2012 FAI 36

SHERIFFDOM OF NORTH STRATHCLYDE AT KILMARNOCK

DETERMINATION

By

SHERIFF ALISTAIR G. WATSON, ESQ., Sheriff of North Strathclyde at Kilmarnock

in Inquiry into the circumstances of the death of

PHILLIP DUFFY

under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

Kilmarnock, 12 September 2012

The Sheriff DETERMINES as follows:-

1. In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that PHILLIP DUFFY, born on 26th of May 1952, and who resided latterly at 5D Witch Road, Kilmarnock, died at 5.10 am on 29th October 2010 at Crosshouse Hospital, Kilmarnock as a result of an injury sustained in a fall while alone in cell number 4 at Kilmarnock Police Office at about 12 pm on 24th October 2010

2. In terms of section 6(1)(b) of the Act that the cause of his death was a head injury as a result of a fall.

3. In terms of section 6(1)(c) of the Act that there were no reasonable precautions whereby the death, or the accident which led to his death, might have been avoided.

4. In terms of section 6(1)(d) of the Act that there were no defects in any system of working either at Kilmarnock Police Office or at Crosshouse Hospital, Kilmarnock which contributed to the death.

5. In terms of section 6(1)(e) of the Act that there are no other facts relevant to the circumstances of the death in respect of which any determination falls to be made.

Sheriff

Note:

This fatal accident inquiry was held in terms of section 1(1)(a)(ii) of the Act before me at Kilmarnock Sheriff Court on 11 and 12 October 2012 on the ground that the deceased was in legal custody at the time of his death. In fact it is clear that while he was in legal custody at the time the injury was sustained, he no longer remained under such status at the date of death. As such, it is less clear that this inquiry was mandatory. It may be hoped however that even if it is not of a mandatory nature the evidence led may have provided some assistance to the family of the deceased in fully understanding the history of events which led to Mr Duffy's demise.

The Procurator Fiscal was represented by his Depute Mr Bloomer; Ms Templeton appeared for the deceased's family and Ms Black for the Chief Constable of Strathclyde Police.

The evidence disclosed that Mr Duffy was a person who on 22nd October 2010 was subject to a bail order with a condition that he remain in his dwellinghouse each day from 6 pm onwards. He was arrested in the street by officers who saw him outside just after the commencement of the curfew time. On being arrested for breaching his curfew he was taken to Kilmarnock Police Office and accommodated in a cell there.

Mr Duffy was not a well man. He suffered from the effects of alcohol addiction, from heart problems and from other ailments. Accordingly arrangements were made for the police casualty surgeon to visit him and he was thereafter provided with his medication while accommodated in the cells.

During his stay, at about midday on 24th October, after rising from his bed and being served at the hatch of his cell door, he fell, first against the cell wall, and then to the ground. This was observed by a member of staff who saw him strike the back of his head against the concrete floor.

Mr Duffy was fully conscious after his fall, but clearly suffering from an injury to the head. He was dealt with properly and sympathetically by staff who immediately called an ambulance and he was then transferred to Crosshouse Hospital.

There can be no criticism of his care at the police office. Further there is nothing that reasonably could have been done there to prevent the accident which occurred.

There can be no certainty about the cause of his fall. The pathologist who gave evidence suggested that it could be due to any one of a number of causes including a heart difficulty, the effects of alcohol withdrawal, or perhaps simply a faint after rising from his bed. No conclusion can be drawn on the evidence.

On arrival at Crosshouse hospital Mr Duffy was assessed using the Glasgow Coma Scale, an internationally recognised method of assessing a person's degree of cognitive function. He was found to be fully alert measuring the maximum score and would in all probability have been released by the hospital were it not for their concerns over his general poor health and in particular their concerns over whether he had suffered or was about to suffer a heart attack.

Accordingly, Mr Duffy was admitted to a ward and kept under observation while various tests were carried out. He was repeatedly assessed on the Glasgow Coma Scale (GCS) at regular

intervals although given that there were no complications presenting, the focus was on assessing and treating the heart issue.

After some period of appearing broadly well throughout the remainder of 24th October, Mr Duffy fell seriously ill on 25th. It is noted that on the morning of 25th he was causing difficulty for staff and that at 7.15pmthat day his measurement on the GCS had fallen dramatically. Steps were taken to have an emergency CT scan performed. This was done and it was found that Mr Duffy had suffered substantial bleeding both subdural and intra-cerebral to the extent that his condition was sadly inoperable.

Thereafter Mr Duffy was made comfortable in hospital until he finally succumbed on 29th October 2010 at 5.10 am.

It is clear that by 7.15 pm on 25th October there was nothing that could have been done for Mr Duffy. The question which has been raised in the inquiry is whether greater attention to recording the GCS reading earlier in that day might have allowed an earlier CT scan and perhaps allowed for surgical intervention to take place.

I have reviewed the evidence on this matter with some care. It is clear that until mid-morning on 25th October all reasonable steps and observations were taken. He was seen by a doctor and his behaviour was identified as being due to alcohol withdrawal. His GCS assessment remained high. At 3.45 pm Mr Duffy was moved to a different ward. At that point another measurement could have been taken. Had that been done however, the timing of any operation to follow would have been later than the actual scan which was done at 9.40 pm. By that time Mr Duffy's condition was terminal and it is clear on the evidence that would have been the position at any point of surgery following any scan after 3.45 pm.

The only period remaining in practical terms is that between 11 am and 3.45 pm. Although another GCS reading is not recorded it is clear not only from the evidence given but also from the notes that Mr Duffy was being treated and fairly closely observed on the ward. He was also throughout his stay exhibiting behaviour consistent with alcohol withdrawal symptoms. Some of those symptoms can be shared with those of brain injury but some referable to alcohol withdrawal only. It is possible that Mr Duffy's secondary bleeding was then occurring and contributing to his presentation. This however cannot be known and the possibility can remain no more than a speculation. I am of the conclusion that while, with the benefit of hindsight, one can identify the possibility that an additional GCS measurement could have picked this up, it is not possible to describe the lack of additional assessments as being a failure in his care in the context of the overall treatment and the close attention being paid to him throughout his stay. Unfortunately, it seems that the real factor preventing earlier assessment of any behavioural changes as potentially indicating secondary brain injury was the effect upon Mr Duffy of alcohol withdrawal symptoms which were being exhibited and treated.

Accordingly, I find no fault in the standard of care at Crosshouse hospital which can be said, on the balance of probabilities, to have contributed to Mr Duffy's death, nor are there any recommendations for changes in practice to be made as a result.

Finally, I would like to express my condolences to Mr Duffy's family. They will be aware that Mr Duffy's health was poor at the time but that does not make his loss any easier for them. I

would hope however that they may take some comfort in knowing that it appears that all practical steps to help him were taken both at the police office and Crosshouse hospital.