Sheriffdom of South Strathclyde, Dumfries and Galloway at Hamilton

Under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976
(Hereinafter referred to as "The Act")

Determination
by
Daniel Scullion Esq
Sheriff of South Strathclyde,
Dumfries and Galloway at Hamilton
following an Inquiry held at Hamilton
into the death of

Mr Derek Patrick McGeechan

Hamilton: 3 August 2007

The Sheriff, having considered all of the evidence adduced, Determines:-

1. In terms of Section 6(1)(a) of the Act that Derek Patrick McGeechan, born 6th March 1963, died on 25th November 2005 at 02.26 hours within the Intensive Therapy Unit of Hairmyres hospital, East Kilbride.

2. In terms of Section 6(1)(b) of the Act, that the cause of Derek Patrick McGeechan's death was hypoxic brain damage due to cardio-respiratory arrest due to upper airways obstruction (foreign body).

Sheriff

NOTE

Parties Represented at the Inquiry

The evidence was presented by Mr Cassidy Procurator Fiscal Depute. Ms Stanage, Solicitor appeared for the Chief Constable; Mr Gillies, Solicitor appeared for PC Cairns; Mr Finlay, Solicitor appeared for WPC Kennedy and Mr Crerar, Solicitor appeared for Lanarkshire Health Board. The family of Derek Patrick McGeechan was not represented. I was advised that the Crown had been in contact with the late Mr McGeechan's mother and with his partner Ms Jacqueline Wylie and that they did not wish to be represented. Evidence was heard on 30th April, 2nd, 3rd and 8th May 2007. Twenty six witnesses gave evidence at the inquiry. Affidavit evidence was received from a further nine witnesses and parties also agreed a significant amount of further evidence by entering a joint minute of agreement which curtailed the length of the inquiry and for which the Court is grateful.

Legal Framework

The late Mr McGeechan was in lawful custody at the time of his death and accordingly this was a mandatory Inquiry in terms of the Act.

The duties and powers of the Sheriff in respect of his Determination are defined in section 6(1) of the Act which provides:

6(1) At the conclusion of the evidence and any submissions thereon, or as soon as possible thereafter, the Sheriff shall make a determination setting out the following circumstances of the death so far as they have been established to his satisfaction –

(a) where and when the death and any accident resulting in the death took place;

(b) the cause or causes of such death and any accident resulting in the death;

(c) the reasonable precautions, if any whereby the death and any

accident resulting in the death might have been avoided;

(d) the defects, if any, in any system of working which contributed to the death or any accident resulting in the death; and

(e) any other facts which are relevant to the circumstances of the death.

It is noteworthy that it is not the purpose of an Inquiry of this nature to determine any question of civil fault or liability. (**Black v Scott Lithgow Limited** 1990 SLT page 612).

The Crown and all parties represented at the Inquiry were united in submitting that the Determination should be restricted to formal findings in terms of sections 6(1)(a) and 6(1)(b) of the Act, a submission I regarded as being well founded on the evidence. Although there was some difference of emphasis in the submissions made as to what facts had been established, no controversy arose in the evidence. Whilst I have restricted my Determination to formal findings in terms of sections 6(1)(a) and 6(1)(b) of the Act a number of issues were brought into focus, quite properly, during the Inquiry and it is appropriate that I set out my findings as to those facts established by the evidence which seemed to me to be most relevant to the circumstances of Mr McGeechan's death. I do so also in the hope that that this will be of some assistance to Mr McGeechan's family but I make it plain that these Findings in Fact should not be construed as being an exhaustive account of all of the evidence which was available to the Court as part of the inquiry.

Findings in Fact:

(1) The late Mr McGeechan, who sometimes undertook work as a window cleaner, lived at 63A Gateside Road, Wishaw with his partner Ms Jacqueline Ann Wylie.

(2) He had a long standing alcohol abuse problem. He was inclined, every 6 or 7 weeks, to binge drink for periods of four to five days at a time. During these binges he would not return home. He had been admitted to hospital on approximately fifty occasions because of his binge drinking.

(3) As a result of binge drinking he was an in-patient at Wishaw General Hospital between 19th and 23rd November 2005.

(4) During this stay in hospital he was prescribed various medications including diazepam and metoclopromide.

(5) The diazepam was prescribed in doses of 20 milligrams. This dosage was calculated using his scoring on a testing scheme devised by the Clinical Institute for Withdrawal from Alcohol (his "CIWA" Score).

(6) In November 2005 the brand of diazepam stocked by the pharmacy at Wishaw General hospital and supplied under contract to hospitals in the west of Scotland drugs buying group was manufactured by A P S Generics. In November 2005 this brand of diazepam was also commonly stocked in chemist shops in the west of Scotland.

(7) The brand of metoclopromide stocked by the pharmacy at Wishaw General hospital on 23rd November 2005 was manufactured by Alphama.

(8) Mr McGeechan received diazepam in doses of 20 milligrams on six occasions on 20th November 2005; on five occasions on 21st November 2005; on six occasions on 22nd November 2005 and on two occasions on 23rd November 2005. On 21st November 2005 at 0800hours, 1230 hours, 1630 hours and 2300 hours and on 22nd November 2005 at 0805 hours, 1445 hours, 1630 hours, 1945 hours and 2300 hours the prescribed dose of diazepam was administered to Mr McGeechan by nursing staff who supervised him when he took the tablets which he was seen to put in his mouth. He was also seen to drink water with the tablets on these occasions.

(9) There is a drugs administration policy in operation at Wishaw General hospital. Medication is administered to inpatients there from a drugs trolley which is always supervised by a trained nurse when open and in use and is always locked when not in use. Patients do not have access to the contents of the drugs trolley. Some bedside lockers have a locked compartment (a "pod") in which a patient's medication is kept. Patients whose bedside locker is served by a pod do not have access to the key for the pod or to the contents of the pod. Pod keys are retained by nursing staff.

(10) At approximately 9am on 23rd November 2005 Mr McGeechan was told by staff that he would be discharged from hospital later that day. His discharge prescription prescribed various medications including metoclopromide but did not prescribe Diazepam.

(11) At a point shortly after 9am on 23rd November 2005Mr McGeechan left the hospital before he was formally discharged. He did not uplift his discharge prescription before leaving.

(12) He did not go home when he left the hospital. He began to drink alcohol during the morning of 23rd November and drank alcohol at a number of locations during that day.

(13) At approximately 1.00 pm he went home and spoke to Jacqueline Wylie for the first time since leaving hospital. He was under the influence of alcohol. Previously whenever he was discharged from hospital he had always gone straight home. He asked Ms Wylie for money which she refused to give him. He became angry and shouted at her. She sought assistance by telephoning other members of his family. He uplifted certain items of clothing from his bedroom and left the house.

(14) During the late afternoon or early evening of 23rd November 2005 Mr McGeechan was seen punching the walls inside a common close at Pentland Road in Wishaw.

(15) In the early evening of 23rd November 2005 he called at the Wishawhill Store**,** a shop he used regularly. He was under the influence of alcohol. He asked for alcohol on credit and when this request was refused he became abusive to the shop keeper. Mr McGeechan had

been a regular customer for twenty years and had not on any prior occasion caused any problem in the shop or been abusive to staff there.

(16) Whilst in the shop he dropped a latex glove onto the floor. The glove appeared to be in the shape only of a finger or of a thumb. It did not appear to be in the shape of an entire glove. Staff pointed the glove out to him and he picked it up and put it into his pocket.

(17) He called subsequently at the home of Mrs Annie Smith, an elderly resident of Heathery Road, Wishaw whose windows he cleaned. He spoke to Mrs Smith's grandson and asked to be paid for having cleaned the windows previously. He was told that he had already been paid for cleaning the windows at which point he became aggressive and was asked to leave the premises.

(18) Although he left the premises he remained on the street outside the house and was seen to punch and kick the fence of Mrs Smith's property. The police were called as a result of his behaviour.

(19) Whilst Mr McGeechan was in the street he was spoken to by Ms Marie Farrell an experienced drugs and alcohol counsellor who lives in Heathery road and who knew him.

(20) She supported him across the road by holding his arm and sat him in the front passenger seat of her car, having indicated that she would take him home. As she was getting into her car Ms Farrell saw a police vehicle enter Heathery Road.

(21) PC David Cairns and WPC Nikki Kennedy both of Strathclyde Police, "N" Division, Wishaw were on uniform mobile patrol in the police vehicle registration number SF04 FAM.

(22) The officers spoke to Ms Farrell and to Mr McGeechan who was asked to enter the rear of the police car in the company of WPC Kennedy whilst PC Cairns spoke to the occupants of Mrs Smith's house. Mr McGeechan complied with the police request. The officers supported him by each holding one of his arms while walking him to the police car.

(23) PC Cairns interviewed potential witnesses for a period of approximately twenty minutes. During this period Mr McGeechan alone remained in the police car with WPC Kennedy who carried out appropriate police computer checks in relation to him. These checks revealed no information whatsoever about Mr McGeechan. At no stage was Mr McGeechan left unaccompanied in the police car.

(24) Throughout the period in which Mr McGeechan was in the police vehicle with WPC Kennedy his demeanour was placid and his behaviour gave her no cause for concern.

(25) The witnesses interviewed by PC Cairns did not wish to make a complaint. PC Cairns thereafter spoke to Ms Farrell. They each had concerns for Mr McGeechan's wellbeing and both were of the view that he was incapable of looking after himself.

(26) As a result of his condition Mr McGeechan was arrested for being drunk and incapable and was advised whilst still in the rear of the police vehicle that he was going to Motherwell Police Station. He remained placid and was compliant upon being told of his arrest. He was not handcuffed or searched when he was arrested.

(27) Throughout the entire period in which he was with the police officers at Heathery road Mr McGeechan complied with their instructions and his behaviour gave the officers no cause for concern.

(28) The arresting officers took the decision not to handcuff or search Mr McGeechan at Heathery Road based upon a full assessment of the circumstances including his compliant behaviour, his demeanour, the circumstances relating to his arrest and the absence of any information to suggest he was a potential risk to himself or to others.

(29) All prisoners require to be searched prior to being placed in a cell. Prisoners who have not been searched before arriving at a police station are routinely searched at the Uniform Bar prior to being placed in a cell.

(30) Mr McGeechan was taken to Motherwell Police Station in police vehicle SF04 FAM. During the journey he conversed with the arresting officers. At one point he removed a pouch of tobacco from his pocket and asked permission to smoke a cigarette. He was refused permission to smoke in the police vehicle and WPC Kennedy removed the tobacco pouch from him. He accepted this decision without complaint.

(31) At Motherwell Police Station PC Cairns and WPC Kennedy were unable to process Mr McGeechan through the Charge Bar immediately as other prisoners were being processed there. As a result they stood with him in the rear yard of the police station in close proximity to him. They continued to converse with him in the yard.

(32) Whilst in the yard Mr McGeechan asked permission to smoke a cigarette. As he had been cooperative and compliant in his dealings with them the arresting officers granted this request. WPC Kennedy removed a single pre rolled cigarette from Mr McGeechan's tobacco pouch and gave it to him. She retained the pouch.

(33) While PC Cairns and WPC Kennedy were in the yard with Mr McGeechan PC Brawley and PC Marshall arrived in another police vehicle with another prisoner.

(34) Whilst he was smoking the cigarette in the yard Mr McGeechan said that his knees were sore. He asked if he could sit and PC Cairns assisted him into position as he sat on his heels in a squatting position. Whilst squatting in this position he said at one point that he was feeling sick. PC Cairns did not hear the sound of any retching. He asked Mr McGeechan if he was okay but received no reply. PC Cairns knelt down beside him and shouted "Derek". At this Mr McGeechan briefly lifted his head, opened his eyes, and looked at PC Cairns after which point his head went forward.

(35) As a result of this development PC Cairns became concerned about Mr McGeechan's condition and he went into the police station and called for an ambulance.

(36) PC Cairns undertook Scottish Police Emergency Life Support Training and Officers Safety Training on 23rd February 2005.

(37) WPC Kennedy undertook Scottish Police Emergency Life Support Training as part of a training course on 22nd June 2005. She received Officer Safety Training on 9th August 2005.

(38) Whilst PC Cairns was inside the police station calling for the ambulance WPC Kennedy and PC Brawley remained with Mr McGeechan in close proximity to him trying to elicit a response from him. PC Brawley shouted Mr McGeechan's name repeatedly. Initially Mr McGeechan looked at PC Brawley then looked down again. PC Brawley heard Mr McGeechan make a groaning noise which he took to be an acknowledgement by Mr McGeechan that he could hear his name being shouted.

(39) After calling for an ambulance PC Cairns came back into the police yard to assist WPC Kennedy and PC Brawley in dealing with Mr McGeechan. PC Cairns was able to detect a pulse. Mr McGeechan was placed in a recovery position. PC Cairns looked inside Mr McGeechan's mouth with a pen torch but saw no obstruction. He carried out a finger sweep of Mr McGeechan's mouth in an attempt to ascertain if there was an obstruction present. He found no obstruction.

(40) An ambulance arrived at the rear yard of Motherwell Police Station at 19:52 hours on 23rd November 2005, having received the call for assistance at 1948 hours. When the ambulance entered the rear yard of Motherwell police office Mr McGeechan was in a reasonable recovery position and WPC Kennedy was trying to comfort him.

(41) Mr Kenneth Miller, a fully trained experienced paramedic was one of the ambulance crew. He examined Mr McGeechan and found a feeble pulse. It was necessary for him to take Mr McGeechan from the yard into the ambulance to have access to better lighting.

(42) At a point shortly after the arrival of the ambulance Mr McGeechan suffered cardiac arrest. He was put onto a trolley bed and taken into the back of the ambulance.

(43) In the rear of the ambulance the paramedic experienced difficulty in his attempts to oxygenate and intubate Mr McGeechan.

(44) It was only with the assistance of a laryngoscope fitted with a light together with a pair of long forceps that the paramedic was able to observe and remove an obstruction which was situated in Mr McGeechan's throat at a point below the epiglottis.

(45) There was a quantity of brown coloured fluid located above the obstruction.

(46) It was not possible to see the obstruction simply by looking in Mr McGeechan's mouth, nor would it have been possible to locate or remove the obstruction by performing a finger sweep of his mouth.

(47) The obstruction was a latex glove which appeared to have a quantity of tablets within its fingers. The glove was not knotted.

(48) The glove containing the tablets was retrieved from the ambulance crew in the police station yard by Police Constable George Lauder who placed it in a production bag which was sealed.

(49) The ambulance left Motherwell Police Station at 20:09 hours and arrived at Wishaw General Hospital at 20:14 hours where medical staff on stand by to receive Mr McGeechan.

(50) Both in the yard at Motherwell police station and en route from the police station to the hospital the ambulance crew gave Mr McGeechan appropriate essential medical treatment.

(51) At Wishaw General hospital Mr McGeechan was given appropriate medical treatment. He required ongoing life support in intensive care. Wishaw General did not have a suitable bed available and an arrangement was made for him to have the nearest available suitable bed which was located at Hairmyres hospital in East Kilbride

(52) Appropriate intensive care and life support therapies were continued both in the Accident and Emergency Department at Wishaw General while Mr McGeechan awaited transfer and during the transfer to Hairmyres hospital.

(53) Mr McGeechan arrived at Hairmyres hospital at 01:05 hours on 24th November 2005. Although appropriate medical treatment was given to him during his period as an inpatient there his condition deteriorated and he died at 02:26 hours on 25th November 2003.

(54) The latex glove which had been removed from Mr McGeechan's throat was taken to Wishaw General hospital in a sealed production bag on the evening of 23rd November 2005 by Inspector Kate Jackson. The glove was opened and its contents were examined by medical staff in the presence of Inspector Jackson. The tablets were intact and had not been immersed in fluid.

(55) A total of eleven tablets were contained within the fingers of the glove. These tablets were received at the Strathclyde Police forensic science laboratory on 29th November 2005 and were subjected to examination by Margaret McGowan, forensic scientist. Ten of the tablets were identified as diazepam, a class C drug, as controlled by the Misuse of Drugs Act 1971. The remaining tablet was identified as containing metoclopromide, which is not controlled by the Misuse of Drugs Act 1971. Production 9 is a copy of Margaret McGowan's forensic report dated 13th December 2005.

(56) The 10 diazepam tablets found within the latex glove removed from Mr McGeechan's throat were manufactured by APS Generics.

(57) The metocolopromide tablet found within the glove was not manufactured by Alphama and was of a brand not stocked by the pharmacy at Wishaw General Hospital in November 2005. The tablet was not prescribed to Mr McGeechan at Wishaw General during his stay there between 19th and 23rd November 2005.

(58) There were no reports received by the management at Wishaw General hospital in November 2005 indicating that any quantities of medication had been stolen from the hospital or were missing.

(59) On the morning of 24th November 2005 Detective Sergeant Philippe Tester searched the police car in which Mr McGeechan had been brought to Motherwell police station. In the driver's door pocket he found two latex gloves placed one inside the other. There was an empty "Rizla" cigarette papers packet located partially inside a finger of one of the gloves. He also found a packet of cigarette papers of a different make in the rear seat of the car. Photograph D in production 3 shows the two gloves and the Rizla cigarette paper packet in the location and condition in which Detective sergeant Tester found these. These items were then removed from the door pocket, placed on the ground and photographed there. Photograph E of production 3 is a photograph of the items taken after they had been placed on the ground.

(60) Detective Sergeant Tester also caused a search to be carried out of the ambulance which took Mr McGeechan to hospital, of the yard at Motherwell police station and of the locus outside the buildings between numbers 30 and 34 Heathery Road Wishaw. Nothing of significance was found at any of these locations.

(61) Strathclyde Police officers use latex gloves in the exercise of their duties including mobile patrol duties.

(62) Police officers on mobile patrol at Motherwell Police Station are not necessarily allocated the same vehicle for each shift. They use a variety of different vehicles. Police vehicles are not routinely cleaned or searched at the beginning or end of a shift.

(63) A post mortem examination was carried out on Mr McGeechan by Doctor Robert Ainsworth, Trainee in Forensic Pathology and Doctor Marjory Black, Forensic Pathologist on 28th November 2005 at the City Mortuary Glasgow. Production number 7 is a copy of the post mortem examination report.

(64) The post mortem examination report recorded the cause of death as Hypoxic brain damage due to Cardio-respiratory arrest due to Upper airways obstruction (foreign body). No

other foreign bodies were found throughout the gastro-intestinal tract. There was no evidence of natural disease that would have contributed to the death.

(65) On 28th November 2005 Doctor Robert A. Anderson and Doctor Hazel Torrance of the Department of Forensic Science at the University of Glasgow received three samples of autopsy blood, three samples of blood, one sample of serum and a hair sample all previously taken from Mr McGeechan. Their analysis of the hospital admission blood sample taken from Mr McGeechan at 20.35 hours on 23rd November 2005 identified therapeutic levels of diazepam and its metabolites, namely 0.17 milligrammes of diazepam per litre of blood, 0.27milligrammes of desmethyldiazepam per litre of blood and 0.04 milligrammes of oxazepam per litre of blood. Their analysis of the serum sample identified a blood/alcohol level of 222 milligrammes of alcohol per 100 millilitres of serum. Also identified was 0.4 milligrammes of lignocaine per litre of blood, this concentration being at the lower end of the therapeutic range. All other analyses were negative. Analysis of a post mortem blood sample for drugs of abuse was negative. The hair sample was not analysed.

(66**)** Mr McGeechan did not take any additional diazepam between leaving Wishaw General on the morning of 23rd November 2005 and being readmitted to the hospital later the same day.

(67) The two latex gloves and Rizla cigarette papers packet recovered from the police car by DS Philippe Tester were examined at Strathclyde Police Forensic Science laboratory on 27th December 2006. No DNA was detected on the gloves. Traces of DNA were obtained from the edges of the Rizla packet but were found to be unsuitable for comparison.

(68) On 24th November 2005 six latex gloves were seized from dispensers at Wishaw General hospital. These gloves together with the glove which was removed from Mr McGeechan's throat on 23rd November were received at Strathclyde Police Forensic Science laboratory on 29th November 2005. On 26th January 2006 two latex gloves were taken from the uniform bar at Motherwell police station and received at Strathclyde Police Forensic Science laboratory on

the same day. All of these gloves were examined by Louise Sonstebo and Ruth Ramage, forensic scientists and their general characteristics were noted. The glove taken from Mr McGeechan's throat was found to be similar in construction, appearance, texture and size to two of the six gloves seized at Wishaw General Hospital. It was found to be different in texture to the two gloves taken from the Uniform Bar at Motherwell police office on 26th January 2006. Production 10 is a copy of the forensic science report dated 13th February 2006 relating to the examination of these items.

(69) On 14th June 2006 Strathclyde Police Forensic Science laboratory received the two gloves and the empty Rizla cigarette papers packet which had been recovered on 24th November 2005 by Detective Sergeant Tester from driver's door pocket of the police car. These gloves were examined By Louise Sonstebo and Ruth Ramage, forensic scientists and their general characteristics were noted. The two gloves recovered in the driver's door pocket of the police car were found to be similar in construction, appearance, texture and size to each other and were found to be similar in construction, appearance and texture but different in size to the glove taken from Mr McGeechan's throat. Production 11 is a copy of the forensic science report dated 22nd June 2006 in relation to these items.

(70) Latex gloves are widely available in Wishaw General Hospital as part of the hospital's infection control policy.

(71) Production 16 is a copy of a document entitled "Strathclyde Police –Officer safety equipment-Standard Operating Procedures". It is issued to police officers and contains advice to police officers in relation to a number of matters including the use of handcuffs and searching of prisoners.

Additional Issues

Having stated the key facts it is appropriate that I explain my view of three additional issues which were brought into focus during the course of the inquiry. These issues are:-

(1) What was the source of the latex glove and the tablets recovered from within Mr McGeechan's throat?

(2) When Mr McGeechan became unwell in the police station yard was he attempting to swallow the glove or was he regurgitating it?

(3) Should the arresting officers have handcuffed and/or searched Mr McGeechan when he was arrested?

First issue.

(i) The glove

A number of latex gloves were subjected to examination by Forensic Scientists. The outcome of those examinations is described in Findings in Fact 68 and 69. I accepted that latex gloves are used by police officers in the course of their duties and are also widely used and readily available at Wishaw General. However, in my view there are several additional matters which are relevant to the issue of determining the source of the glove. Whilst there were several similarities between the glove recovered from Mr McGeechan's throat and two of the six gloves seized from the hospital, there were also several similarities between the glove seized from his throat and the two gloves recovered from the driver's door pocket of the police car. There was no evidence that Mr McGeechan had either put gloves in the driver's door pocket or obtained a glove from there, nor was there evidence that he had the opportunity to do either of these things. No DNA was detected on the two gloves recovered from the police car by Detective Sergeant Tester and although traces of DNA were obtained from the edges of the Rizla cigarette paper packet it was unsuitable for comparison. There was also evidence that police officers on mobile patrol are not always allocated the same police vehicle on every shift and that police cars are not, as a matter of routine, searched or cleaned at the start or end of a shift. In addition the forensic examination of the gloves was restricted to an examination and

notation of general characteristics. There was no additional detailed evidence led, as to the manufacture, type, distribution or availability of these gloves which might have provided further assistance in the identification of the gloves themselves or of their source. In the whole circumstances I was not persuaded to make either a positive or negative finding in fact as to the provenance of the glove which had been recovered from Mr McGeechan's throat.

(ii)The tablets

The provenance of the 11 tablets found within the glove taken from Mr McGeechan's throat was unclear. I accepted the evidence from the hospital staff from whom I heard that the diazepam they had administered to Mr McGeechan had been swallowed by him. I also accepted their evidence as to the security of the drug dispensing trolleys and pods at Wishaw General. Furthermore, I accepted that the tablets found inside the glove taken from Mr McGeechan's throat were intact and had not been affected by immersion in fluid. Although the diazepam tablets inside the glove were of a brand then being prescribed by Wishaw General the brand was commonly available at that time throughout the west of Scotland. In addition it is of some significance that the brand of metoclopromide found inside the glove was not then being prescribed by Wishaw General. In the whole circumstances, while I was satisfied that the metoclopromide tablet had not been prescribed to Mr McGeechan at Wishaw General the evidence did not establish to my satisfaction the source of the 10 diazepam tablets. Accordingly I have made no finding in fact on that issue.

A further matter arose in relation to the diazepam which was prescribed to Mr McGeechan at Wishaw General between 19th and 23rd November. Dr Anderson had been advised by the Procurator Fiscal of the quantity of diazepam which had been prescribed to Mr McGeechan during this period. He had been asked to prepare a report indicating whether or not the blood analysis results are consistent with Mr McGeechan's diazepam dosage regime during this

period in hospital. Production 25 is a copy of Dr Anderson's report on this issue. Doctor Anderson found that Mr McGeechan's blood sample did not contain the level of diazepam or of its metabolites which he would have expected it to contain given the dosage of the drug that he had received during his stay in hospital. He also concluded that Mr McGeechan did not take any additional diazepam between leaving hospital on the morning of 23rd November and being readmitted later in the evening of the same day. Since it was accepted that the information as to the dosage prescribed was accurate Dr Anderson opined that there were two possible explanations for his finding. Either Mr McGeechan had not consumed all of the diazepam prescribed to him while he was in hospital or he eliminated diazepam from his system at an unusually rapid rate.

Mr Crerar for the Health Board submitted that if I accepted the evidence of the nursing staff from whom the inquiry heard, which I did, the only remaining possibility on the evidence was to conclude that Mr McGeechan eliminated diazepam from his system at an unusually rapid rate. Whilst there was some discussion of this issue in Mr Crerar's examination of Doctor Anderson and of Miss Richardson the pharmacist from Wishaw General, it was clear from the evidence that neither of these witnesses was in a position to speak definitively to the rate at which diazepam was eliminated from Mr McGeechan's system In addition the Inquiry did not hear from every member of the nursing staff who had administered Mr McGeechan's prescribed diazepam to him during his period as an inpatient. Accordingly I was not persuaded on the evidence that it was appropriate to make a finding that Mr McGeechan's metabolic make up was such that he eliminated diazepam from his system at an unusual rate.

In any event, in concluding the discussion of the first additional issue I should indicate that I did not regard the provenance or the inherent constituent properties of either the glove or of the

tablets found within the glove as issues which were truly causally connected or truly relevant to Mr McGeechan's death. In addition there was no evidence that the tablets within the glove played any part in causing Mr McGeechan to become unwell and choke. Irrespective of the source or inherent properties of these items it could not have been anticipated that Mr McGeechan was likely to have swallowed and later regurgitated or was likely to have attempted to swallow the glove containing the tablets.

Second issue.

Mr Cassidy for the Procurator Fiscal suggested that I might find that Mr McGeechan had attempted to swallow the glove containing a quantity of tablets at about 19.47 hours on 23rd November 2005 at the rear of Motherwell Police Office, whilst under the influence of alcohol. He accepted that the evidential position on this issue was not entirely clear but submitted that it was the most logical conclusion to reach. Those representing the Chief Constable, PC Cairns and WPC Kennedy were united in submitting that on the evidence such a finding would be inappropriate. Mr Gillies submitted that, far from demonstrating that Mr McGeechan had attempted to swallow the glove in the police station yard, the evidence pointed to him having had an opportunity to see the police arrive in Heathery Road and swallow the glove there before coming into contact with the police. Furthermore it was just as probable if not more so, that in the yard he was regurgitating the glove from his stomach, while under the influence of alcohol. In this connection he reminded the court of the evidence which indicated a person's gag reflex can be adversely affected by excessive alcohol consumption. Four witnesses were asked for their views as to which of these two scenarios was more likely.

Mr Miller the paramedic who retrieved the obstruction thought it more likely that Mr McGeechan had regurgitated the glove whilst in the yard at the police station, an opinion

which was informed by the fact that he had observed a quantity of brown liquid situated above the obstruction in Mr McGeechan's throat.

Doctor Ainsworth who with Doctor Black had performed the post mortem examination, was not able to exclude the possibility that the glove had been regurgitated from the stomach but thought it most likely from the history provided that Mr McGeechan had attempted to swallow the glove whilst crouching down in the yard at the police station. In his opinion the size of the obstruction militated against regurgitation and he also noted the absence of any other foreign bodies in the gastro intestinal tract. His opinion was also informed to an extent by research done in other cases by a colleague but the research was neither produced or referred to in significant detail. Doctor Ainsworth could not recall if he had been shown the obstruction in the state in which it had been removed from Mr McGeechan's throat although he thought he had been shown something. He had not discussed matters with the paramedic but there had been some details in the notes. He could not recall being advised of the precise location within Mr McGeechan's throat from which the obstruction had been removed and he had not been advised that the paramedic had seen brown liquid located above the obstruction. I make it plain that these observations are not raised as an attempt to be critical of the evidence in any way whatsoever but are simply aspects of the evidence which was given. He did not think the location of the brown liquid above the obstruction informed the issue one way or another.

Doctor Johnston, a Consultant Anaesthetist from Wishaw General was unable to say which of the two scenarios posed was the more likely, indicating that she was not prepared to speculate on this issue.

Doctor Allan a Consultant Anaesthetist from Hairmyres hospital was of the opinion that either of the two scenarios posed were possibilities. He shared Doctor Ainsworth's view that the presence of brown fluid above the obstruction was not determinative of what had happened because a person choking will often vomit simultaneously. His position at one point was that regurgitation was the more likely of the two possible scenarios posed but he eventually settled on a position that either attempted swallowing of the glove or regurgitation of it were both "good possibilities".

The three doctors who were examined on this issue were called primarily to speak about other matters relevant to Mr McGeechan's death namely the treatment administered in hospital in an attempt to save his life and the results of the post mortem examination. Their evidence as to which of the two scenarios posed was more likely to have occurred in the police station yard at the point when Mr McGeechan became unwell in my opinion was of limited value. In court they were each shown the glove which had been recovered from Mr McGeechan's throat and were asked to give an opinion. Their evidence on the issue was in short compass. Dr Ainsworth indicated that he had first been asked his opinion on the matter at a point subsequent to performing the post mortem examination. Furthermore I did not regard the fact that the glove removed from Mr McGeechan throat was not knotted, or the fact that the tablets within the glove were intact or indeed the fact that Dr Anderson opined that Mr McGeechan had not consumed any diazepam between leaving Wishaw General and returning there on 23rd November 2005, as factors which clarified the issue to my satisfaction. In my view these facts were at least balanced by the fact that the local shopkeeper and her colleague had seen Mr McGeechan in possession of a latex glove which was shaped in an unusual or restricted way ("like a finger"), by the fact that there was no evidence as to the condition of the inside of the glove, by the fact that there was no evidence as to the effect upon the glove of the laryngoscope and long forceps used by the paramedic to retrieve the obstruction, by the fact

that the obstruction was located below the level of the epiglottis with fluid situated above the obstruction and by the additional facts that Mr McGeechan was heavily intoxicated, was always in close proximity to the arresting officers whilst in the yard, had conversed with and been observed by them there and had not been seen by the officers to do anything which raised their suspicions.

Whilst it was entirely proper and appropriate to explore this issue in the inquiry I was not satisfied that I could, on the evidence, make a finding to the effect suggested by the Procurator Fiscal Depute and accordingly I have not done so.

Third issue.

Several police officers gave evidence at the inquiry and those who were asked for their opinion on this issue were of the view that the arresting officers were acting within their discretion in deciding not to handcuff or search Mr McGeechan.

The Inquiry also heard from Sergeant Martin Todd an officer with twenty five years service. Sergeant Todd has been a Strathclyde Police Force Officer Safety Training Co-ordinator for a period of 3 years and in addition has 22 years experience in the field. He has devised and implemented safety training programmes for Strathclyde Police. He explained that police officers effecting an arrest require to carry out a risk assessment in a dynamic situation which is flexible and subject to change. Such officers will take account of a variety of factors such as a prisoner's demeanour, information about particular individuals contained in police computer records, witness reports and their own knowledge and experience. The list is not exhaustive. In twenty five years as a police officer he had arrested many people for being drunk and incapable, had never searched any of them prior to attending at the Uniform Bar in the police station and had only handcuffed such a prisoner on one occasion.

Sergeant Todd explained that Strathclyde Police Force did not have a policy compelling officers to handcuff or search all prisoners at the point of being arrested. Guidance was given that prisoners should not be searched before they were handcuffed. Officers were encouraged to handcuff prisoners for safety reasons. Strathclyde Police policy in relation to the use of handcuffs was consistent with the policy adopted on the subject by other Police Forces throughout the United Kingdom with the exception of one Constabulary in England which had recently changed its policy on the issue.

Sergeant Todd gave evidence about the content of production 16**,** the document entitled **"Strathclyde Police; Officer Safety Equipment; Standard Operating Procedures."**

Paragraph 1.1 of page 3 of the document is in the following terms:

"The use of physical force can cause fear and anger. It should be applied with the greatest restraint, only when discussion and persuasion have been found to be inappropriate or ineffective. When faced with violent resistance we must apply only such force as is necessary to accomplish a legitimate purpose, using skill and discipline."

Paragraph 2.1 at page 3 is in the following terms:

"No police force adopts the policy whereby every prisoner will be handcuffed. The application of handcuffs is the use of physical force, therefore it must be justified. However, officers are encouraged to apply the handcuffs more often to ensure their own safety, the safety of others or the safety of the prisoner."

Paragraph 2.2 at the same page lists various Rules of handcuffing one of which is:

"Handcuff first-search afterwards"

The question underlying this third issue was whether Mr McGeechan would have become unwell in the yard if he had been searched at the point of his arrest. I have already indicated that the evidence did not establish to my satisfaction whether he was attempting to swallow the glove or whether he was regurgitating it from his stomach at the point when he became unwell. Likewise the evidence did not establish to my satisfaction when he had put the glove into his mouth nor did it establish whether at the point of his arrest he still had the glove upon his person. However, in my view even if Mr McGeechan was indeed attempting to swallow the glove when he became unwell in the police station yard, the arresting officers' decision not to search him at the point of arrest was a decision they were entitled to make. Furthermore the fact that Mr McGeechan may have been in possession of the glove and tablets in the police station yard would not serve to invalidate the reasoned decision taken by the arresting officers not to search him at the point of his arrest.

I am entirely satisfied that it would not be appropriate to criticise the actions of PC Cairns and WPC Kennedy in choosing not to handcuff or search Mr McGeechan. They dealt with him in a sensible and fair manner from the point of their first contact with him to the point in which he was taken into the ambulance. Their prisoner was compliant and cooperative throughout his dealings with them. From his first contact with the police in Heathery Road he was not in any way threatening or aggressive to them either verbally or physically. He was intoxicated and was being arrested for his own safety since he was incapable of looking after himself, a fact also spoken to by Ms Farrell an experienced drugs and alcohol addiction councillor. There were no warnings in the police computer database about any prior known behaviour of Mr McGeechan which would have given the arresting officers any cause for concern. There was no information which suggested that he was prone to using drugs nor were there any suggestions that he was in any way fragile or might be inclined to be a danger either to himself

or to others. For all of these reasons, the officers' decision not to handcuff or search him prior to taking him to the police station where they knew that he would be searched at the Uniform Bar before being placed in a cell for the evening was in my view a reasonable decision for them to have made. Their method of dealing with their prisoner on the evening in question was a method which has been adopted by other experienced officers when dealing with prisoners in similar situations to that of Mr McGeechan.

Conclusion

The evidence in this sad case suggests that Mr McGeechan, at an indeterminate point during the evening of 23rd November 2005, placed a glove containing a quantity of tablets in his mouth. The evidence did not demonstrate to my satisfaction whether he was regurgitating the glove or trying to swallow it when he became unwell in the yard. There was evidence which suggested that after he left the hospital he had behaved at various points in an uncharacteristic way. It may well be the case that the alcohol he had consumed played a part in the decision he took to put the glove in his mouth but I was not satisfied on the evidence led at the inquiry that I could properly make a finding in fact as to when or why he did so.

It is quite clearly the case that every possible effort was made to help Mr McGeechan by all those who came into contact with him from the point at which the police were called to Heathery Road. Ms Farrell tried to help him in the street. He was treated fairly by the arresting officers both at the locus and thereafter. When he became unwell in the police station yard PC Cairns and WPC Kennedy responded promptly and secured the attendance of an ambulance. Because of the nearby location of the ambulance headquarters an ambulance was in the police station yard within four minutes. Mr McGeechan was treated appropriately by an experienced paramedic with specialist equipment at the police station yard. Had the Ambulance not had a paramedic on board it is unlikely that a normal ambulance crew member would have been able

to locate and remove the obstruction from his throat. After he left the yard at Motherwell police station he was given appropriate medical treatment both in Wishaw General hospital and Hairmyres hospital where every effort was made to treat him and to save his life. In the whole circumstances of this case I am satisfied that there are no reasonable precautions which could or should have been taken whereby Mr McGeechan's death might have been avoided. I am also satisfied that there was no defect in any system of working which contributed to his death.

Sadly for Mr McGeechan and his family all efforts to assist him failed. However, his family may be comforted by the medical evidence led in the inquiry which confirmed that in all probability he had suffered irreversible hypoxic brain damage within a short time of becoming unwell in the police station yard and accordingly it is clearly the case that he would have felt no pain thereafter.

I would wish to express my sympathy to Mr McGeechan's mother, to his partner Ms Wylie and to other family members who attended the Inquiry and behaved with dignity throughout. It may have been of some comfort to them to hear it confirmed in the evidence that he was a well liked man, that he was well treated by all who dealt with him on the evening of 23rd November 2005 and that every effort was made to save his life by all members of the police, ambulance and hospital services who came into contact with him from 23rd November 2005 to the point of his untimely death on 25th November 2005.

I should also like to offer my thanks to Mr Cassidy the Procurator Fiscal Depute who led the evidence at the Inquiry and to the solicitors who represented the other interested parties for the moderate and sensitive manner in which they each presented their respective cases.