Scottish Prison Service were represented: the Crown by Miss Sibbald, procurator fiscal depute, and the Service by Miss Hammond, solicitor. I heard evidence from Mr Alan S Combe, the operations manager at HMP Barlinnie, and from Dr John Clark the forensic pathologist who conducted the post mortem on Mr Kelly on 13th February 2009. In addition the parties had entered into a joint minute of agreement which they tendered at the start of the inquiry.

[4] The Crown submissions requested me to make a determination that was formal in its terms. Miss Hammond did likewise.

[5] I accept all the evidence led from both witnesses as reliable in its entirety. On the basis of what they said I have made the findings in fact set out above.

[6] In light of the evidence and the submissions thereon I am satisfied that I can make a determination that sets out the circumstances of the death of Mr Kelly under each of the five elements of section 6(1)(a) of the Act, and having made those findings in fact I have done that as set out above. The findings are what are usually described as formal.