2011 FAI 40

SHERIFFDOM of TAYSIDE CENTRAL and FIFE at PERTH

DETERMINATION

by

LINDSAY DAVID ROBERTSON FOULIS, Esquire, Sheriff of the Sheriffdom of Tayside Central and Fife at Perth following an INQUIRY held at Perth on 31st August and 21st September 2011 into the death of ROBERT WILLIAM MARSHALL, an inmate of Her Majesty's Prison, Perth.

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PERTH, 1st November 2011. The Sheriff, having considered all the evidence adduced, Determines:-

1. In terms of Section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, that the said Robert William Marshall died at 10am on 3rd December 2010 within Ward 4, Perth Royal Infirmary, Perth.
2. In terms of Section 6(1)(b) of the said Act, that the causes of death were end stage liver failure, cirrhosis of the liver, and hepatitis C.

NOTE

Evidence in this inquiry was led on 31st August and 21st September 2011. Miss Kynaston, Procurator Fiscal depute, Perth, represented the Crown. The only other party represented was the Scottish Prison Service. They were represented by Miss Hammond, solicitor, Edinburgh.

The Crown led evidence from M/s Laura Lanani, M/s Dorothy Simpson, M/s Kelly Martin, M/s Gillian Murray, M/s Catherine McQuillan, M/s Arlene Kennedy, M/s Alexandra Johnston, Messrs John Reid, Steve Mulligan, Stuart Kippen, Mingle Sarpomaa, and Doctors Neil Nichol, and Christina Wilson. Evidence was provided from Doctor Benedikt Vennemann in affidavit. No other party led evidence.

Both parties moved me simply to make a formal determination in terms of section 6(1)(a) and (b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. I have done so. In my view there was nothing in the evidence led before me which would have supported in any way any determination being made in terms of sections 6(1)(c) – (e) of the 1976 Act. However, in light of the evidence that Mr Marshall was suffering from hypothermia, I consider that it is appropriate for me to deal briefly with the cause of death.

A number of witnesses at the prison spoke of Mr Marshall being cold when they attended him in his cell about 7.30am on 3rd December 2010. He had further urinated himself and his clothing and bedding were wet. Some witnesses spoke about the cell being cold. The weather on 3rd December 2010 was artic. Mr Reid, who was the estates manager for the Scottish Prison Service responsible for *inter alia* HMP Perth, said that the temperature in Mr Marshall's cell was recorded at 19.1 degrees centigrade on that date. This is just above the minimum temperature for cells, namely 19 degrees centigrade. The fact that Mr Marshall had urinated himself would have assisted in the evaporation of heat from his body.

Mr Marshall's temperature was taken in prison before he was transferred to Perth Royal Infirmary and was low. Mr Steve Mulligan, a nurse at HMP Perth, described Mr Marshall as hypothermic. According to the prison medical records, Mr Marshall temperature was 31.7 degrees centigrade which is five to six degrees lower than normal. Once Mr Marshall was transferred to Perth Royal Infirmary all medical staff who gave evidence again described Mr Marshall as being cold. He was hypothermic. His temperature at 9.45am, according to the medical clerking document from Perth Royal Infirmary, was unrecordable. Steps were taken to try and heat up Mr Marshall.

Notwithstanding that evidence, I am satisfied that hypothermia was not a cause of Mr Marshall's death. He was described by various witnesses as being in poor/chronic health caused by his suffering from hepatitis C and cirrhosis of the liver resulting in chronic liver disease. He had

been a regular patient at Ward 4 at Perth Royal Infirmary. Mr Sarpomaa spoke of having treated him on and off for approximately a year. Doctor Wilson, a trainee registrar on Ward 4, had commenced her spell there in August 2010. She described Mr Marshall as a frequent patient in Ward 4. Indeed he had been admitted on 26th November 2010 as a result of his illnesses. He was discharged on 1st December 2010. He was recorded as a 'Do not resuscitate' patient in his hospital notes. The medical evidence was that aggressive resuscitation was neither useful nor appropriate. Doctor Wilson indicated that since she had commenced in Ward 4 in August 2010 Mr Marshall's family had been contacted on a number of occasions when he had been admitted because his death could occur at any time. The purpose of his various admissions was simply to stabilise his condition before he was discharged back to HMP Perth. She described death as imminent.

Doctor Nichol, who was a consultant in accident and emergency, indicated that Mr Marshall suffering from hypothermia was unlikely to have a direct link with his death. He explained that if he had lost consciousness as a result of his liver disease he was unlikely to respond to his conditions such as having urinated in bed and the cold. Mr Marshall was spoken of being semi conscious when personnel in the prison encountered him around 7.30am on 3rd December 2010. Mr Marshall might have urinated himself when in his semi conscious state. He would then have been unable to respond appropriately. His liver failure was likely to have resulted in his incontinence.

Doctor Wilson said that his liver condition meant that Mr Marshall was more prone to be affected by external factors. The existence of liver disease meant his body's internal temperature control did not work. His body was struggling to regulate itself when he was admitted on 3rd December 2010. The indications were that his body was shutting down. This had nothing to do with temperature.

In light of the medical evidence I am satisfied that the causes of death are as I have determined.

I now turn to a matter which the evidence in this inquiry did raise and I consider is worthy of comment although the evidence is not such that I could make any determination in terms of section 6(1)(e) of the 1976 Act.

Mr Marshall was aged thirty five years of age. He had had significant addiction problems. By the latter part of 2010 his condition was such that death was imminent as a result of chronic liver disease and the resultant problems. He was serving a five year prison sentence which had been imposed in June 2008 but running from 6th December 2007. There are a significant number of inmates at HMP Perth with addiction problems. M/s Alexandra Johnston, a practitioner nurse at the prison, said that she estimated of a population within the prison of seven hundred inmates approximately 70% had addiction problems with between 5 and 10% suffering from hepatitis C and/or liver problems. Whilst few at present may be in a similar condition to Mr Marshall, the possibility of an increase in such persons cannot be discounted for the foreseeable future. Indeed M/s Johnston indicated that there were two current inmates in HMP Perth whose condition was almost as serious as that of Mr Marshall. In short there is a likelihood of persons with significant addiction problems and associated significant health issues being inmates in prison, some serving significant sentences.

The general view from the prison nursing staff was that the prison could not provide the appropriate care for such persons. Mr Steve Mulligan indicated that observation overnight would not be likely to identify that Mr Marshall had been incontinent or vomited. He said that prison was not equipped to look after persons in Mr Marshall's condition. There was no nursing staff on duty overnight. He considered that Mr Marshall should have been in hospital. He considered that Mr Marshall required health care assistance at least twice daily with possibly assistance regarding meals and going to bed. He required pretty constant nursing care. His colleague, M/s Johnston, indicated that the prison was unable to assign two nurses to an inmate. Nursing staff were only present during the day and back shifts, between ten and twelve during the day shift, four during the back shift. She explained that the prison did not have a hospital wing. It simply had a health centre. The medical care provided was the equivalent of a general practitioner's health centre. She considered that the prison was not in a position to provide palliative care to inmates such as Mr Marshall. She was of the view that Mr Marshall's care needs would have been better met in Perth Royal Infirmary. If Mr Marshall had been in the community she considered that he would not have been discharged without a care package being in place at a person's home. Alternatively, he would have been discharged to a residential care or nursing home. Whilst a prisoner could activate a buzzer to obtain assistance during the night, in most cells that required an inmate to get out of bed. There were only two cells in C Hall in which the buzzer could be operated from the bed.

The staff at Perth Royal Infirmary clearly considered that their role was to stabilise Mr Marshall following his admission. Once that was achieved, it was appropriate that he be discharged. Doctor Wilson said in evidence that Mr Marshall could be adequately cared for in prison. The difference in opinions between the prison nursing staff and the staff at Perth Royal Infirmary can be seen when the medical notes from hospital and prison relating to Mr Marshall are examined prior to his discharge on 1st December 2010. The hospital notes show that that day at 11.40am it was planned to discharge Mr Marshall. Thirty minutes later the physiotherapist was asked to review Mr Marshall as he required to be independently mobile prior to discharge. At 2.40pm the physiotherapy assessment was that Mr Marshall required a zimmer and the assistance from two people to get about. Doctor Harper, who was the consultant in charge of Mr Marshall, was appraised of this. His decision was still to discharge Mr Marshall. The nursing notes also indicate that a decision was made to discharge Mr Marshall on the morning of 1st December 2010 and that decision remained notwithstanding his limited mobility. In addition there was a reluctance on the part of prison staff to administer opiate based medicine to Mr Marshall

The prison notes covering the same period, in addition to the issue regarding the opiate medication, show their reservation regarding being able to care for Mr Marshall in light of his mobility problems. At 2.30pm on 1st December 2010 they advised the hospital that they could not facilitate the care for Mr Marshall if he was only walking with the assistance of a zimmer and two nurses. There is no other entry in the prison records until Mr Marshall is returned to HMP Perth at 6pm. At that time he was able to be transferred from a wheelchair to his bed. In short, the differences of opinion as to the appropriate place to care for Mr Marshall are evident not simply from what the witnesses said but also from the relevant notes at the time.

I do not consider that this matter had any direct connection with Mr Marshall's death or was relevant to the circumstances of his death. His death was imminent and nothing done in this regard would have altered that fact. However, it does have a relevance regarding the general care and welfare of prisoners and might have a connection with the death of an inmate in the future. The fact that this issue does not have any direct connection with Mr Marshall's death may well be the reason that it was not directly investigated in detail in evidence. For example, I heard no evidence as to the NHS policy regarding the discharge of patients who are ill but are in need of nursing care as opposed to medical intervention. I did not hear specific evidence regarding the way in which hospitals deal with inmates who require inpatient treatment. Inmates will raise issues which are not present when inpatient care is required by a normal citizen. For example,

Doctor Wilson indicated that inmates are looked after in a side room if one is available. I did not hear specific evidence as to the capacity of medical care for terminally ill inmates in prison.

It does, however, raise in my mind an issue regarding the general care and welfare of prisoners particularly in light of the evidence I heard regarding the number of prisoners with addiction problems and those who have resultant liver problems. It seems to me that if inmates are discharged from hospital when they are stabilised, as happened to Mr Marshall on numerous occasions, then greater provision for care of a nursing nature may require to be looked at by the relevant authority. M/s Johnston observed that HMP Perth was Mr Marshall's home. If his home had been in the community she was of the opinion that he would have been provided with a care package at home or been admitted to a residential care/nursing home. Clearly this has cost implications. It might even be that such prisoners would be considered for compassionate release. I did not hear any evidence as to the criteria for such release. Such a course would presumably also be dependent in part upon the relevant care being available to the inmate in the community either by means of his family members or some other intervention.

I simply conclude by offering my condolences to Mr Marshall's family.