

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

Determination

of

**SHERIFF KENNETH M MACIVER,
Solicitor, Advocate, Sheriff at Edinburgh**

**In the Fatal Accident Inquiry into the
death of PHILIP HOLMES SAFFREY**

Held at Edinburgh on 24 May 2011

The Sheriff, under and in terms of section 6(1) of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976 makes the following determination.

1. That, in terms of section 6(1)(a) of the said Act, Philip Holmes Saffrey (date of birth 17 March 1967, formerly of 42/1 Muirhouse Park, Edinburgh, died at approximately 1.30 am on 15 July 2010 on route from HM Prison Edinburgh to Edinburgh Royal Infirmary. Life was pronounced extinct at 02.57 on that day at said Edinburgh Royal Infirmary.
2. That, in terms of section 6(1)(b) of the said Act, the cause of death of said Philip Holmes Saffrey was
 - 1a. Cocaine toxicity
3. In terms of section 6 of said Act there are facts which are relevant to the circumstances of the death, which facts are more fully detailed in the note which follows, but which do not lead to the making of any recommendations under the Act.

NOTE

The evidence in this Fatal Accident Inquiry was in relatively short compass and in considering this determination I have made reference to the evidence given in court by 7 witnesses, to a joint minute of admissions entered into by the parties, and to a large number of productions (including witness statements) referred to in the joint minute.

The Crown was represented at the hearing by Mrs Ball, Procurator Fiscal Depute and there was representation by Miss Hammond, Solicitor, Edinburgh on behalf of the Scottish Prison Service and by Miss Davis, Solicitor, Edinburgh on behalf of Reliance Custodial Services. I was informed that the family of the deceased Philip Saffrey did not wish to be legally represented at the Inquiry, but his brother Simon Saffrey was present throughout and at my invitation contributed to the inquiry in a significantly helpful and appropriate manner. Mr Saffrey had access to all of the information which was available to the other parties, was therefore familiar with the circumstances, and was content to leave the court with the duty of making the determination on the facts examined in this matter.

Background

This is an inquiry into the death of a man in custody, and his death occurred on the third night of his remand to Edinburgh Prison by the Sheriff Court at Edinburgh. The deceased appeared from custody at Edinburgh Sheriff Court on Monday 12 July charged along with two other men, Luis Hidalgo and David Carpenter, with importing and being concerned in the supply of cocaine of high value. The charges were extremely serious and the custody remand was an inevitable one made at the further examination stage of the petition case. The deceased would be aware that he was facing a long sentence of custody, and his co-accused have now both been sentenced in respect of this matter. Carpenter pled guilty to reduced involvement and was sentenced to a discounted period of 18 months while Hidalgo went trial in the High Court, and following conviction was sentenced to 11 years imprisonment. I am advised and accept that the evidence against the deceased would have placed him in a position similar to Hidalgo in terms of potential sentence.

There were no circumstances which would give rise to any cause for concern in relation to the deceased's physical or mental condition during any of his time in police custody, in the Sheriff Court process or during his 3 days in Saughton Prison. He was a 43 year old man in good and physical mental health and had no issues which required special attention. In particular there was absolutely no question of any indication of suicidal intent. He was of Scottish origin and although he spent many years in Ecuador, he had been back in the Edinburgh area for about 12 years. Prior to returning to Edinburgh the deceased had been convicted in Ecuador in respect of possession, and probably importation, of drugs and spent around 4 years in custody there.

He married an Ecuadorian citizen (Caty Saffrey) around 1994 and she returned to the UK and lived with him in Edinburgh until around 1999 when she committed suicide, apparently having taken drugs which she brought to Edinburgh from Ecuador.

His co-accused in this case Luis Hidalgo is also Ecuadorian and he and the deceased became friends around 1994 when he also was in prison there. He came to the UK about 10 years ago seeking asylum on grounds of religious persecution and he and the deceased have remained friends throughout the intervening period up to the point where they apparently conceived the plan to import cocaine from Ecuador into the UK which led to their arrest by Scottish police officers on 10 July 2010. I have no information as to the relationship between the deceased and his other co-accused David Carpenter, other than that they are friends from Edinburgh and have known each other on a casual basis for about 10 years.

I am satisfied from the general level of the information which I have heard or read, that the deceased has been a user of cocaine for many years and that he is well experienced in relation to all aspects of cocaine use, supply, transportation and importation. There is no evidence that he is a chaotic user or that he has ever taken a deliberate or accidental overdose of cocaine in the past. His usage appears to have been under control.

The cause of death in this case is the oral ingestion of a quantity of cocaine which was large enough to be well into the fatal dosage range, and I consider it unlikely that the

deceased would have accidentally ingested such a quantity on the day of his death. This leaves a series of questions for the court as to how that situation came about. Since it is clear from the post-mortem report that the cocaine was swallowed and since I am clear that it would not have been swallowed accidentally in prison on that day, the potential of accidental death is reduced to consideration of whether the deceased had deliberately swallowed packaged cocaine at an earlier stage for the purpose of concealment. If that had happened it is of course always possible that the packaging could burst in his body releasing the drug into his system, but in that situation I would have expected the post-mortem report to have found some remaining evidence of packaging within the stomach contents. No such evidence was found, and additionally the circumstances of his arrest in Edinburgh on Friday 10 July were such that he would have had a very limited opportunity to properly package and swallow cocaine for the purpose of concealment from that point on. I have therefore given that matter careful consideration but have ruled out accidental death in this particular set of circumstances. That leaves the possibilities of homicide and of suicide, and I look at those separately below.

Arrest and subsequent procedures

Looking now at events chronologically, the deceased was detained by officers of the Scottish Crime and Drug Enforcement Agency in Edinburgh on 10 July following observation and comprehensive preparation of a case against him and others. He was detained in a public house and was immediately taken to St Leonards Police Station, Edinburgh where, along with his co-accused Hidalgo and Carpenter, he was fully and professionally searched by various police officers. I can be clear from all the available information that there was a full search because not only do the police officers confirm that in their statements but they are corroborated by an entry in the notes written by the deceased and left in his cell, where he mentions a “strip search” of his person made by them after arrest.

There is no indication that police officers have failed in their professional duty in carrying out the search although as I later mention the deceased left a note in his cell in which he mockingly suggests that they were neglectful of their duty when they searched him and failed, by implication, to detect the fact that he was carrying drugs at that time. He does not say how he was concealing these drugs.

The deceased and his co-accused remained in St Leonards Police Station over that weekend and though I have no detail of their movements I am clear that they stayed in police custody at St Leonards until they were collected on Monday morning by officers of Reliance Custodial Services whose contracted duty is to take the police custody prisoners from there to Edinburgh Sheriff Court where they will be processed to appear in the various courts. Again without going into any detail, I am entirely clear that the Reliance officers concerned carried out their proper duties and searched the deceased and his two co-accused, not simply at St Leonards police station, but also at Edinburgh Sheriff Court, perhaps even more than once. These searches were conducted in conformity with their written instructions on such procedures.

The Reliance searches were what they call down “rub down” searches involving the clothing and the exterior of the body including the mouth, but the police searches had involved removal of all clothing and an examination of the whole body sufficient to satisfy the searcher that there was no need to require a judicial warrant for internal body search by a doctor. It is a proper and well known procedure for Police, suspecting internal concealment and not getting cooperation from the detainee, to seek such a warrant. This was not thought to be necessary in this case, and it had therefore not been done.

After court Reliance officers took the deceased and the co-accused to custody in Edinburgh Prison in the afternoon of 12 July 2010, where, again without full detail I am satisfied that the proper and necessary search procedures were carried out by prison staff, involving in each case strip searching of the three prisoners. Again nothing was found and there is no indication that the officers were negligent in their duty in that connection. At prison, some items of personal clothing and footwear were retained by the prisoners.

On the matter of search of the deceased over the whole period of 10-12 July at the three locations, I am satisfied that all appropriate and reasonable search procedures were carried out by experienced professionals, and that if any drug was concealed on or in the person of the deceased during his time in police custody and in the Sheriff Court, it was concealed in a very careful and secure manner, either internally or

cleverly concealed in an item such as a shoe which would be retained by him throughout the procedure. There is no indication of any failure in searching duty by any of these three agencies, nor indeed any negligence on the part of the prison authorities during the 3 days when the appellant was in their custody after the admission search procedures. In saying this I do not ignore the simple fact that it is patently clear that the deceased did in fact die as a result of an overdose of an illegal drug which somehow entered the Prison in spite of security measures.

Medical Assistance

The staff at Edinburgh Prison are of course responsible for the welfare of prisoners and must have in place a system which deals properly with any emergency situations which may arise. In that connection there has to be a swift response and availability of sufficient trained staff to deal appropriately with emergencies.

In this particular case the emergency alarm system was activated by the prisoner Hidalgo, who was sharing a cell with the deceased, at around with 11.54 pm and from the evidence and statements which I have heard I am satisfied that the response by the first officer was immediate in that he did not delay to any extent in answering the alarm buzzer. On going to the cell door he made swift and appropriate enquiry and although the level of information being given to him by the prisoner Hidalgo was not particularly precise, his reaction was quick and appropriate and within a very short period of time he had called for the assistance of one officer, and then two more. I am satisfied on the statements which I have seen that the cell door was opened and the deceased seen within 2 or 3 minutes of the alarm being raised.

The medical intervention applied by the prison staff was quick and appropriate, and resuscitation attempts were started immediately and continued until the arrival of paramedics from Edinburgh Royal Infirmary. There are no medical staff members on duty during the night at Edinburgh Prison and in the circumstances here it is not necessary to comment on that since it is clear that it would not have made any substantial difference. I reach this view because the deceased's critical medical situation was quickly and accurately assessed and dealt with by the trained prison officers, the emergency services at the Royal Infirmary were alerted within about 2 minutes of the emergency arising, and the deceased was in any event, by the time he

was first seen by prison officers, already beyond the stage where further or different medical intervention would, in my view, have saved his life.

It is, I think, uncertain in this case whether the deceased was indeed alive during some of the procedures since both prison staff and paramedics found long intervals where there was either no pulse or no heart beat or both. In the event I am satisfied that both pulse and heart beat were undetectable after about 1.30 am when the deceased was in an ambulance on the way to hospital, but as a matter of simple fact his situation was so critical by the time his cell mate raised the alarm that I am clear that he was effectively in a terminal state when the first prison officer unsuccessfully looked for a pulse and noted that he was not then breathing. His position did not change markedly thereafter although the paramedic's equipment intermittently showed some heart activity up to 1.30 am. On the basis of the above information I am satisfied that no fault can be attributed to any of the staff at the Edinburgh Prison and no deficiency has emerged in any of the procedures which are in place there for dealing with emergencies.

Similarly the Scottish Ambulance Service reacted swiftly and although one of their ambulances broke down in the transportation procedure this did not have an affect on the treatment of the deceased, who received a full and professional service from the point of their arrival at Prison, until he was placed on a life support machine at hospital, and eventually pronounced dead shortly before 3.00 am.

Ingestion of Cocaine

The remaining question is how the deceased obtained the cocaine which killed him and running alongside that, the associated question of whether he ingested it willingly or whether it was forced upon him.

Dealing with the second question first there is of course only one person that could have brought about the death of the deceased by a wilful criminal act and that person is his friend and his cell mate on that night, the co-accused Hidalgo. I heard his evidence and carefully read his police statements and all of the associated material before reaching a decision on this matter. I have to say that the Crown have never suggested, so far as I am aware, that he is culpable in any way but it seems to be

important in the context of the fatal accident inquiry that that matter also be looked at by the court.

I am satisfied on the information available to me that there was no animosity between the deceased and Hidalgo either on the day of death or previously, and indeed all of the available evidence points to them being good friends with no indication of past or current animosities. The matter which brought them both into custody appears to have been a joint criminal enterprise with no obvious benefit to Hidalgo if he brought about the death of the deceased prior to the resolution of the charges. They had not shared a cell until that night but the information available to me suggests that this was an arrangement sought by the deceased, and he seemed to be very comfortable in the company of his friend and happy with the arrangement. The deceased had no injury and there is therefore no issue of forceful ingestion of cocaine but the prisoner Hidalgo made two cups of tea for the deceased in the course of the later part of the evening and it appears that both of them were drunk, certainly the first one was drunk by the deceased somewhere in the mid evening. Hidalgo states that these cups of tea were made at the request of the deceased.

Some slight element of suspicion must fall upon Hidalgo as a result of his decision to transcribe onto a piece of paper in the cell a portion of the note, proved to have been written by the deceased, which includes a remark that exculpates Hidalgo and Carpenter from any involvement in the matter which brought them all into custody. That suspicion arises because even on Hidalgo's own account, his decision to transcribe that portion tending to exculpate him was taken at a time when he knew that the deceased was very ill and suffering convulsive fitting, and he wrote down that portion of it before he called for assistance. That decision, in addition to a possible unexplained delay of 15 minutes or so between realising that the deceased was ill and calling for assistance, needs to be considered but it is the only feature of the evidence in this case which even hints at any wrongdoing by Hidalgo.

About 2 hours (at most) before the prison officers were alerted to his condition the deceased wrote a note in the following terms -

“PLEASE FORGIVE ME BUT PERSICUTION AND MONEY SPENT ON ME IS A WASTE.

I AM GOING TO SEE CATY. HOW DID I DO IT THE SCDEA CANT DO
SERCHES FOR SHIT

RODRIGO AND DAVE ARE INOCENT + I PLANNED IT ALL AND USED
THEM TO FEED MY ADDICTION

NO MORE”

That note was undoubtedly written by the deceased and the expert evidence makes that clear, although the hand appears to be quite shaky by that stage. It also indicates particular individual thought processes of the deceased, rather than giving any indication of a position forced upon him, and it seems to me that the exculpation of his co-accused Hidalgo is ancillary to the main object of the Note, which it would not be if the deceased had either been forced to write it or had written it after realising that Hidalgo somehow had made him consume drugs without his knowledge.

While the reaction of Hidalgo before calling for the prison authorities is not as prompt as I suspect it could have been, he did nonetheless present himself credibly to all who saw him thereafter as being extremely shocked and upset about the condition of the deceased. It is perhaps understandable bearing in mind that Hidalgo is an international drug smuggler and clearly not a reliable and decent citizen, or a man to be trusted to any great extent, that he would take a few minutes to take advantage of the potential bonus that came his way when he saw the terms of the note which the deceased had written. If indeed he did delay his emergency call for the unexplained 15 or so minutes which may be unaccounted for in the evidence, it is unlikely that it would have made any substantial difference, and it may be that any period of delay was in any event shorter. It is however also possible, although there is no evidence for this, that Hidalgo knew all along what his co-accused had decided to do and waited until the point of convulsive fitting before calling for the authorities.

Having given full consideration to all of the evidence surrounding what happened here and having also seen him give his evidence at the fatal accident inquiry I have reached the view that while he is not a man in whom I would place trust, there is nonetheless no evidence to suggest that he played any active role in the death of Philip Saffrey and the level of inaction which I consider has been present here is unlikely to have made a difference to the deceased's situation. I have therefore

reached the view that the cocaine which killed the deceased was not introduced into his system by any deliberate action of Hidalgo such as administration of the drug in the cup of tea.

The Evidence of Suicide

That leaves the remaining issue of how the deceased came to be in possession of the cocaine, since having eliminated other possibilities I have reached the position where I am satisfied that the deceased did indeed willingly and knowingly ingest an amount of cocaine sufficient to kill him.

I am satisfied by the terms of the note which he left that this is to be regarded as “a suicide note”, and that it was intended additionally to help the two people who, at that point, he continued to regard as his friends, namely his two co-accused. Dealing with that issue first, it is obviously not a common situation, and this is not a foolproof way to fully exculpate a co-accused, but the deceased has written the note in such a way as to leave a clear inference in my mind that this was his final word on the matter and was to be seen as a parting gesture towards them. The other contents of the note, and particularly the opening comments, are indicative of suicidal intention, not only the reference to prosecution being a waste but also the specific reference “I’m going to see Caty”, which, I think, is a particularly obvious reference to taking his own life. In all the circumstances I am of the view that this is a case which can be properly regarded as a suicide, and while there are features of it which are open to debate and speculation, the balance of probabilities favours that conclusion.

The remaining part of that note contains the question which cannot really be answered, in that he suggests that he has managed to conceal cocaine from the 10th July until he took it on the 15th, and particularly points the finger of accusation at police officers for a failure to properly search him.

In this matter I have to acknowledge the difficulty for a prisoner wishing to obtain such a quantity of cocaine as is involved here, particularly when not a regular inmate and when as here he had little time to make such an arrangement.

On the basis that dying individuals often see no point in lying at that stage I could easily reach a view that the deceased had concealed cocaine internally, probably in his

anus, and since he was not subjected to internal examination at hospital as is sometimes the case, he has been able to remove the concealed cocaine in prison and ingest it at a time of his own choosing. It seems to me that the time of his choosing was the point, when after discussion with his solicitor that afternoon, he realised with some clarity that he faced a sentence of imprisonment of considerable duration, and he elected not to do that but instead to take his own life.

Having said that, however, I have to concede that the sentence which followed the reference to SCDEA, was in fact a lie in order to help his friends, since he knew that they were not innocent, and the reference to SCDEA may also be a lie, designed to embarrass or annoy those who had arrested him.

I have considered whether it is appropriate to suggest that police officers should be more alert to the possibility that individuals, particularly individuals like the deceased who have some knowledge and experience of international drug smuggling, should be more intensively considered for internal search procedures but I have decided that this case is so unusual as to make that an impracticable suggestion and indeed probably an unnecessary one. I think that the deceased was skilled enough in the business of drug concealment to make him unusually difficult to deal with, and while I think that he may well have managed to get drugs into prison through all of the search procedures, I do not consider that position to be a regular or sufficiently frequent situation as to make it appropriate for me to make any special recommendations in the context of this Fatal Accident Inquiry. The Scottish Crime and Drug Enforcement Agency will already know of the content of the suicide note and will have taken on board for future reference the possibility that the deceased has successfully frustrated their search attempts. In saying all of this, I have considered and cannot entirely dismiss the possibility that the deceased was laying a false trail to deflect blame from others and by so doing, throwing false accusation in the direction of those who had brought about his downfall.

Sheriff of Lothian and Borders at Edinburgh

EDINBURGH, 8 June 2011.