INQUIRY UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY ACT INTO THE DEATH OF DAVID YARDLEY

Sheriffdom of South Strathclyde Dumfries & Galloway at Hamilton

UNDER THE FATAL ACCIDENTS AND SUDDEN

DEATHS INQUIRY (SCOTLAND) ACT 1976

(hereinafter referred to as "The Act")

Determination

by

William Erle Gibson Esquire

Sheriff of South Strathclyde Dumfries

and Galloway at Hamilton

in

Fatal Accident Inquiry

regarding

David Yardley

Hamilton: 10th October 2005

The Sheriff determines:-

(1)In terms of Section 6(1)(a) of "the Act" that David Yardley who resided at 48 Belmont Street, Overtown, Wishaw died at Wishaw General Hospital on 11th November 2003 at 11.45 pm.

(2)In terms of Section 6(1)(b) of "the Act" that the cause of death was peritonitis due to perforation of large bowel (surgically treated) due to carcinoma of the rectum.

(3)In terms of Section 6(1)(c) of "the Act" that a reasonable precaution whereby the death might have been avoided was for Mr Yardley to have been given a gastrograffin enema in the evening of 7th November or at the latest in the morning of 8th November 2003.

(4)In terms of Section 6(1)(d) of "the Act", although the view is taken that there were defects in the system of working, it cannot be said that these contributed to the death.

(5)That the facts relevant to the circumstances of death in terms of Section 6(1)(e) are set out fully in the note appended to this Determination.

NOTE

At this Inquiry Mr Dalziel, Procurator Fiscal Depute, presented the evidence of eleven witnesses, Mr Santoni, Solicitor, appeared for the family of Mr Yardley, Mr Holmes, Solicitor, instructed by the Medical and Dental Defence Union represented Doctor Alison Lannigan and Mr Crerar, Solicitor, appeared for Lanarkshire Health Board.

The duties imposed on the Sheriff in respect of this Determination are:-

"(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 death;

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

I will deal with each of these items and issues in turn. It will have been clear from the extensive evidence, however, that paragraph (a), (b) and (d), can be dealt with briefly, that the relevant facts in paragraph (e) are not materially in dispute and that only paragraph (c) raised issues which were in dispute. There are two preliminary matters worth mentioning. Firstly, an inquiry of this nature is not determining any question of civil fault or liability (***Black v Scott Lithgow Limited*** 1990 SLT 612) and of course a Determination cannot be founded upon in any subsequent proceedings (Section 6(3) of "the Act"). Despite the wording of Section 6(1)(c) therefore the Sheriff does not have power to make findings of fault or to apportion blame. Secondly, in terms of Section 4(7) of "the Act" the Rules of Evidence shall be as nearly as possible those applicable in an ordinary civil cause brought before the Sheriff. The standard of proof is the balance of probabilities and facts and circumstances can be established without the necessity of corroboration.

Summary of Events

On 11th September 2003 Mr Yardley attended his GP Doctor T K Wilson. He explained that he had been suffering from diarrhoea for some six weeks. Doctor Wilson was concerned lest Mr Yardley had a tumour in his bowel and because of Mr Yardley's age and the fact that he rarely attended the surgery he wanted him seen sooner than later. As he thought Mr Yardley merited urgent investigation he wrote to

Wishaw General Hospital asking for an appointment fairly soon. In the event Mr Yardley was given an appointment for 5th February 2004. On 2nd October Doctor Wilson again saw Mr Yardley about another matter when Mr Yardley said that his bowels had settled. On 7th November Mrs Yardley called Doctor Wilson to their home because her husband was in considerable pain. Having examined Mr Yardley Doctor Wilson concluded that he had a sub-acute obstruction in his bowel and arranged for him to be admitted to Wishaw General Hospital as an emergency. He was admitted at 1.20 pm on 7th November, a Friday. On admission, first a nurse and then a junior house officer examined and made notes of Mr Yardley's condition. At 5.30 pm he was seen by the duty surgeon, Mr Babar, a general surgeon with ten year's experience who by coincidence specialised in colo-rectal surgery. As he explained on the telephone that night to Mrs Alison Lannigan, the general surgeon who was to take over on-call duties for the weekend at 9.00 am on the Saturday, Mr Babar felt there was no urgency, that Mr Yardley did not require immediate surgery and that on Monday 10th November Mr Yardley should have a gastrograffin enema. Mr Babar went off duty at 9 am on Saturday 8th November and Mrs Lannigan assumed responsibility for Mr Yardley. At that time, she had some two years experience as a Consultant General Surgeon, her specialty being breast and thyroid disease. She saw Mr Yardley on ward rounds on Saturday 8th and Sunday 9th November. On Sunday an x-ray was taken on her instructions which she compared with the x-ray taken on admission on Friday 7th. She saw no improvement or deterioration. Mr Yardley was given analgesics over the weekend to control his pain. At 9.10 pm on Sunday 9th he suffered a sudden severe abdominal pain and at 1 am on Monday 10th it became clear that Mr Yardley had suffered a perforation. Mrs Lannigan, having been advised of this, made the necessary arrangements to operate which she did between 3 am and 4.45 am. After the operation Mr Yardley was transferred to the Adult Critical Care Unit where he received considerate nursing care until his death on Tuesday 11th November at 11.45 pm.

Section 6(1)(a) - Where and When the Death took Place

Mr Yardley died at 11.45 pm on 11th November 2003 at Wishaw General Hospital.

Section 6(1)(b) - The Cause or Causes of Death

In the course of the Inquiry a Joint Minute of Agreement was lodged wherein ***inter alia*** the terms of the Post Mortem Report dated 23rd December 2003 by Doctor John Clark (Crown Production 2), were agreed and admitted in evidence. As therein stated the cause of death was peritonitis due to perforation of the large bowel (surgically treated) due to carcinoma of the rectum.

Section 6(1)(e) - Facts which are Relevant to the Circumstances of the Death

I consider it would be appropriate to move to Section 6(1)(e) and explore the circumstances as a means of determining whether there are any reasonable precautions which might have avoided the death in terms of Section 6(1)(c) or defects in any system of working which contributed to the death in terms of Section 6(1)(d).

The Depute Fiscal first lead the evidence of Mrs Ann Davies, the eldest daughter of Mr Yardley, and Doctor T K Wilson, his General Practitioner, who spoke to the circumstances leading up to the admission to hospital of Mr Yardley on 7th November. Mrs Davies also spoke to family concerns about his care while in hospital which concerns were documented in a letter dated 13th November 2003 by Mr Yardley's wife, Mrs Margaret Yardley (Crown Production 4). Sadly Mrs Yardley died in February of this year. Thereafter the Depute Fiscal lead the evidence of several doctors and nurses who were involved in the care and treatment of Mr Yardley from his admission on 7th November until his death on 11th November but not of Mr Babar who had left the hospital some six months previously and was now resident abroad. Finally the Depute Fiscal lead the evidence of Mr D C Bartolo, a consultant in colo-rectal surgery, whose evidence I accepted as that of an expert witness.

Mr Bartolo, having perused the several productions of the crown, including the case records, and the Post Mortem Report prepared a report dated 26th July 2004 Crown Production 3. In evidence he spoke to and expanded on that report. In his opinion Mr Yardley should have undergone a gastrograffin enema on the morning of Saturday 8th November if not the Friday evening which would almost certainly have prompted urgent surgery which would have dramatically reduced the chances of Mr Yardley dying. In his opinion, the management plan decided upon by Mr Babar, that he would undergo the gastrograffin enema on Monday 10th November, was unreasonable. The criticism by Mr Bartolo focused on that decision. He offered no criticism of the treatment which Mr Yardley received thereafter. Specifically, he offered no criticism of Mrs Lannigan for not interfering with that management plan, his explanation being that there had been no significant change in Mr Yardley's condition between Friday and Sunday and therefore no reason for her to interfere with the management plan of a colleague who had not only considerably more experience than her but also a special interest in colo-rectal surgery.

Mr Bartolo said that when emergency patients are admitted with a suspected large bowel obstruction the normal practice is that a gastrograffin enema be given as soon as possible to establish if it is a mechanical or pseudo obstruction. If it is a pseudo obstruction surgery is not required and to operate would put the patient at unnecessary risk. If it is a mechanical obstruction the procedure provides more detail of the obstruction. In the opinion of Mr Bartolo the x-rays taken on admission showed that Mr Yardley had a large bowel obstruction which made it prudent to give him a gastrograffin enema as soon as possible, the timing depending on all the circumstances including the time of day and the availability of staff. Mr Yardley should have been given a gastrograffin enema if not on the Friday night then on the Saturday morning. Had that been done, Mr Bartolo would then have expected Mr Yardley to be operated on later on the Saturday or first thing on Sunday morning and, had that been done, on a balance of probabilities the chances of mortality would have been substantially reduced to somewhere between thirty to fifty per cent.

Dr Susan Reid, a consultant radiologist at Wishaw General Hospital, gave evidence that at 5.55 pm on the Friday a standard request was made for a gastrograffin enema to be given to Mr Yardley but there was no indication of when it would be carried out. She explained that there is a radiologist on duty from Monday to Friday, 9.00 am to 5.00 pm, that a radiologist routinely attends the hospital on Saturday and

Sunday mornings and that there is always a radiologist on call. She confirmed that Mr Yardley could have been given a gastrograffin enema on the Friday night or the Saturday morning if that had been requested.

It was unfortunate that Mr Babar was not available to give evidence which could have been helpful when considering the criticisms by Mr Bartolo of his decision to delay the gastrograffin enema until Monday. In his absence the only evidence on which the opinion of Mr Bartolo might be challenged was that of Mrs Lannigan. Mr Babar had told her during a telephone conversation on Friday evening that Mr Yardley did not require immediate surgery and his management plan was to have him given a gastrograffin enema on the Monday to assist in diagnosing his condition and thereafter deciding if an operation was necessary. She had seen Mr Yardley on ward rounds on Saturday and Sunday and had instructed an x-ray to be taken on Sunday. She had seen no change in his condition for better or worse and was not going to change the management plan put in place by a more senior colleague of ten years experience who was a colo-rectal specialist.

I recognised that Mr Bartolo is a consultant surgeon in the Western General Hospital in Edinburgh, a teaching hospital which is a centre of excellence, and that in giving his opinion as an expert witness he had the benefit of hindsight. However, in making my determination I have to rely on the evidence which I heard and, in my opinion, the evidence of Mrs Lannigan, who was relatively inexperienced and who did not have a special interest in colo-rectal surgery, did not amount to an approbation of the management plan of Mr Babar nor did it lead me to question the opinion of Mr Bartolo.

Given that the standard of proof to be applied in this Determination is the balance of probabilities, I am satisfied taking account of all the evidence that a reasonable precaution whereby the death of Mr Yardley might have been avoided was for him to have been given a gastrograffin enema on the Friday night or Saturday morning.

The concern of Mr Yardley's family was that if he had been admitted midweek he would have been operated on at once but because he was admitted on a Friday nothing was going to happen and nothing did happen until Monday. It is perhaps understandable that the family might have that concern but it is not well founded. Had Mr Babar called for a gastrograffin enema on the Friday evening or Saturday morning there is no doubt, in my mind, that the radiology department was adequately staffed and would have carried out the procedure expeditiously and there was no suggestion that Mrs Lannigan, had the result of the procedure been available to her, would not have carried out the necessary surgery without delay.